GAO

Comptroller General
of the United States

United States General Accounting Office
Washington, DC 20548

Decision

Matter of: LeBoeuf, Lamb, Greene & MacRae

File: B-283825; B-283825.3

Date: February 3, 2000

James L. Feldesman, Esq., Edward T. Waters, Esq., and Kathy S. Ghiladi, Esq, Feldesman, Tucker, Leifer, Fidell and Bank, for the protester.
Thomas P. Humphrey, Esq., James J. Regan, Esq., John E. McCarthy, Esq., Daniel R. Forman, Esq., and Reed M. Brodsky, Esq., Crowell and Moring, for Winston and Strawn, an intervenor.
Gena Cadieux, Esq., and Patricia D. Graham, Esq., Department of Energy, for the agency.
Aldo A. Benejam, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Application for admission of protester's counsel to a General Accounting Office (GAO) protective order is granted where, based on a review of the record, GAO concludes that protester's counsel is not involved in competitive decision-making, and their admission does not otherwise pose an unacceptable risk of inadvertent disclosure of protected material.

2. Protest that the contracting agency improperly selected awardee despite an alleged organizational conflict of interest is denied where the record does not support this allegation.

DECISION

LeBoeuf, Lamb, Greene & MacRae protests the award of a contract to Winston and Strawn under request for proposals (RFP) No. DE-RP01-99GC30789, issued by the Department of Energy (DOE) for professional legal services. LeBoeuf primarily argues that the award was improper because Winston and Strawn has an unavoidable organizational conflict of interest (OCI).

We deny the protest.

Background

Pursuant to the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. § 10133(a) (1994), DOE is in the process of evaluating a site at Yucca Mountain, Nevada, for a high-level waste and spent nuclear fuel repository.[1] The repository is needed in order to safely dispose of high-level nuclear waste, mainly from defense activities, and spent nuclear fuel from both civilian and defense activities.[2] DOE Motion to Dismiss, Oct. 22, 1999, at 1; Contracting Officer's (CO) Statement, Nov. 29, 1999, at 1. The NWPA provides for the siting, construction, and operation of repositories for spent nuclear fuel. See 42 U.S.C. §§ 10101 et seq. The Act also provides that utilities are primarily responsible for paying the costs of disposal of their spent fuel, while the federal government has the responsibility of protecting the public health and safety and the environment, while providing disposal services. 42 U.S.C. §§ 10131(a)(4), (5). The NWPA establishes a mechanism for payment of these costs by authorizing DOE to enter into contracts with utilities and others generating spent nuclear fuel, under which the utilities agree to pay fees into the Nuclear Waste Fund in return for disposal of their spent nuclear reactor fuel. 42 U.S.C. § 10222(a). These contracts are referred to as the Standard Contracts. See 10 C.F.R. Part 961 (1999).[3]

The NWPA also mandates a process for DOE first to decide whether or not to recommend a site for a permanent repository and then to seek a license from the Nuclear Regulatory Commission (NRC) to construct and operate the repository. 42 U.S.C. §§ 10132-10145. The NWPA contemplated that a permanent repository was to begin accepting spent nuclear fuel by January 31, 1998. 42 U.S.C. § 10222(a)(5)(B). Despite efforts by DOE to meet that deadline, however, the agency

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[1] Yucca Mountain is located in Nye County, approximately 100 miles northwest of Las Vegas, Nevada, on federally-owned land on the western edge of DOE's Nevada test site. If approved, the repository will be built approximately 1,000 feet below the top of the mountain, and will be the nation's first geological repository for permanent disposal of this type of radioactive waste.

[2] The major focus of the NWPA is the need to dispose of spent nuclear fuel from civilian nuclear power reactors located at approximately 70 sites throughout the country. These reactors use rods of radioactive materials in order to generate electricity. After a period of time, the rods become "spent" and are removed from the reactor. According to DOE, these spent fuel rods will remain radioactive for thousands of years.

[3] The regulations establish the contractual terms and conditions under which DOE will make available nuclear waste disposal services to owners and generators of spent nuclear fuel and high-level radioactive waste. The text of the Standard Contract, which is not at issue in this protest, is set out at 10 C.F.R. § 961.11.

concedes that the scientific and technical inquiry necessary to make a recommendation is not yet completed. CO Statement at 2; Agency Report (AR), exh. 11, Declaration of Assistant Manager, Office of Licensing and Regulatory Compliance at the Yucca Mountain Site Characterization Office (RCYMSCO), Nov. 23, 1999, at ¶ 3. DOE states that a repository is not yet ready to accept spent nuclear fuel and estimates that a facility will not be available before 2010. DOE Motion to Dismiss at 2.

Since 1991, TRW Environmental Safety Services, Inc. has been DOE's management and operating (M&O) contractor for DOE's Office of Civilian Radioactive Waste Management (OCRWM). TRW has been involved on DOE's behalf in studying the site at Yucca Mountain to determine whether it is suitable for a nuclear waste repository. Since the success of the project depends on various regulatory bodies accepting DOE's technical conclusions, lawyers have been assisting the program to determine what information needs to be generated in order to satisfy legal requirements and how to present the information to the applicable regulatory bodies, and providing other ancillary legal advice and assistance.[4]

In May 1992, TRW issued a competitive solicitation that resulted in the award of a subcontract to Winston and Strawn to provide some of that legal advice and assistance. Recently, DOE determined that it could better manage the work being performed by TRW's subcontractor (i.e., Winston and Strawn) if the work were performed under a prime contract with DOE. That decision led to the issuance of the instant RFP, which resulted in the award of the contract to Winston and Strawn protested here.

The Current Solicitation and Award

The RFP, issued on May 27, 1999, contemplated the award of a time and materials, level-of-effort type contract for a base period of 5 years, with option periods totaling an additional 5 years. RFP §§ B.2, L.8. The RFP explains that the successful offeror is to provide DOE with professional legal advice and assistance in matters involving licensing activities of DOE's OCRWM. Id. § C.2.1.0. Specifically, the contractor is to provide support to DOE in performing activities necessary to the preparation and defense of a potential license application for a spent nuclear fuel and high-level

[4] Several federal agencies are responsible for one or more aspects of the proposed repository, including DOE (construction, management, and operation); the Environmental Protection Agency (EPA) (developing site-specific standards related to public health and environmental safety); NRC (licensing); Department of Transportation (safety of transporting hazardous waste); and Mine Safety and Health Administration/Department of Labor (health and safety of underground workers). This protest involves only the procurement of professional legal services by DOE.

radioactive waste repository at the Yucca Mountain site. The work will include preparation of written analyses, recommendations and documents, and ensuring compliance with regulatory requirements related to the licensing process. Id. The successful offeror is also required to work with DOE and its contractors in a teaming arrangement, which involves close coordination of work effort, including sharing information, knowledge and expertise between the contractor, the agency, and other DOE contractors.

The agency explains that throughout the process of planning the procurement, DOE considered the contemplated contract as a replacement for the subcontract TRW had awarded Winston and Strawn--i.e., the RFP is to procure through a prime contract the same kind of licensing expertise, and legal advice and assistance, Winston and Strawn had been previously providing DOE through its TRW subcontract. AR at 3 and exh. 11, Declaration of Assistant Manager, RCYMSCO, Nov. 23, 1999, ¶ 12. In order to avoid overlapping the work, DOE states that it timed the award in this procurement to coincide with the expiration of the TRW/Winston and Strawn subcontract on September 30, 1999, just as would have occurred had the expiring contract been a prime DOE contract. AR at 3.

