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K. H. Rice

DECISION



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

FILE: B-207098

DATE: May 25, 1982

MATTER OF: Keith Donaldson

DIGEST:

1. Former air controller who participated in strike against the Federal Government is not an interested party to protest a solicitation provision prohibiting contractor from employing such former Federal employees.
2. GAO does not have authority to restrain award of Federal contracts.

Keith Donaldson protests the provision contained in invitation for bids No. F41687-82-B-0008, issued by Bergstrom Air Force Base, Texas, and request for proposals No. F30637-82-R-0001 issued by Griffiss Air Force Base, New York for air controller and other services, prohibiting the contractor from employing former air controllers who participated in the August 3, 1981 strike against the Federal Government. For the following reasons, we will not consider the protest on the merits.

Donaldson, speaking as an individual who has been denied the opportunity to seek employment, complains that the solicitation restriction constitutes black-listing in violation of law. Donaldson further asserts that various legal proceedings have been instituted challenging this employment prohibition and requests that we prevent the award of Federal contracts containing this or similar restrictions until such time as a decision is rendered.

Our Bid Protest Procedures require that protests be filed by "interested" parties. 4 C.F.R. § 21.1(a) (1981). Determining whether a particular party is interested for protest purposes involves consideration of the party's status in relation to the procurement. Die Mesh Corporation, 58 Comp. Gen. 111 (1978), 78-2 CPD 374.

As a general rule, the interests involved in whether the award of a contract is proper are adequately protected by limiting the class of parties eligible to protest to disappointed bidders or offerors, Dig Mesh Corporation, supra. Where, however, the stated interest in the procurement has been sufficiently compelling, we have considered protests by labor unions and civic, trade and parents associations. See Falcon Electric Company, Inc., B-199080, Apr 19, 1981, 81-1 CPD 271.

On the other hand, it is not enough merely to be an individual employee or a disappointed bidder or offeror, Dale Chlouber, B-190638, December 20, 1977, 77-2 CPD 484; a concerned citizen, Patti R. Whiting, B-187286, September 29, 1976, 76-2 CPD 298; or a union which believes that its members might be employed by the successful contractor if the work were open to competition, Marine Engineers Beneficial Association; Seafarers International Union, 50 Comp. Gen. 102 (1980), 80-2 CPD 418.

Donaldson does not assert that he is interested in competing for the contracts and restricted from doing so by the challenged provision. Rather, he is apparently concerned about the loss of employment opportunities and about the legality of the Government's dismissal of the striking air controllers. In this regard, Donaldson advises that the Merit Systems Protection Board is currently hearing individual dismissal cases and that the Federal Labor Relations Authority has been notified of this circumstance.

Under the circumstances, we believe the major substantive issue of concern to Donaldson--the dismissals--is under consideration by the appropriate forums and is not a matter for consideration under our bid protest procedures. Moreover, as indicated above, one who seeks an opportunity for new or continued employment, which is dependent upon a particular company's receiving a Government contract, is not an interested party to protest since the interests to be protected with respect to procurement-related issues can best be protected by those who would seek to compete for the contracts involved. Marine Engineers Beneficial Ass'n et al., supra. In other words, had a company interested in competing for one of these contracts filed a timely protest alleging the impropriety or illegality of the provision Donaldson complains of, we would have considered it. Donaldson, however, does not qualify as an interested party and therefore we will not consider the protest.

Donaldson also requests that the Comptroller General "withdraw, cancel or void" all Government contracts containing this employment prohibition until such time as the matters disputed by the former air controllers are resolved. This Office does not possess the authority to restrain the award of Federal contracts, see Tymshare Inc., B-186858, January 23, 1978, 78-1 CPD 56, and to the extent that this request contemplates injunctive relief, we note that the proper forum for seeking this would be the Federal courts, not our Office. Tymshare Inc., supra.

The protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel.