

DOCUMENT RESUME

02665 - [A:652654]

[Protest against Contractor's Use of Proprietary Drawing to Evaluate Another Concern's Drawing]. B-189023. June 7, 1977. 2 pp.

Decision re: Worthington Pump Corp.; by Robert P. Keller, Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Procurement Law I.  
Budget Function: National Defense: Department of Defense -  
Procurement & Contracts (058).  
Organization Concerned: Defense Logistics Agency; RPS, Inc.  
Authority: 49 Comp. Gen. 471. B-186063 (1976). A.S.P.R.  
9-203(b).

Corporation protested the Defense Logistics Agency's use of the company's proprietary drawing to determine the acceptability of another firm's drawing. If the data are not released outside the Government, such use is allowed.  
(Author/QH)

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**DECISION**



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

**FILE: B-189023**

**DATE: June 7, 1977**

**MATTER OF: Worthington Pump Corporation**

**DIGEST:**

Agency may use data supplied with restrictive legend to evaluate drawing submitted by another concern so long as such data is not released outside Government.

Worthington Pump Corporation questions the Defense Logistics Agency's use of the company's "proprietary drawing to determine whether or not the drawing submitted by RPS, Inc., was acceptable for purposes of supplying the part to be procured" under contract No. NSN/PN4320-00-577-7565, recently awarded to RPS. Worthington says that it submitted the drawing in question under a prior contract and that the drawing contained a "limited rights" proprietary legend as set forth in the "Rights In Technical Data" (Feb. 1965) clause of ASPR § 9-203(b) (1962 ed., Rev. 19, October 1, 1966). That clause prohibited the release of covered data outside the Government "in whole or in part, for manufacture or procurement" except for "emergency repair" or "release to a foreign government." The clause also provided:

"\* \* \* the limited rights provided for \* \* \* shall not impair the right of the Government to use similar or identical data acquired from other sources."

Worthington argues that the use of its drawing for comparison purposes in order to qualify another competitor "has had precisely the same effect on Worthington as would [outright] disclosure of the technical data to RPS, Inc." The company says that DLA's use of the drawing "has rewarded RPS for stealing or otherwise unlawfully obtaining Worthington's drawing from the Government or other sources and, secondly, the use has confirmed to RPS that the drawing that they have unlawfully obtained is in fact a valid drawing."

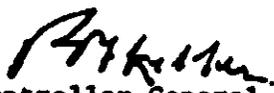
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Worthington acknowledges that the use of its drawing for comparison purposes was, notwithstanding the "limited rights" legend, consistent with our decision in 49 Comp. Gen. 471 (1970), where we held that the Government could use "limited rights" data for internal comparison purposes in order to determine whether data acquired from other sources was "similar or identical" to the "limited rights" data within the meaning of the above-quoted provision of the "Rights in Technical Data" clause. Worthington expresses pointed disagreement with the holding of our decision.

In Curtiss-Wright Corporation, B-186063, July 19, 1976, 76-2 CPD 54, we were also confronted with a similar protest which expressed disagreement with our holding in 49 Comp. Gen., supra. What we said in the Curtiss-Wright decision also applies to Worthington's protest here. The Curtiss-Wright decision reads:

"This Office has on several occasions provided some protection against the unauthorized disclosure of proprietary data by directing cancellation of solicitations which improperly disclosed such data. 49 Comp. Gen. 28 (1969); 43 id. 193 (1973); 41 id. 148 (1961). Here, no claim is made that the RFP improperly reveals CWC's proprietary data. Rather, CWC asserts that the Air Force made improper use of the restricted data by using it to evaluate drawings submitted by CWC competitors. However, as indicated above, we have held that the Government may properly use data in which it has limited rights for such comparison purposes. 49 Comp. Gen. 471, supra. We reached that conclusion after a careful and thorough consideration of the purpose of and policy behind the use of the legend giving the Government limited rights in data furnished under Government contracts, and have consistently adhered to it. See Garrett Corporation, B-132991, B-182903, January 13, 1976, 76-1 CPD 20 and cases cited therein. Although CWC argues at length that our holding in 49 Comp. Gen. 471 was incorrect, we do not find CWC's position in this regard to be persuasive. Accordingly, we cannot agree that the Air Force's use of the CWC data in this case was improper."

We again affirm our holding in 49 Comp. Gen. supra. Consequently, we must deny Worthington's protest.

  
Deputy Comptroller General  
of the United States