

**DECISION**

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

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**FILE:** B-213650**DATE:** January 9, 1984**MATTER OF:** Sterling Medical Associates**DIGEST:**

1. It is not contrary to statute or regulation for a former government employee to accept employment with a contractor to perform services under a government contract when such services are to begin after the employee terminates his federal service.
2. Protest that award to firm whose services will be performed by a former government employee resulted in that individual's violation of the Ethics in Government Act (18 U.S.C. § 207), and 18 U.S.C. § 208, both criminal statutes, does not come within GAO's bid protest jurisdiction, since the interpretation and enforcement of criminal laws are for the Department of Justice. GAO's role is to determine whether the former employee's participation resulted in bias on behalf of the awardee, and the protester has not offered evidence of that situation.

Sterling Medical Associates (SMA) protests the award of a contract to Brenda Paget Holland under invitation for bids (IFB) No. N00612-83-R-0404, issued by the U.S. Naval Supply Center, Charleston, South Carolina, for surgical services at Beaufort Naval Hospital, Beaufort, South Carolina.

SMA contends the contract should not have been awarded to Ms. Holland because at the time of bid opening she was engaged to Holton Timberlake Pearce, Jr., M.D., a government employee who had performed surgical services at the hospital in the past, and was to perform services under the contract upon leaving the government. The protester also argues that the contract award was invalid because Dr. Pearce violated statutory conflict of interest prohibitions.

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We summarily deny the protest in part and dismiss it in part. We do so based on the protester's submission without further development under our Bid Protest Procedures, 4 C.F.R. Part 21 (1983), because the material submitted by the protester, when read in the light most favorable to the protester, demonstrates that the firm is not entitled to relief. See Valiant Security Agency, 61 Comp. Gen. 65 (1981), 81-2 CPD 367.

Bids were opened on September 19, 1983. Included with SMA's protest is an October 21 letter from the Navy advising the firm that Dr. Pearce, who married Ms. Holland on September 24, 1983, left the government on September 30, and that during the pre-award survey of Ms. Holland a letter of intent was received from Dr. Pearce and another individual to accept employment by Ms. Holland should she be awarded the contract. Award was made to Ms. Holland as the low responsive, responsible bidder on October 21, for services to begin November 1.

SMA contends that the award of the contract violates Defense Acquisition Regulation (DAR) § 1-302.6(a) (DAC No. 76-28, July 15, 1981). The regulation generally precludes an agency from knowingly entering into a contract with a government employee or a business organization substantially owned or controlled by government employees. SMA alleges that Dr. Pearce substantially owns or controls, via Ms. Holland, the business entity that was awarded the contract.

The critical time for application of DAR § 1-302.6(a), which is intended primarily to avoid criticism of possible favoritism or preferential treatment by the government toward its employees, Elogene Thurman, B-206325, May 24, 1982, 82-1 CPD 487, is the date of award. Electronics West, Inc., B-209720, July 26, 1983, 83-2 CPD 127. Here, the contract was entered into with Ms. Holland on October 21, and Dr. Pearce terminated his government employment on September 30. Therefore, the regulation does not preclude award to Ms. Holland, since Dr. Pearce was not a government employee at the time of contract award. It is not contrary to statute or regulations for a former government employee to accept employment with a contractor to perform services under a contract with the government, when such services are to begin after the employee terminates

B-213650

his government service. See Chemonics International Consulting Division, B-210426, October 7, 1983, 63 Comp. Gen. \_\_\_\_ (1983), 83-2 CPD 426. We deny the protest on this issue.

The protester also contends that the contract should be considered invalid because of alleged violations of conflict of interest prohibitions. The protester's allegation is that Dr. Pearce violated both the Ethics in Government Act of 1978, 18 U.S.C. § 207 (1982), and 18 U.S.C. § 208 (1982). The first provision cited forbids a former government employee from representing others before the government in connection with matters in which the individual participated as a government employee; the second prohibits a current government employee from participating personally and substantially as a government official in any matter in which the employee has a financial interest.

We dismiss this protest issue. Both 18 U.S.C. §§ 207 and 208 are criminal statutes whose enforcement is not encompassed by our protest jurisdiction. See Western Engineering and Sales Co., B-205464, September 27, 1982, 82-2 CPD 277; Consolidated Service, Inc., B-186199, November 21, 1977, 77-2 CPD 386. The interpretation and enforcement of these statutes are primarily matters for the Department of Justice. Polite Maintenance, Inc., B-194669, May 10, 1979, 79-1 CPD 335; Consolidated Service, Inc., supra.

Our interest, within the confines of a protest, is to determine whether any action of Dr. Pearce may have resulted in prejudice for, or bias on behalf of, the contract awardee. National Service Corporation, B-205629, July 26, 1982, 82-2 CPD 76. The protester in this case has submitted no evidence to suggest that Dr. Pearce exerted any improper influence on the award outcome or that the awardee obtained any improper competitive advantage through Dr. Pearce. See Chemonics International Consulting Division, supra. Because the protester has offered no evidence on this issue, we find no basis within our review standard to question the award.

B-213650

The protest is denied in part and dismissed in part.

for *Milton J. Dorstar*  
Comptroller General  
of the United States