

DECISION



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

FILE: B-213355

DATE: June 11, 1984

MATTER OF: Applicon, a Division of Schlumberger
Technology Corporation

DIGEST:

1. Protest of specifications either filed with agency prior to closing date for receipt of initial proposals and not filed with GAO within 10 working days of initial adverse agency action or filed initially with GAO after closing date for receipt of initial proposals is untimely.
2. Protest that awardee had conflict of interest because a former employee of awardee drafted specifications is denied where record shows that former employee had only peripheral involvement in procurement working for another firm that served as a consultant to government and that only tie between former employee and awardee during time of procurement was past employment.

Applicon, a Division of Schlumberger Technology Corporation (Applicon), protests the award of a contract to Tricad, Inc. (Tricad), for a computer-aided engineering design system under request for proposals No. DAEA18-83-R-0158 issued by the Army Communications Electronics Engineering Installation Agency (Army). Applicon argues that certain specifications restricted competition and that a conflict of interest situation tainted the contract award.

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

We find Applicon's allegation that certain specifications were restrictive of competition to be untimely. Our Bid Protest Procedures at 4 C.F.R. § 21.2(b)(1) (1983) require protests of alleged solicitation improprieties that are obvious from the face of the solicitation to be filed with the contracting agency or GAO prior to the closing date for receipt of initial proposals.

If the protest is filed initially with the contracting agency, any subsequent protest to GAO must be filed within 10 working days of the agency's initial adverse action. 4 C.F.R. § 21.2(a).

Applicon complained to the Army on August 22, 1983, that certain specifications were restrictive of competition and asked that they be relaxed. The Army replied to the objections by issuing amendment 0001 on August 26, 1983, in which it declined to relax the specifications in the manner requested by Applicon. The closing date of the solicitation was September 16, 1983. Applicon's protest to GAO was filed on October 11, 1983. If Applicon's complaint to the Army is considered a protest, Applicon's protest to GAO is untimely because it was filed more than 10 working days after initial adverse agency action--amendment 0001. If, as Applicon argues, the complaint to the Army was not a protest, then Applicon's protest to GAO was untimely because it was not filed prior to the closing date for receipt of initial proposals.

In that regard, Applicon now contends that it is not protesting the specifications per se, but rather the fact that a former employee of Tricad was involved in drafting the specifications. Consequently, it could not protest until Tricad was awarded the contract. We think that Applicon is protesting the specifications per se, since it raised the objections to the Army before Tricad was awarded the contract. However, if Applicon is not protesting the specifications, but only the fact that a former employee of Tricad assisted in drafting them, then there is no separate restrictive specifications issue and the only remaining issue is the conflict of interest issue that we deny below.

Finally, Applicon argues that, if we consider its allegation to be untimely, we should consider it to be a protest that raises issues significant to procurement practices and consider it on the merits on that basis. That exception requires that the issue be one of widespread interest to the procurement community not previously considered. Sequoia Pacific Corporation, B-199583, February 7, 1981, 81-1 CPD 13. The restrictiveness of particular specifications is not such an issue. See, e.g., Universal Design Systems, Inc.--Reconsideration, B-211547.3, August 16, 1983, 83-2 CPD-220.

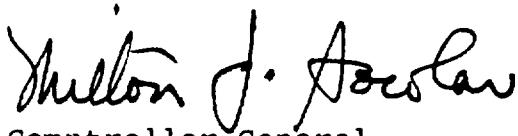
Regarding its allegation of conflict of interest, Applicon contends that a former employee of Tricad was involved in drafting specifications and evaluating proposals and that, therefore, Tricad should have been barred from competing for the contract. In support of its argument, Applicon cites section II, paragraph 3, of appendix "G" to the Defense Acquisition Regulation (DAR). That section states that, if a single contractor assists the Department of Defense in the preparation of a statement of work, that contractor shall not be allowed to supply the services or system.

The Army asserts that the former employee of Tricad had no relationship with Tricad during the time that the statement of work was prepared. Rather, the person in question was an employee of Kentron International, Inc. (Kentron), the contractor that assisted the Army in preparing the statement of work. In addition, the Army states that the employee did not draft specifications, but was consulted in only a general way concerning the requirement. Also, the Army reports that the employee was not involved in the evaluation of proposals in any way and did not have access to proposals.

The responsibility for determining whether a firm has a conflict of interest and to what extent the firm should be excluded from competition rests with the procuring agency and we will overturn such a determination only when it is shown to be unreasonable. N.D. Lea & Associates, Inc., B-208445, February 1, 1983, 83-1 CPD 110. Mere inferences of actual or potential conflict of interest do not afford a basis for disturbing a contract award; there must be "hard facts" showing an actual conflict of interest. See Culp/Wesner/Culp, B-212318, December 23, 1983, 84-1 CPD 17, affirmed, B-212318.2, March 26, 1984, 84-1 CPD 346, both citing CACI, Inc.-Federal v. United States, 719 F.2d 1567 (Fed. Cir. 1983).

Applicon has not shown that the Army's determination was unreasonable. As the Army points out, the section of appendix "G" to the DAR cited by Applicon does not apply to the present situation. It prevents a firm from competing if that firm has assisted in preparing the statement of work. Kentron, not Tricad, assisted the Army in preparing the statement of work. Consequently, only Kentron would be prevented from being awarded the contract.

Additionally, the evidence in the record does not show a relationship between the employee in question and Tricad during the time that Kentron was assisting in the preparation of the statement of work. The fact that the employee was once a Tricad employee is not sufficient to bar Tricad from competing. Applicon alleges that the employee might own stock in Tricad. That allegation is mere speculation unsupported by evidence in the record. Not only does there appear to be no relationship between Tricad and the employee other than past employment, it appears that the employee's involvement in the actual drafting of the specifications was minimal and that he was not involved at all in evaluating proposals. Consequently, even if he had wanted to favor Tricad in some way, it is unlikely that he would have been able to do so.

for 
Comptroller General
of the United States