



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Aeronautical Instrument and Radio Co.  
File: B-224431.3  
Date: August 7, 1986

---

### DIGEST

1. An allegation that a government employee's improper disclosure of the protester's proprietary manufacturing information permitted a competitor to offer an "equal" product in a brand name or equal procurement is dismissed, since there is no relief the General Accounting Office can grant.
2. Protest that a competitor may be using the protester's proprietary data presents a dispute between private parties, which General Accounting Office therefore will not consider.

---

### DECISION

Aeronautical Instrument and Radio Co. (AIR) protests award to Cross Systems, Inc., under Department of the Navy request for proposals (RFP) No. N00383-86-R-4521, for five AIR, or equal, bearing distance heading indicator test sets. AIR states it has learned that proprietary manufacturing information it previously furnished the government was revealed to Cross Systems by a Navy employee and contends it was this disclosure that enabled Cross Systems to submit a proposal for an "equal" item.<sup>1/</sup>

We dismiss the protest.

We have, in a number of cases, considered claims of misuse of proprietary data, so as not to give any semblance of approval to improper disclosures of data or to expose the government to liability for damages resulting from the disclosure. See John Baker Janitorial Services, Inc., B-201287, Apr. 1, 1981/ 81-1 C.P.D. ¶ 249. Where it has been clearly established that the government misused a protester's proprietary data we have, in

---

<sup>1/</sup> AIR originally protested on July 18, 1986, and we dismissed the protest as untimely based on our understanding that AIR recognized the disclosure from the RFP as issued yet failed to protest before the date proposals were due. See 4 C.F.R. § 21.2(a)(1) (1986). This decision responds to AIR's subsequent explanation that the solicitation itself did not evidence any impropriety, and that the firm learned of the disclosure only after proposals had been submitted.

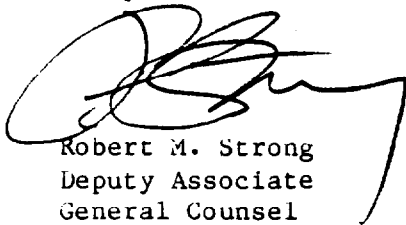
036322

some circumstances, recommended a sole-source award to the firm, or that the solicitation that included proprietary data be canceled and reissued without data. See Zodiac of North America, Inc., B-220012, Nov. 25, 1985, 85-2 C.P.D. ¶ 595. In those situations, however, the disclosure has been in the solicitation itself, and we have held the first cause of action appropriate only if the agency clearly required a product that was proprietary to the protester. See White Machine Co., B-206481, July 28, 1982, 82-2 C.P.D. ¶ 89. Moreover, we specifically have rejected the suggestion that the recipient of another's propriety data be eliminated from the competition altogether, because we do not believe such action would be a desirable means of removing a possible competitive advantage gained through inadvertent agency disclosure. See Youth Development Associates, B-216801, Feb. 1, 1985, 85-1 C.P.D. ¶ 126; White Machine Co., B-206481, supra.

In the present case, the disclosure was not through the RFP (it is not even clear from AIR's protest that the disclosure occurred in the course of this procurement), and the solicitation expressly contemplated offers of acceptable items other than AIR's by soliciting "equal" items that met certain prescribed salient characteristics. Thus, even assuming the disclosure occurred, and that the information, in fact, was proprietary to AIR, there is no remedy our Office can provide in this procurement.

As to Cross Systems' use of the allegedly proprietary data, that presents a dispute between two private parties, and is not for resolution under our Bid Protest Regulations, 4 C.F.R. part 21 (1986). The courts, rather than this Office, are the appropriate forum to resolve such matters. SETAC, Inc., 62 Comp. Gen. 577 (1983), 83-2 C.P.D. ¶ 121.

The protest is dismissed.



Robert M. Strong  
Deputy Associate  
General Counsel