



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Sterling Supply Corporation--Request for  
Reconsideration

File: B-224298.2

Date: April 6, 1987

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### DIGEST

1. The rejection by the Navy of protester's low bid signed by retired regular Naval officer was not improper where regulation prohibits Navy from dealing with retired regular Naval officer because the officer's signing of the bid constituted a sale to the government which violated a criminal statute.
2. Prior decision is affirmed on reconsideration where it is not shown to contain any errors of fact or law.

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### DECISION

Sterling Supply Corporation requests that we reconsider our decision in Sterling Supply Corporation, B-224298, Jan. 6, 1987, 87-1 C.P.D. ¶ \_\_\_\_\_. In our prior decision, we denied in part and dismissed in part Sterling's protest against the award to any other bidder under invitation for bids (IFB) No. N00250-86-B-0073, issued by the Navy for laundry and dry cleaning supplies, finding that the Navy properly rejected Sterling's low bid because it was signed by a retired regular Naval officer, Mr. Clement, Sterling's vice president.

We affirm our prior decision.

Sterling's low bid was rejected by the Navy after the Navy learned that Mr. Clement was a retired regular Naval officer and determined that Mr. Clement, through his signing of Sterling's bid, had apparently violated 18 U.S.C. § 281 (1982), which provides a fine of up to \$10,000 and an imprisonment of not more than 2 years for those "retired officers" who "represent any person in the sale of anything to the government through the department in whose service [the officer] holds a retired status." According to the Navy, its rejection of Sterling's bid was mandated by Naval

regulations which prohibit Naval personnel from knowingly dealing "on behalf of the Government with present or former Government personnel, military or civilian, whose participation in the transaction would be in violation of a statute, regulation or policy set forth in this instruction, § 721.15." 32 C.F.R. § 721.6(d) (1986). Section 721.15 of 32 C.F.R. specifically discusses the prohibition of 18 U.S.C. § 281 as outlined above.

Sterling had argued that the rejection of its bid was improper because the retired officer's signing of the bid did not violate the criminal statute since it was not a "sale" under the statute.

We found, however, that the Navy's rejection of Sterling's bid was reasonable. We stated that under decisions of this Office concerning similar statutory language, we concluded that signing a bid constitutes selling to the government. See, e.g., 53 Comp. Gen. 616 (1974). We concluded, therefore, that Mr. Clement's signing of Sterling's bid constituted a violation of 18 U.S.C. § 281 and that, consistent with the purpose of the statute, the Navy properly rejected Sterling's bid.

In its request for reconsideration, citing our decision in Society Brand, Inc., et al., 55 Comp. Gen. 475 (1975), 75-2-C.P.D. ¶ 327, Sterling argues that it was improper and inconsistent with precedent for us to interpret 18 U.S.C. § 281, a criminal statute, because "the interpretation and enforcement of the criminal laws of the United States are functions of the Attorney General and the Federal Courts and it is not within [GAO's] jurisdiction to determine what does or does not constitute a violation of a criminal statute."

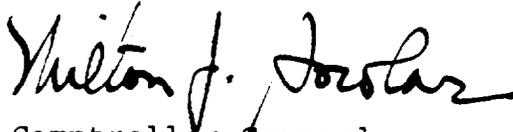
Sterling is correct in stating that our Office generally will not address contentions of protesters relating to the enforcement of criminal laws of the United States. For example, in Society Brand, Inc. et al., 55 Comp. Gen. 475, supra, for the reasons quoted above, we declined to address an allegation of a protester that certain bidders were violating antitrust laws. However, pursuant to our bid protest jurisdiction, we will review the reasonableness of a contracting agency's decision to reject a bid where to accept the bid would apparently require the agency to violate its own regulations against dealing with certain parties whose participation in the transaction would be in violation of a statute or regulation. B-149351, Nov. 5, 1962.

In our decision in B-149351, supra, with facts nearly identical to those in the case at hand, we found that the Air Force relied upon the provisions of 18 U.S.C. § 281 and an Air Force regulation worded almost identically to 32 C.F.R. § 721.6(d) quoted above, to reject a proposal signed by a retired Air Force officer. We found that the rejection of the proposal on this basis, to prevent the Air Force from violating its regulation and policy against dealing with retired Air Force personnel (when to do so would violate 18 U.S.C. § 281), was reasonable.

Sterling argues that the purpose of 18 U.S.C. § 281, is to prevent "influence peddling" and therefore since the record in this case allegedly does not contain evidence of "influence peddling" the Navy improperly relied upon 18 U.S.C. § 281 in rejecting Sterling's bid.

This issue was also addressed in B-149351, supra. In denying the protest we stated that while the purpose of 18 U.S.C. § 281 may be "to preclude awards in situations where undue influence is manifest, it is not a condition of the prohibition in the statute that the retired officer must be shown to have exerted undue influence."

Since Sterling has not shown that our prior decision contains any errors of fact or law, it is affirmed.

*for*   
Comptroller General  
of the United States