

**DECISION**

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

FILE: B-186597

DATE: August 30, 1976

MATTER OF: Celesco Industries, Inc.

**DIGEST:**

GAO will not adjudicate the rights of a protester against another private party with respect to proprietary data, and will not disturb an on-going procurement where those rights have not been established but are a matter of pending litigation.

Celesco Industries, Inc. (Celesco) protests the award of a contract to Baldwin Electronics, Inc. (Baldwin) for MK-46 flares under invitation for bids (IFB) No. N00019-76-B-0006 on the grounds that Baldwin's bid was based on the improper use of Celesco proprietary information to which Baldwin previously had been given access by Celesco.

According to Celesco, its company data had been made available to Baldwin during now abandoned negotiations that were to lead to the purchase by Baldwin of the assets of Celesco's Ordnance Division. Celesco maintains that Baldwin "utilized a copy of the IFB contained from Celesco along with the proprietary information, data, and trade secrets furnished for asset valuation purposes to prepare and submit to the Naval Air Systems Command its bid on the MK-46 Flare units."

Celesco recognizes that the dispute concerning the misappropriation of proprietary data and trade secrets is essentially a private one between Baldwin and itself. It requests the intervention of this Office, however, on the basis that "the Comptroller has a vested interest in preserving the integrity of the fair competitive bidding processes involved in proposed Government contracts." Celesco requests that the Naval Air Systems Command (NAVAIR) be directed to insure that Baldwin's access to Celesco's proprietary data and information on the MK-46 Flare be accorded full and complete consideration in any determination of Baldwin's responsibility and competence. Otherwise, states Celesco, "the Government may become a party to and a participant in any wrongdoing of Baldwin by permitting and accepting the unauthorized use of proprietary data and information to be included in and forming the basis for any determination of capability on the part of Baldwin."

The role of this Office in protests similar to this case was delineated in Garrett Corporation, B-182991, B-182903, January 13, 1976, 76-1 CPD 20:

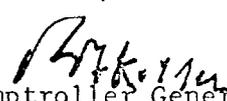
"At the outset, it is appropriate to point out that this Office is not in a position to adjudicate the rights of a protester against another private party; and until those rights are established in a proper forum we have no jurisdiction for disturbing an ongoing procurement program. B-156727, October 7, 1965. Thus, we have refused to interfere with the proposed award of a contract where the evidence is inconclusive as to whether data to be submitted thereunder will be furnished under circumstances violative of the protester's proprietary rights. 49 Comp. Gen. 471, 473 (1970). Also, in B-173192, August 23, 1971, we stated that we would take no position with respect to the possible violation of a protester's proprietary rights by a non-Government entity and would interpose no objection to the Air Force's action in qualifying the contractor charged with wrongdoing, where that Department had undertaken to obtain a reasonable explanation from the prospective contractor as to the manner in which it had obtained the contested data. \* \* \*"

It is true, as Celesco points out, that in some cases we have considered claims of misuse of proprietary data. We have done so "in order not to give any semblance of approval to improper disclosures of data and so as not to expose the Government to liability for damages resulting from the disclosures." Data General Corporation, B-185897, April 28, 1976, 76-1 CPD 287. Thus, where it was clear that the Government's use of data in a solicitation was violative of a contractor's proprietary rights, we directed cancellation of the solicitation. 49 Comp. Gen. 28 (1969); 43 Comp. Gen. 193 (1963). On the other hand, where it was not clear that improper use was being made of data, or where it was clear that proprietary rights were not being violated, we refused to interfere with the procurement. See, e.g., Curtiss-Wright Corporation, B-186063, July 19, 1976, 76-2 CPD \_\_\_\_; 52 Comp. Gen. 312 (1972); 49 Comp. Gen. 471 (1970); B-167046, September 29, 1969; B-165111, February 26, 1969; B-156727, October 7, 1965. In none of these cases, however, have we adjudicated a dispute between private parties as to rights in data.

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Here, there is no evidence of record regarding Celesco's claim that (1) Baldwin's bid is based on Celesco data and (2) Baldwin is improperly using that data. Neither, it appears, has Celesco at this point established in any other forum that it had data rights which are being violated by Baldwin. In this regard, however, we note that Celesco has filed suit against Baldwin in the Circuit Court for Calhoun County, Arkansas, where the matter is still pending. Furthermore, we are advised by NAVAIR that a pre-award survey team pursued the question of the Celesco data with Baldwin, and that Baldwin denied that it had improperly obtained any data proprietary to Celesco. The survey team also determined that Baldwin had the ability to perform the contract without the data which it had obtained from Celesco. Under these circumstances, we do not believe that Celesco has established an adequate basis which would warrant our disturbing an on-going procurement program.

In the light of the foregoing, the protest is denied.

  
Acting Comptroller General  
of the United States