

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

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**FILE:** B-212957**DATE:** January 30, 1984**MATTER OF:** Danish Artic Contractors**DIGEST:**

1. Protest made more than 10 days after protester knew or should have known basis for protest is untimely.
2. Review of determination of organizational conflict of interest is limited to determining whether determination has reasonable basis.

Danish Artic Contractors (DANAC) protests its disqualification from competition by the Department of the Air Force because of an organizational conflict of interest under request for proposals (RFP) No. F61101-83-R-0009.

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

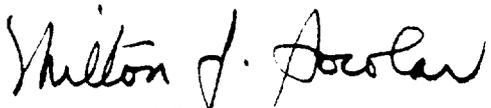
Essentially, DANAC was disqualified because the Air Force determined that DANAC, as part of its function as operation and maintenance contractor for Sondrestrom Air Base, participated in the preparation of the specifications for the immediate RFP covering construction projects for repairs and alterations at Sondrestrom Air Base. The Air Force made this determination under the "Avoidance of Organizational Conflicts of Interest" clause included in the operation and maintenance contract awarded to DANAC on July 25, 1983, effective October 1, 1983. DANAC has been the operation and maintenance contractor since fiscal year 1981. The specifications in the immediate RFP were prepared during the term of the operation and maintenance contract in effect prior to October 1, 1983.

At the time of the protest to our Office, DANAC agreed that the organizational conflict of interest clause applied, but disagreed that the conditions in the clause for

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disqualification existed. Two months later, DANAC protested that the clause did not apply because it is ex post facto as the immediate RFP was issued prior to the award of the operation and maintenance contract containing the conflict of interest provision. DANAC knew or should have known that the RFP was issued prior to the award of the operation and maintenance contract when it filed the original protest with us. Therefore, the latter protest made more than 10 days after DANAC knew or should have known the basis for the protest is untimely. 4 C.F.R. § 21.2(b)(2) (1983).

However, whether the Air Force properly disqualified DANAC remains to be considered. Under the conflict of interest clause, the disqualification depends upon whether DANAC performed services to prepare, coordinate or design projects including plans, specifications, resources requirements and estimates for the construction project. The Air Force found that DANAC performed such services. Although DANAC disagrees, in most respects, with that determination, DANAC admits to having substituted Danish products for American brand name items in what became the specification for the immediate RFP. In the circumstances, we are unable to conclude that the determination of conflict of interest was without a reasonable basis. In that connection, our review of a determination of organizational conflict of interest is limited to determining whether the determination has a reasonable basis. N.D. Lea & Associates, Inc., B-208445, February 1, 1983, 83-1 CPD 110.

*for*   
Comptroller General  
of the United States