

*Ma. Linda Glass*



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Ingersoll-Rand Company  
**File:** B-236495  
**Date:** December 12, 1989

### DIGEST

1. General Accounting Office will not recommend that an agency cancel a solicitation where the protester does not present clear and convincing evidence that the solicitation's specifications and drawings package are derived from proprietary drawings.
2. Protest that agency did not justify the use of reverse engineering in order to obtain additional competition for requirement is dismissed since General Accounting Office will not review a protest that has the purpose of reducing competition.

### DECISION

Ingersoll-Rand Company protests request for proposals (RFP) No. DLA700-89-R-2257, issued by the Defense Construction Supply Center (DCSC) to acquire 22 suction guide cones for use in the auxiliary seawater pumps designed by Ingersoll-Rand for Naval shipboard use. Ingersoll-Rand contends that the RFP violates its proprietary rights with respect to the suction guide cones.

We deny the protest in part and dismiss it in part.

The RFP, issued on July 18, 1989, required the cones to be manufactured in accordance with DCSC drawing No. CS-4320-SV-0773. The RFP also included a first article test requirement. The RFP essentially provided that award would be made to the low, technically acceptable offeror. Eight offers were received by the closing date of August 24. The offers range from a low of \$2,750 each to a high of \$17,200 each. Ingersoll-Rand submitted a price of \$12,055 each. No award has been made.

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Ingersoll-Rand states that while performing as a subcontractor under a prior contract, it designed and manufactured the auxiliary seawater pump which assists in the cooling of nuclear reactors on the Trident class submarine and was required to furnish to the government its drawings of the parts making up the end item pumps. Ingersoll-Rand contends, however, that the government acquired only limited rights in the technical data, that the firm retained ownership of the drawings, and that the government was prohibited from using the drawings for procurement purposes. Ingersoll-Rand alleges that DCSC improperly copied its limited rights Drawing No. 11724-F-18, which, except for a few errors, is identical to DCSC's RFP drawing. According to Ingersoll-Rand, DCSC could not possibly have derived its drawing through reverse engineering because of the exactness of the detail and tolerances of the DCSC drawing when compared to the Ingersoll-Rand drawing. Ingersoll-Rand therefore requests that the solicitation be canceled.

The agency responds that no Ingersoll-Rand limited rights drawings were used in reverse engineering the suction guide cones. In fact, DCSC states that these drawings were not available in the DCSC data repository. The agency does acknowledge, however, the use of an "outdated" Ingersoll-Rand drawing (No. 11235-F-18) which was in their data repository and contained no restrictive legend. This drawing described an earlier version of the suction guide cone. The agency also obtained a second set of allegedly unrestricted Ingersoll-Rand drawings of a similar part, a sectional assembly, from its data repository. DCSC states that the information obtained from the unlimited rights Ingersoll-Rand drawings, the dimensional analysis of some sample parts and metallurgical analysis (reverse engineering), were used in the preparation of the DCSC drawing.

In response, Ingersoll-Rand argues that the "outdated" drawing used by DCSC was in fact a proprietary drawing which was furnished to the Navy absent the restrictive legend as required by the Navy at that time so that parts could be produced by Naval shipyards in cases of emergency.

In a recent decision involving the procurement of casing assembly covers for use on auxiliary seawater pumps for the Trident, Ingersoll-Rand Company, B-236391, Dec. 5, 1989, 89-2 CPD ¶       , involving this same protester and agency, and a companion drawing, we stated that we have recognized the right of a firm to protect its proprietary data from improper exposure in a solicitation in the context of a bid

protest. See Diversified Technologies; Almon A. Johnson, Inc., B-236035, Nov. 6, 1989, 89-2 CPD ¶ \_\_\_\_; Zodiac of North America, Inc., B-220012, Nov. 25, 1985, 85-2 CPD ¶ 595. However, where a protester alleges improper disclosure of proprietary data, the burden is on the protester to demonstrate by clear and convincing evidence that its proprietary rights have been violated. Zodiac of North America, Inc., B-220012, supra. To prevail on a claim of violation of proprietary rights, the protester must show that: (1) its material was marked proprietary or confidential or that it was disclosed to the government in confidence; and (2) the material involved significant time and expense in preparation and contained material or concepts that could not be independently obtained from publicly available literature or common knowledge. Litton Applied Technology, B-227090; Sept. 3, 1987, 87-2 CPD ¶ 219 at 4.

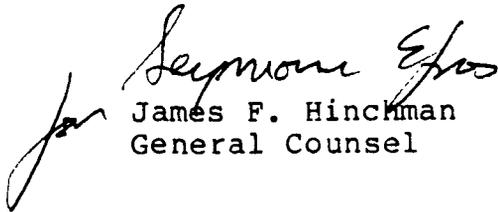
Here, there is no dispute that Drawing No. 11724-F-18 is a proprietary drawing of Ingersoll-Rand. However, Ingersoll-Rand has not provided sufficient evidence to establish the proprietary nature of the "outdated" drawing used by the agency in its reverse engineering process. The evidence provided is, at best, conflicting. The record shows, and the protester acknowledges, that the drawing used by the agency did not contain a restrictive legend or any other printed statement which would indicate that such drawing was regarded as proprietary or confidential in nature. The protester argues, however, that the applicable military specification (MIL-P-17639F) required it to remove the restrictive legends from the drawing so that the Navy could use them in cases of emergencies. The portion of the military specification relied upon by the protester does not support its position since that provision does not require removal of restrictive legends from proprietary drawings. Ingersoll-Rand simply has not refuted DLA's position as to the unrestricted nature of the drawing. In this regard, the burden is upon the owner of the information to prevent its unauthorized disclosure. 46 Comp. Gen. 885 (1967). Nothing prevented Ingersoll-Rand from insuring that some sort of restrictive statement remained on the drawings provided the Navy, and we think that it was incumbent upon Ingersoll-Rand to do so in order to insure its proprietary rights.

On the basis of the record before us, we therefore conclude that Ingersoll-Rand has not met its burden of demonstrating by clear and convincing evidence that the drawing used by DCSC was proprietary. We therefore will not require the agency to cancel the solicitation under these circumstances.

Next, Ingersoll-Rand argues that the prices paid to it under prior contracts do not show a pattern of overstated prices and therefore do not justify the use of allegedly questionable methods of reverse engineering by DCSC at "considerable expense" to obtain additional competition for this item. The protester candidly admits that it seeks to preserve its sole-source status. Similarly, Ingersoll-Rand also contends that the DCSC drawing contains several errors and only its drawings can be successfully used to produce the item.

We note, however, that consistent with the objective of our bid protest function to ensure full and open competition for government contracts, our Office generally will not review a protest that has the purpose or effect, whether explicit or implicit, of reducing competition to the benefit of the protester. Rhine Air, B-226907, July 29, 1987, 87-2 CPD ¶ 110; Ray Serv. Co., 64 Comp. Gen. 528, (1985), 85-1 CPD ¶ 582; Ingersoll-Rand Co., B-224706; B-224849, Dec. 22, 1986, 86-2 CPD ¶ 701. Accordingly, we dismiss these protests grounds.

The protest is denied in part and dismissed in part.

  
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General Counsel