

14310 *Sever*  
*PLII*

**DECISION**



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

B-199213; B-199214;  
B-199217; B-199218;  
FILE: B-199298; B-199300; DATE: July 17, 1980  
B-199402; B-199403

MATTER OF: VSI Corporation Aerospace Group

*[Protest Alleging Procurement Items are Patented and  
Must be Prequalified]*

DIGEST:

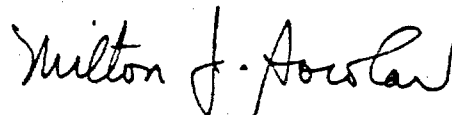
Protests which do not allege that agency has made or will make award in violation of procurement regulations regarding patents and prequalification of items, but merely state that items being procured are patented and must be prequalified, are premature. In any event, allegations of possible patent infringement by Government contractor are not considered by GAO since the exclusive remedy for alleged patent infringement resulting from performance of a Government contract is a suit against Government in Court of Claims under 28 U.S.C. § 1498 (1976).

*DLC 04939* VSI Corporation Aerospace Group (VSI) protests the award of a contract by the Defense Logistics Agency (DLA) to any firm which has not been licensed to manufacture rivets being acquired under solicitation Nos. DLA500-80-B-1448, DLA500-80-B-1593, DLA500-80-B-1632, DLA500-80-B-1679, DLA50080-B-1712, DLA500-80-B-1720, DLA500-80-B-1822, and DLA500-80-B-1824. VSI maintains the rivets are covered by a patent and that it has been granted a license by the patent holder to manufacture them. It argues that "award to an unlicensed source will result in damages" to VSI. VSI further states that the rivets are required to be prequalified by the Government, as well as the manufacturer of the equipment in which they will be used, and that "introduction of noncompatible parts into the system could contaminate existing stocks inasmuch as these items are generally warehoused in roto-bins."

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Since it does not appear that DLA has made or proposes to make award to a firm which is not a licensed manufacturer or will not supply a prequalified product, it appears that VSI's protests are premature. Inter-Con Security Systems, Inc., Washington Patrol Service, Inc., B-192188, February 9, 1979, 79-1 CPD 86. In any event, our Office does not consider allegations regarding possible patent infringement by a Government contractor. Under 28 U.S.C. § 1498 (1976) the exclusive remedy for an alleged patent infringement resulting from performance of a Government contract is a suit for money damages against the Government in the Court of Claims. See CEL-U-DEX Corporation B-195012, February 7, 1980, 80-1 CPD 102; Miltope Corporation, B-191322, July 7, 1978, 78-2 CPD 20.

The protests are dismissed.



Milton J. Socolar  
General Counsel