

**DECISION**

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

26174

**FILE:** B-202813.4**DATE:** September 6, 1983**MATTER OF:** M/A-COM Sigma Data, Inc.**DIGEST:**

1. Protest objecting to contract awarded more than 2 years ago is academic, because hardware deliveries are substantially complete and it is unlikely that invalidation of award would result in new award to protester under the original solicitation.
2. Award of proposal preparation costs is only justified if the claimant shows both that the Government's conduct towards the claimant was arbitrary and capricious and that, if the Government had acted properly, the protester would have had a substantial chance of receiving the award. Therefore, claim for proposal preparation costs based on allegations of wrongdoing by an offeror rather than by the Government is dismissed.

M/A-COM Sigma Data, Inc. protests the March 30, 1981 award of a contract to Paradyne Corporation under request for proposals No. SSA-RFP-80-0253 issued by the Social Security Administration (SSA) to update its existing nationwide computer access telecommunications data system. Sigma Data argues that the Paradyne contract should be canceled and award made to it on the basis of this 1981 competition. In addition, Sigma Data requests award of proposal preparation costs.

In M/A-COM Sigma Data, Inc., B-202813.3, May 12, 1983, 83-1 CPD 502, we dismissed as premature Sigma Data's protest that Paradyne fraudulently rigged its preaward operational capability demonstration tests as alleged by the Securities and Exchange Commission (SEC) in Securities and Exchange Commission v. Paradyne Corporation, Civ. No. 83-351 CIV-T-10 (M.D. Fla., filed March 25, 1983). At that time, the SEC complaint formed the basis of Sigma Data's protest. Sigma Data now adds to that certain affidavits and excerpts from depositions developed to date in the discovery phase of the SEC litigation.

026587  
128285

Whatever the outcome of the SEC litigation may be, it is evident that Sigma Data's protest is academic at this point. Paradyne's hardware deliveries under the contract are substantially completed and, should that award be invalidated for any reason, it is highly unlikely that a subsequent award would be made on the basis either of the 1981 solicitation or the proposals submitted under that solicitation. The time that has elapsed since the original competition and the resulting changes in the technology available and in the agency's needs would undoubtedly necessitate the issuance of a new solicitation containing substantially altered requirements. Consequently, no useful purpose would be served by our considering the propriety of the 1981 award. Anchor Mental Health Association, B-192500, September 12, 1978, 78-2 CPD 194.

As far as Sigma Data's claim for proposal preparation costs is concerned, such costs can be recovered only if the claimant shows both that the Government's conduct toward the claimant was arbitrary and capricious and that, if the Government had acted properly, the claimant would have had a substantial chance of receiving the award. Tracor Marine, Inc., B-207285, June 6, 1983, 83-1 CPD 604. Since Sigma Data's allegations of impropriety concern Paradyne's actions only, we also dismiss the claim for proposal preparation costs.

We dismiss the protest and the claim.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel