

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20546

FILE: B-185213

DATE: March 9, 1976

MATTER OF: Tyco

60619

98505

DIGEST:

1. It is policy of GAO to decline to rule on issues involved in cases which are under litigation in courts. Since question of whether agency used proprietary data taken from protester's drawing is issue being litigated in suit in United States District Court GAO will not rule on issue.
2. GAO will not comment on alleged violations of criminal statutes presumably violated in connection with improper use of protester's proprietary data since enforcement of criminal statutes is primarily function of Department of Justice and courts.
3. There is no statutory or regulatory prohibition against opening of quotations by contracting officer prior to closing date for receipt of quotations so long as information contained therein is not disclosed in contravention of ASPR § 3-507.2. Therefore, GAO finds no impropriety in such actions where evidence presented does not indicate improper disclosure of information contained in proposals.

By letter of October 23, 1975, as supplemented by letter of November 14, 1975, Tyco protested the issuance of request for quotations DSA-400-76-Q-8279 by the Defense General Supply Center (DGSC), Richmond, Virginia, and the anticipated award of a contract under the subject solicitation.

Tyco contends that DGSC is using proprietary data taken from Tyco's drawings without permission or compensation as required by law. In this regard, the record indicates that in a suit originally brought in the Circuit Court of the City of Norfolk and subsequently removed to the United States District Court, EDVA, Norfolk, Division, the question of the improper use of

proprietary data from Tyco's drawings was raised. Since it is the policy of our Office to decline to rule on a protest where the material issues involved are likely to be disposed of in litigation by a court of competent jurisdiction, we will take no action on this aspect of the protest. See Allenberg Cotton Company, B-180929, April 24, 1974, 74-1 CPD 212, and cases cited therein; 4 C.F.R. § 20.10.

In its letter of November 14, 1975, Tyco contends that the contracting officer, presumably in connection with the improper use of Tyco's proprietary data, violated various sections of title 18 of the United States Code. These sections of title 18 are criminal statutes whose enforcement is primarily the function of the Department of Justice and the courts. Accordingly, we do not believe that it would be appropriate for us to comment on the alleged violations of these statutes. See 48 Comp. Gen. 24, 27 (1968).

Tyco also contends that on the above solicitation the contracting officer, in violation of section 2-401 (1975 ed.) of the Armed Services Procurement Regulation (ASPR), opened the quotations prior to the closing date for receipt of quotations. While ASPR § 2-401, relating to formally advertised procurements, prohibits opening of bids prior to the bid opening date, we know of no statutory or regulatory prohibition against opening of quotations prior to the closing date for receipt of such quotations. However, ASPR § 3-507.2 (1975 ed.) does preclude the disclosure of information contained in the proposal. Thus, even assuming that the contracting officer did open the quotations prior to the closing date for receipt of quotations, we are unable to conclude that such action was improper since there is no evidence to indicate that the information contained therein was disclosed in contravention of the cited regulation.

For the above reasons, the protest by Tyco is denied.


Acting Comptroller General
of the United States