

DECISION



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

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FILE: B-216512 **DATE:** April 17, 1985

MATTER OF: BOW Industries, Incorporated

DIGEST:

1. Protest that agency improperly failed to send protester a solicitation is dismissed as untimely when not filed within 10 days after the closing date for the receipt of proposals published in the Commerce Business Daily.
2. Allegation of restrictive specifications is dismissed as academic where protester failed to submit a proposal or timely protest the failure to receive a proposal, and thus would not be eligible to receive the award.
3. Allegation that a contract award was improper because a former agency employee subsequently was employed by the awardee, indicating a conflict of interest, is dismissed where the agency denies, and the protester submits no evidence demonstrating, that the former employee exerted improper influence on behalf of the awardee, or even participated in the procurement.

BOW Industries, Incorporated (BOW), protests the award of a contract for instrumentation tape winder/cleaners to Honeywell, Inc., Test Instrument Division (Honeywell), under Department of the Navy solicitation No. N62269-84-R-0438. We dismiss the protest.

The solicitation, synopsized in the Commerce Business Daily (CBD) on June 11, 1984, requested proposals to supply instrumentation magnetic tape winder/cleaners, which are used by the Navy to clean and rewind tape so that it may be reused. The procurement was to be conducted using two-step formal advertising and the request for technical proposals initiating step one was issued on July 11, with a closing date for receipt of proposals of July 31. The closing date subsequently was changed to August 17. The Navy received only one proposal--Honeywell's--and therefore decided to award the contract to Honeywell by a delivery order under a

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basic ordering agreement rather than proceed with step two of the procurement. Award was made on September 12 and we received BOW's protest on September 21.

BOW first protests the fact that it did not receive a copy of the solicitation until after the contract had been awarded to Honeywell even though its name was on the list of firms to be solicited and it orally requested a solicitation from the contracting officer in mid-July. BOW alleges that when it made this request, the contracting officer advised that the closing date for receipt of proposals had been extended to an unknown date and that BOW would be sent a copy of the solicitation when it was ready. BOW never received a copy, and thus believes it was unfairly denied an opportunity to participate in the procurement. This aspect of the protest is untimely.

To be timely under our Bid Protest Regulations, a protest must be filed within 10 days after the protester knows or should know the basis of its protest. 4 C.F.R. § 21.2(a)(2) (1985). Here, even though the closing date ultimately was extended, since the CBD announcement listed July 31 as the closing date for the receipt of proposals, BOW was or should have been aware that, in order to compete, it would need a copy of the solicitation by that date. When BOW did not receive the solicitation by July 31, it was on notice of this basis of protest and thus should have raised it within 10 days thereafter. It did not do so, however, and its protest on this point filed on September 21 therefore is untimely and will not be considered on the merits. See Aurora Spectrum International, B-214162, Feb. 13, 1984, 84-1 C.P.D. ¶ 185. The Navy disputes BOW's claim that it requested a copy of the RFP in mid-July and was informed that the closing date for the receipt of proposals had been extended indefinitely; the Navy maintains that this telephone call never occurred and that it thus never informed BOW that the closing date had been extended. Even if BOW did request a copy of the solicitation in mid-July, however, we do not think it was reasonable for BOW to stand idly by until September, without ever again attempting to obtain additional information on the status of the procurement.

BOW next argues that because the specifications for the tape winder/cleaners were derived from a tape recorder, and would preclude BOW and other manufacturers of conventional

winder/cleaners from competing, they unduly restrict competition. BOW submits that only Honeywell can compete under this specification. Since BOW neither submitted a proposal nor timely protested its failure to receive a solicitation, it was not within the field of competition for this procurement and would not be eligible to receive a contract award. Consequently, it is academic whether BOW would be able to compete under the specifications. We will not consider such academic questions on the merits. See generally, M. Pashelinsky & Sons, Inc., B-214973, Aug. 29, 1984, 84-2 C.P.D. ¶ 237.

Finally, BOW alleges that Honeywell should not have received the contract award because a former tape lab department head allegedly responsible for initiating the current solicitation went to work for Honeywell, creating a conflict of interest. BOW contends that this constituted a violation of a statute which prohibits government employees, for 1 year after terminating employment, from becoming employed by a contractor on behalf of whom they are in a position to exert influence over an award. The Navy reports that it has investigated BOW's charge and that information from the former employee and the employee's Navy supervisors indicates that, in fact, the employee neither initiated the acquisition, nor participated in any matter concerning Honeywell once he began negotiating for employment with Honeywell.

This aspect of BOW's protest provides no basis for questioning the award to Honeywell. Section 207 of Title 18 of the U.S. Code (1982), the statute on which BOW relies, imposes criminal penalties on former government employees who represent parties other than the government on specific matters in which the employee participated during his government employment. Since there is no allegation or evidence that the employee in question represented Honeywell in this procurement, there is no basis for finding that the statute has been violated. In any case, we do not consider violations of criminal statutes. Rather, our interest here is limited to determining whether actions of the former employee resulted in bias on behalf of the proposed awardee. The agency has specifically denied that the employee was even in a position to influence the award, BOW has submitted no documentary or other evidence to support its assertions that the former employee exerted influence on

behalf of Honeywell, and we find nothing else in the record indicating that this is the case. The mere coincidence of an employee's subsequent employment with an awardee is not by itself sufficient to establish that the award decision resulted from improper influence. Consequently, we dismiss this basis of BOW's protest. See D.J. Findley, Incorporated, B-213310.2, Nov. 30, 1984, 84-2 C.P.D. ¶ 588.

BOW has requested that this office conduct an investigation of the circumstances surrounding this solicitation and the contract award to Honeywell. It is not our function, however, to conduct investigations pursuant to our Bid Protest Regulations. Atlantic Pacific International, B-206498, Mar. 19, 1982, 82-1 C.P.D. ¶ 260.

The protest is dismissed.



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