The protester and the awardee were the only two firms that responded to the RFP. The agency evaluated proposals, heard oral presentations, conducted written discussions, and received and evaluated final proposal revisions from both firms. In accordance with DOE's standard OCI disclosure clause contained in the RFP, both offerors submitted OCI disclosure statements. In its OCI disclosure statement, Winston and Strawn represented that it had no conflict of interest as defined in the RFP, and specifically disclosed that during the preceding 12 months, it had provided legal services to TRW, including legal support, regulatory research, and advice related to all aspects of NRC licensing. Winston and Strawn stated that it had identified no actual or potential conflict of interest or unfair competitive advantage resulting from its work for TRW. AR, exh. 7, Tab 9, Winston and Strawn OCI Disclosure, June 28, 1999.

The RFP listed key personnel, technical approach, corporate experience/past experience, and price as evaluation factors, and stated that the offerors' technical capability would be of greater importance than price. RFP §§ M.2, M.3. A technical evaluation committee (TEC) evaluated proposals and reviewed the OCI disclosure statements. Based on the results of the final evaluation, both proposals earned perfect technical scores of 1,000 points in the evaluation; Winston and Strawn's final revised price was nearly $3.7 million less than that offered by LeBoeuf. AR, exh. 10, Selection Statement for DE-RP01-99GC30789, Sept. 17, 1999, at 2-3, 5. In addition, based on its review of Winston and Strawn's OCI disclosure statement, the TEC found that there were no OCIs that would preclude the firm from being selected for award under the RFP. Accordingly, the TEC recommended to the source selection official (SSO) that Winston and Strawn be selected for award. AR, exh. 5, Memorandum from Assistant General Counsel for Civilian Nuclear Programs to SSO, Sept. 16, 1999, at 1.

DOE notified LeBoeuf of the selection on September 20 and awarded the contract to Winston and Strawn on September 24 at a total estimated value, including options, of $16,586,795. CO Statement at 6, and AR, exh. 10, at 5. DOE debriefed LeBoeuf on September 27, and this protest followed.

Admission to Protective Order

Pursuant to our Bid Protest Regulations, 4 C.F.R. § 21.4(a) (1999), our Office issued a protective order, which allowed the limited release of certain documents--such as the offerors' proposals and the agency's evaluation documentation--to counsel who were admitted to the protective order. We received and reviewed the applications of James L. Feldesman, Edward T. Waters, and Kathy S. Ghiladi, attorneys with the law firm of Feldesman, Tucker, Leifer, Fidell and Bank, retained by LeBoeuf to represent it in this protest.

DOE objected to the admission of protester's counsel primarily because Eugene R. Fidell, a partner in the Feldesman firm, was listed as a personal reference for Michael F. McBride, one of the key employees in LeBoeuf's proposal. Specifically, DOE's objection was that "[b]ased on the protester's counsel's relationship with the protester as a reference in this procurement and the continuing personal and professional relationship, as well as [protester's] counsel's failure to disclose this information [in their applications] . . . there is a significant risk of inadvertent disclosure of protected material." Letter from DOE to General Accounting Office 1 (Oct. 14, 1999). DOE further argued that since the protest challenged the evaluation of LeBoeuf's proposal, "it appears that the counsel representing LeBoeuf may themselves be witnesses regarding the technical evaluation of the information they provided." Id. at 2. Finally, DOE claimed that protester's counsel does not have an established bid protest practice and "thus probably does not have an established process for conformity to the strictures of a GAO protective order," further enhancing DOE's concern for the inadvertent disclosure of protected information. Id. at 3.

In considering the propriety of granting or denying an applicant admission to a protective order, we review each application in order to determine whether the applicant is involved in competitive decision-making or there is otherwise an unacceptable risk of inadvertent disclosure of protected information should the applicant be granted access to protected material. See McDonnell Douglas Corp., B-259694.2, B-259694.3, June 16, 1995, 95-2 CPD ¶ 51 at 7. In this case, we admitted protester's counsel to the protective order over DOE's objections based upon our finding that they are not involved in competitive decision-making and that their admission does not otherwise pose an unacceptable risk of inadvertent disclosure of protected information.

