

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

58711

97266

FILE: B-183168

DATE: May 28, 1975

MATTER OF: Jet International, Inc.

DIGEST:

1. Allegations that contracts were improperly awarded over 10-year period ending in November 1974 because of lack of competition are untimely since issues of this nature must be raised before closing date for receipt of proposals and not well after award pursuant to 4 C.F.R. § 20.2(a).
2. Without proof of improper use of proprietary data or pending patents, no conclusion of improper action on part of agency can be reached; moreover, 28 U.S.C. § 1498 (1970) provides exclusive and comprehensive remedy for unauthorized Government patent infringement, i.e. suit against Government in Court of Claims.
3. GAO has no authority under 5 U.S.C. § 552 (1970) to determine what information must be disclosed by other Government agencies pursuant to Freedom of Information Act.
4. As determined at 52 Comp. Gen. 761 (1973), and presently reaffirmed, Department of Transportation has no authority to enter into license agreements with patent holders. However, Report of the Commission on Government Procurement has recommended that all agencies be given this authority, but recommendation has not been implemented to date.

By letter dated February 3, 1975, and subsequent correspondence, Jet International, Inc. (Jet), has raised several issues of protest regarding contracts that have been awarded by the Department of Transportation (DOT), Federal Aviation Administration (FAA). Jet also questions current, as well as future, procurement actions on the part of DOT with regard to possible DOT infringement on Jet's proprietary data and pending patents. Additionally, Jet has requested from FAA, but has failed to receive, a significant amount

B-183168

of documents and information from DOT regarding both previous and current procurements. And finally, Jet seeks to have our Office modify our decision at 52 Comp. Gen. 761 (1973) and grant DOT and the FAA permission to enter into patent license agreements in the area of air safety accident prevention and control systems.

Although Jet has requested that DOT supplement its report to our Office with respect to certain unanswered questions, in view of our position on the issues presented we find that this would be unnecessary.

Initially, Jet contends that DOT has awarded contracts to International Business Machines Corporation, Sperry Rand Corporation and MITRE Corporation without competition. The contracts in question were awarded to the above corporations between June 30, 1964, and November 22, 1974. Our Interim Bid Protest Procedures and Standards at 4 C.F.R. § 20.2(a) (1974), require that protests based upon alleged improprieties in any type of solicitation which are apparent prior to the closing date for receipt of proposals must be filed prior to the closing date for receipt of proposals. As Jet's contention is first being raised well after awards of the contracts in question, it is clearly untimely and will not be considered on the merits.

Next, Jet has alleged that the FAA plans to infringe on both proprietary data and pending patents encompassed in three unsolicited proposals submitted by Jet to the FAA from October 1974 through January 1975. Responding to this allegation in a report on the protest to our Office, FAA has stated:

"* * * The technical specification and work statements contained in the draft RFP were initiated by the FAA over a year ago, well in advance of receipt of the unsolicited proposals. The proposed procurement described in the RFP has not been developed from information contained in the Jet International proposals. The work statements presented in the RFP merely describe extensions of effort that has been performed over a number of years for our National Airspace System En Route Automation program * * *."

B-183168

FAA states that patent infringement and unauthorized use of proprietary data has not occurred nor does the FAA intend to deliberately misuse proprietary data or infringe on pending patents.

Other than its initial allegation, Jet has not established that the FAA has, in fact, wrongfully utilized its proprietary or patented data. Accordingly, our Office cannot conclude that the FAA has acted improperly in this regard. Moreover, 28 U.S.C. § 1498 (1970) provides that the remedy of a patent owner for unauthorized patent infringement occurring during the use or manufacture by or for the Government shall be by action against the Government in the Court of Claims for the recovery of reasonable and entire compensation for such use and manufacture. Our Office has often iterated the interpretation of the act by the courts to the effect that the remedy provided therein is exclusive and comprehensive in nature. 52 Comp. Gen., supra.

As concerns Jet's request for numerous documents and information, FAA advises that the request is being processed in accordance with the provisions of the Freedom of Information Act (5 U.S.C. § 552 (1970)). It is the position of our Office, in this regard, that we have no authority under the act to determine what information must be disclosed by other Government agencies. 53 Comp. Gen. 40 (1973).

Finally, Jet has requested that our Office consider granting DOT and FAA permission to enter into patent license agreements in the area of air safety accident prevention and control systems. In our decision at 52 Comp. Gen., supra, we stated to the Secretary of Transportation that no clear authority existed for his Department to enter into a then proposed license agreement. Nothing has occurred between the date of the referenced decision and the present which would cause us to change our position. However, attention is invited to page 124 of Volume 4, Part I, Chapter 2, of the Report of the Commission on Government Procurement (December 1972) wherein a recommendation for the consideration of Congress particularly pertinent to Jet's request was made.

"Grant all agencies express statutory authority to acquire patents, applications for patents, and licenses or other interests thereunder."

B-183168

This recommendation, adopted by the executive branch in July 1974, has not been implemented to date.


Deputy Comptroller General
of the United States