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DECISION

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

FILE: B-186958

DATE: November 29, 1976

MATTER OF: York Industries, Inc.

DIGEST:

General Accounting Office is not in position to adjudicate rights of private parties to proprietary data dispute; moreover, until rights have been established in proper forum, ongoing procurement or award may not be disturbed because of allegation that rights are being violated incident to procurement.

On July 15, 1976, a protest was received from York Industries, Inc. (York), concerning invitation for bids (IFB) No. N00140-76-B-6740, issued by the Naval Supply Systems Command, Department of the Navy, for hydraulic cylinders. York asserted that the IFB drawings of the cylinders were proprietary to the company.

York further explained that it had previously furnished drawings of the cylinders to "McKiernan-Terry or Edo Corporation * * * with the understanding that [the drawings] were to be used for incoming inspection and spares provisioning only." York also asserts that its drawings were appropriately marked with a "Proprietary Rights Statement." Consequently, York requested that the IFB be canceled or that an award be made to York for the requirement.

The Navy states that it acquired rights to the IFB drawings in question from Edo Corporation, whom the Department considers to be the apparent holder of unlimited rights to the drawings and that it was, therefore, entirely justified in attaching the drawings to the IFB.

During the pendency of York's protest the contracting officer for the procurement determined that immediate award of a contract under the IFB was required in order that the projected shipboard installation schedule for the items (which were urgently needed) not be further delayed. The contracting officer's determination was then reviewed and approved at a "level higher than the

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contracting officer." After the Department informed our Office of its determination, an award for the items was made to Arbee Corporation on September 15, 1976, before we received the Department's report concerning the protest on September 24.

It is the position of the Navy that the dispute in question is essentially one between York and Edo as to which court action, rather than a protest to our Office, is the appropriate method for York to pursue if it wants to establish its rights, if any, in the contested drawings.

We are not in a position to adjudicate the rights of private parties each of whom apparently claims rights in contested data; moreover, until those rights are established in a proper forum we would not be justified in disturbing an ongoing procurement or an award because of an allegation that data rights are being violated incident to a procurement. See Garrett Corporation, B-182991, B-182903, January 13, 1976, 76-1 CPD 20. We, therefore, agree with the Navy's position.

Consequently, we will not further consider York's protest.

Deputy


Comptroller General
of the United States