DOE did not assert, and there is no evidence in the record suggesting, that either protester's counsel or Mr. Fidell participate in competitive decision-making for LeBoeuf. Mr. Fidell provided a sworn declaration describing his relationship with Mr. McBride, in which he stated that since leaving LeBoeuf more than 15 years ago, he worked with Mr. McBride on a single matter, which was concluded in 1997 and had nothing to do with the Yucca Mountain Project at issue here. Mr. Fidell further stated that with only one exception in connection with the 1997 work, he and Mr. McBride do not socialize, and have lunch together only two or three times a year.

In addition, Mr. Fidell asserted that he is not privy to the business plans of the LeBoeuf firm; has not had any financial interest in the firm since 1984; and has not been involved in competitive decision-making for LeBoeuf since 1984. Mr. Fidell offered additional assurances that he reviewed no documents concerning LeBoeuf's proposal before its submission, and stated that he has no desire or intention to view or otherwise learn the contents of any protected documents that may be released to his colleagues at the Feldesman firm. In light of Mr. Fidell's explanation of his relationship with Mr. McBride and LeBoeuf, we concluded that the primary basis for DOE's objection--that Mr. Fidell's past or present relationship with Mr. McBride gives rise to a significant risk of inadvertent disclosure of protected material--was without merit.

We further found that DOE's concern that protester's counsel's failed to mention in their applications the fact that LeBoeuf had listed Mr. Fidell as a personal reference for Mr. McBride in its proposal, was also unfounded. There simply is no basis to conclude that protester's counsel reasonably should have anticipated DOE's objections.

In addition, we found that DOE's concern that protester's counsel may themselves be witnesses in this case regarding DOE's evaluation of LeBoeuf's past performance was equally meritless. The protester did not challenge the technical evaluation of its own proposal; rather, in its initial protest, LeBoeuf challenged the evaluation of the awardee's proposal. We thus found it highly unlikely that any statements Mr. Fidell made to DOE evaluators could be at issue in this case. In any event, we failed to see, and DOE did not explain, how the remote possibility that Mr. Fidell could be a witness may present an unacceptable risk of inadvertent disclosure of protected material.

Finally, protester's counsel represented that they had read the protective order issued by our Office for this protest and would abide by its terms and conditions in handling any protected material that is produced in this matter. Except for DOE's blanket statement that the firm may lack an established process for conforming to the requirements of the protective order, there was no reason to question counsel's representations. In sum, we concluded that the risk of inadvertent disclosure of protected material was sufficiently minimal to warrant providing protester's counsel access under the protective order.

Protest Issues

The protester primarily argues that DOE should have disqualified Winston and Strawn from receiving the award because the firm allegedly has an unavoidable OCI as a result of its earlier work under its subcontract with TRW.[5] LeBoeuf in essence contends that an OCI exists because under the instant contract, Winston and Strawn will be responsible for reviewing the work the firm performed under its TRW subcontract. The protester also relies on the text of a 1997 version of DOE's Management Plan for the preparation of the license application, arguing that the Plan requires Winston and Strawn to serve as "document reviewer" for the license application. The protester also argues that the license application is subject to certain quality assurance procedures established to satisfy NRC requirements for review of technical documents.[6]

Discussion

An OCI occurs where, because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage. Federal Acquisition Regulation (FAR) § 9.501; International Management and Communications Corp., B-272456, Oct. 23, 1996, 96-2 CPD ¶ 156 at 3; Aetna Gov't Health Plans, Inc.; Foundation Health Fed. Servs., Inc., B-254397.15 et al., July 27, 1995, 95-2 CPD ¶ 129 at 12. Contracting officials are to avoid, neutralize, or mitigate potential significant conflicts of interest so as to prevent an unfair competitive advantage or the existence of conflicting roles that might impair a contractor's objectivity. FAR §§ 9.504(a), 9.505; CH2M Hill, Ltd., B-259511 et al., Apr. 6, 1995, 95-1 CPD ¶ 203 at 14.

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[5] In its initial protest, LeBoeuf also argued that the CO should have considered the increased costs that DOE may incur in defending its selection of Winston and Strawn due to anticipated legal challenges based on the existence of the alleged OCI; LeBoeuf also maintained that the alleged OCI should have precluded Winston and Strawn's proposal from earning a perfect score in the technical evaluation. DOE responded to these allegations and LeBoeuf did not rebut the agency's response. Accordingly, we consider these issues abandoned. Appalachian Council, Inc., B-256179, May 20, 1994, 94-1 CPD ¶ 319 at 8 n.8.

[6] In a supplemental protest filed January 14, 2000, LeBoeuf contends that Winston and Strawn has an OCI stemming from its representation of another company, Fluor Daniel Hanford, Inc., in connection with certain proceedings before DOE. We will issue a separate decision addressing the supplemental protest.

In deciding whether Winston and Strawn has an OCI in this case, the central issue is whether the work called for under the RFP in essence is a continuation of work performed to date, or whether the RFP calls for Winston and Strawn in effect to review work it performed under its subcontract with TRW, thereby calling into question the firm's objectivity and its ability to render impartial assistance to DOE. As explained below, we conclude that Winston and Strawn's work under its TRW subcontract and its current work for DOE are virtually indistinguishable and that neither the RFP, DOE's Management Plan, nor its quality assurance procedures call on Winston and Strawn to review its prior work under the TRW subcontract. Accordingly, there is no basis in the record to conclude that award to Winston and Strawn gives rise to an OCI.

The RFP that resulted in the award of TRW's M&O contract stated in relevant part:

> The Contractor is to provide the strategy options, leadership, and resources to assist DOE in obtaining the NRC license. . . . A primary aspect of the Contractor's responsibilities is to ensure that all work is conducted in a structured and systematic manner: meets the technical, schedule, cost, safety, environmental, quality and interface requirements; meets the regulatory requirements of the NRC and [EPA]; and, is consistent with applicable DOE orders.

RFP No. DE-RP01-88RW00134, Oct. 5, 1987, as amended, Feb. 25, 1988, attach. A, Statement of Work, ¶ I.B.

The current RFP describes the required work in essentially similar terms, as follows:

> Primarily, the contractor will provide support to DOE in performing activities necessary to the preparation and defense of a potential license application for a spent nuclear fuel and high-level radioactive waste repository at the Yucca Mountain, Nevada site, including preparation of written analyses, recommendations and documents, and ensuring compliance with regulatory requirements attendant to the licensing process.

AR, exh. 1, RFP § C.2.1, at 16.

A comparison of these provisions, in our view, clearly supports the agency's position that the work contemplated by the protested contract is essentially a continuation of the work Winston and Strawn previously accomplished under its TRW subcontract.

The agency further states that TRW routinely shared Winston and Strawn's work product with DOE, and DOE relied on the expertise provided by Winston and Strawn. AR, exh. 11, ¶¶ 10-11. Thus, contrary to LeBoeuf's suggestion, there is no reason to conclude that Winston and Strawn's work pursuant to its TRW subcontract was motivated by interests adverse to DOE's, or created any relationship with TRW

that would preclude the firm from providing impartial, objective legal advice and assistance to DOE under this contract.[7]

LeBoeuf's argument that DOE's Management Plan requires Winston and Strawn to perform review functions for the license application under this contract is similarly lacking in merit.[8] The RFP does not contemplate that the successful offeror will perform review functions. In any case, DOE explains that the specific language of the Plan LeBoeuf relies upon for its argument is obsolete, and is substantially different from the current Plan. As relevant to LeBoeuf's concerns, the current Plan makes clear that DOE's Office of General Counsel is to provide "concurrence review" before the application is transmitted to the Secretary, and DOE does not intend to delegate this final concurrence review to a contractor. Management Plan for the Development of the License Application for a High Level Waste Repository at Yucca Mountain, YMP/97092, Rev. 1, 1999, ¶ 2.4.3.[9]

Similarly, since DOE is ultimately responsible for reviewing the license application, we find there is no merit to LeBoeuf's argument that Winston and Strawn will be reviewing the license application in accordance with quality assurance procedures established to satisfy NRC requirements for review of technical documents. In this connection, the agency explains that LeBoeuf assumes that the license application is

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[7] To the extent that LeBoeuf argues that in performing the contract, Winston and Strawn's personnel would violate applicable professional canons of ethics or rules of professional responsibility, our Office does not have jurisdiction to review alleged violations of these rules. Dun & Bradstreet Corp., B-213790, June 13, 1984, 84-1 CPD ¶ 626 at 3 (protester's argument that contractor's approach would violate applicable professional canons of ethics dismissed as a matter for the professional organizations involved, not our Office); see also Sterling Med. Assocs., B-213650, Jan. 9, 1984, 84-1 CPD ¶ 60 at 3 (protester's allegation that awardee violated the Ethics in Government Act dismissed because enforcement of that Act is not encompassed by our bid protest jurisdiction).

[8] The purpose of the Plan is to provide guidance for developing a license application in compliance with applicable regulations, sufficient to docket the application with the NRC. AR, exh. 11, Tab A, Management Plan, ¶ 1.1. DOE developed the Plan to provide a framework to ensure that the license application is developed on schedule and with adequate content to be submitted to the NRC in accordance with the NWPA. Id. ¶ 1.2.

[9] In any event, we note that the Plan is an internal DOE document to guide agency personnel in the licensing application process, and its violation, if that occurred, would not provide outside parties, such as LeBoeuf, with a basis of protest. Rockwell Int'l Corp., B-261953.2, B-261953.6, Nov. 22, 1995, 96-1 CPD ¶ 34 at 13 n.16.

a document that must be reviewed to satisfy NRC's quality assurance requirements. DOE states, however, that the applicable regulations require a quality assurance program that applies to systems, structures, and components important to safety. 10 C.F.R. § 60.151. According to DOE, the regulations apply to activities such as site characterization, construction, and facility operation. AR at 14. Accordingly, by their terms, the regulations do not apply to the process of applying for an NRC license. The agency further explains that, contrary to the protester's assumption, DOE decided that the license application itself would not be subject to the procedures in DOE's quality assurance program. In this connection, the agency states that the license application is not subject to the quality assurance process because it will not be the original source of any technical conclusions, but will merely report technical conclusions that will be contained in supporting documents, such as site information and analysis results, that are subject to the quality assurance program. Consequently, we agree with the agency's view that the protester's suggestion that an OCI exists because Winston and Strawn will be performing quality assurance review of the license application is lacking in factual basis.

In our view, given that the RFP essentially contemplates a continuation of the work Winston and Strawn performed under its TRW subcontract, rather than review of that work, there is no basis to conclude that because of its previous relationship with TRW, Winston and Strawn would be unable to render impartial assistance or advice to DOE under this contract. Accordingly, based upon our review of the record, there is no basis to conclude that Winston and Strawn has an OCI that precludes it from receiving the award.

Supplemental Protest

In a supplemental protest, filed October 28, 1999, LeBoeuf contends that Winston and Strawn was ineligible to compete under the RFP's OCI clause because a cover letter to the 1992 solicitation issued by TRW (which resulted in the subcontract awarded to Winston and Strawn) disqualifies the firm from competing in this procurement;[10] that the RFP's OCI clause constitutes a definitive responsibility criterion that Winston and Strawn could not meet; and that in view of the existence of the alleged OCI, the CO's responsibility determination was made in bad faith. In

[10] The cover letter to the TRW solicitation for the subcontract, dated May 15, 1992, stated that DOE "anticipat[ed] procuring technical support service from a law firm to assist it in connection with the discharge of its responsibilities to OCRWM. Firm(s) providing technical support services to TRW based upon [the subcontract] will be disqualified from bidding on the procurement the DOE OGC intends to publish in the future." LeBoeuf Supplemental Protest, Oct. 28, 1999, exh. 2. DOE states that this cover letter was not incorporated into the M&O subcontract solicitation, nor was it incorporated into the resulting subcontract with Winston and Strawn. CO Statement at 2-3; AR exh. 8.

addition, LeBoeuf contends that an OCI provision incorporated into TRW's M&O contract rendered Winston and Strawn ineligible for award under the instant RFP by virtue of the "flow down" effect of that provision into Winston and Strawn's subcontract.

DOE and the intervenor argue that the issues raised in LeBoeuf's supplemental protest are untimely because DOE informed the protester of the selection of Winston and Strawn both on September 20 and again at its debriefing, which was conducted on September 27. The agency further points out that LeBoeuf received a copy of the cover letter with the solicitation for the TRW subcontract in May 1992. CO Statement at 3. The protester does not dispute DOE's statement in this regard. DOE and the intervenor thus contend that to be timely under our Regulations, any protest issues based on the language of the cover letter or questions concerning Winston and Strawn's responsibility, or regarding the effect of the OCI provision incorporated into Winston and Strawn's subcontract, had to be raised within 10 days after the agency debriefed LeBoeuf. As explained below, we agree with DOE's and the intervenor's position in this regard.

Where a protester files supplemental protest grounds, each new ground must independently satisfy the timeliness requirement of our Bid Protest Regulations, which do not contemplate the piecemeal presentation or development of protest issues. Imaging Sys. Tech., B-278112, Dec. 10, 1997, 97-2 CPD ¶ 161 at 4 n.2; QualMed, Inc., B-257184.2, Jan. 27, 1995, 95-1 CPD ¶ 94 at 12-13. Such new issues must be filed within 10 calendar days after the protester knew or should have known the basis for its protest. Bid Protest Regulations, 4 C.F.R. § 21.2(a)(2). Presenting a broadly stated general allegation in an initial protest does not permit the protester later to present specific and otherwise untimely arguments having some relevance to the initial general allegation. GE Gov't Servs., B-235101, Aug. 11, 1989, 89-2 CPD ¶ 128 at 4.

The record shows that DOE notified LeBoeuf of the selection of Winston and Strawn on September 20, 1999, and debriefed LeBoeuf on September 27. AR at 6; Protest, Oct. 4, 1999, at 4. Further, LeBoeuf concedes that it received the cover letter to TRW's solicitation upon its issuance in May 1992. Supplemental Protest, Oct. 28, 1999, at 8-9; Supplemental Affidavit of R. Tenney Johnson, Oct. 26, 1999, ¶ 8. Thus, LeBoeuf knew of DOE's selection decision and the reasons for the decision--and therefore, the basis for its protest--as of September 27.

A protester that knows of a relationship which potentially violates an RFP's OCI provision must protest no later than 10 days of learning that the award was made to a party with the allegedly prohibited relationship. Test Sys. Assocs., Inc., B-244007.4, B-244007.5, May 1, 1992, 92-1 CPD ¶ 408 at 5. Given that LeBoeuf was on notice that Winston and Strawn had been providing assistance and legal advice to TRW at least since 1992, if LeBoeuf believed that the 1992 cover letter to TRW's solicitation (of which the protester had possession since May 1992) or the terms of TRW's M&O contract precluded the award to Winston and Strawn, or concluded from the

information it learned at its debriefing that the CO unreasonably determined that Winston and Strawn is a responsible firm, it was required to raise these issues within 10 calendar days of its September 27 debriefing, that is, by October 7. Since LeBoeuf did not file its supplemental protest until October 28--more than 1 month after its debriefing--these issues are untimely and will not be considered. 4 C.F.R. § 21.2(a)(2).

The protest is denied.

Comptroller General
of the United States