



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Herb Richards Construction Company

File: B-262177

Date: November 20, 1995

Dennis E. Lind, Esq., Datsopoulos, MacDonald & Lind, for the protester.
Allen W. Smith, Department of Agriculture, for the agency.
M. Penny Ahearn, Esq., and David A. Ashen, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

1. General Accounting Office (GAO) will not conduct an in-depth inquiry into whether bidder is affiliated with contractor debarred for violations of the Contract Work Hours and Safety Standards Act; rather, GAO's review is limited to an examination of whether the contracting officer's determination of affiliation was reasonable.
2. Protest against agency determination that firm was ineligible for award, based on substantial interest in firm of contractor debarred for violations of the Contract Work Hours and Safety Standards Act, is denied where debarred individual signed protester's bid in capacity of project manager.

DECISION

Herb Richards Construction Company (HRCC) protests the rejection of its bid under invitation for bids (IFB) No. R4-IDAWY-95-14, issued by the Department of Agriculture, U.S. Forest Service for construction of a campground at the Salmon-Challis National Forests. HRCC challenges the Forest Service's determination that the firm is ineligible for award of a contract based on its affiliation with John Richards, a contractor debarred by the Department of Labor for violations of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327 *et seq.* (1988) (the Act). HRCC argues that it is entitled to award of a contract as the low, responsive bidder.

We deny the protest.

The Forest Service determined that HRCC, the apparent low bidder, was ineligible for award on the basis that it was affiliated with John Richards, a debarred contractor. Richards signed HRCC's bid in the capacity of project manager, and according to the agency, this indicates that he has authority to contractually

obligate, and is a principal employee of, HRCC and has a substantial interest in HRCC.

The protester challenges the agency's determination, arguing that John Richards is merely an employee who has no financial or ownership interest in HRCC, and no authority to sign bids and change orders without approval by Herb Richards. HRCC claims that only Herb Richards, HRCC's president (and John Richards's father), can financially obligate the company; the only officers of the company are Herb Richards and his wife; Herb Richards is the only director of the company; and bonding is in Herb Richards's name.

The Act provides that no government contract may be awarded to any firm in which a debarred contractor has a "substantial interest." 40 U.S.C. § 333(d)(2). The Department of Labor is empowered to prescribe standards, regulations, and procedures to govern enforcement of the Act, 40 U.S.C. § 330(d). Pursuant to these regulations, federal contracting agencies and the Secretary of Labor have primary responsibility under the Act for determinations regarding affiliations with debarred firms. 29 C.F.R. § 5.12 (1995); see M. C. & D. Capital Corp., B-189450, July 14, 1977, 77-2 CPD ¶ 31. In light of the agencies' responsibility--and consistent with the review standard we have adopted in similar cases where the Service Contract Act applies, see C & L Diversified Enters., Inc., B-224912, Jan. 30, 1987, 87-1 CPD ¶ 102, aff'd on recon., B-224912.2, Mar. 10, 1987, 87-1 CPD ¶ 268--we will not conduct an in-depth inquiry into whether HRCC is affiliated with John Richards; rather, we will limit our review to an examination of whether the contracting officer's determination was reasonable.

The contracting officer reasonably rejected HRCC's bid. While the protester's position is based on John Richards's asserted lack of an ownership interest, an agency reasonably can conclude that a person who is entrusted with the power to sign a bid (as John Richards did here), and thereby bind a contractor to perform under a contract, is so deeply involved with the company that a substantial interest reasonably may be assumed. Traffic Moving Sys., Inc., B-248572, Sept. 3, 1991, 92-2 CPD ¶ 152. While the protester asserts that John Richards's authority to sign bids is limited by Herb Richards's prior review and approval, we note that when the agency specifically requested "[a] copy of John Richards's delegated authority to sign and obligate the company and his role as project manager regarding management decisions," HRCC furnished no documentation delineating the limits of John Richards's authority. Further, we think that, under the circumstances, the agency reasonably could view John Richards's role as project manager as evidence

that he has influence over the company's activities.¹ Finally, although the contracting officer does not cite in support of his substantial interest determination the fact that Herb Richards, the president of the firm, and John Richards are father and son, in the absence of any evidence to the contrary, an agency may reasonably assume that family members generally have an identity of interest. See Howema Bau-GmbH, B-245356; B-245386, Sept. 4, 1991, 91-2 CPD ¶ 214; C & L Diversified Enters., Inc. *supra*.

We conclude that the agency properly found HRCC ineligible for award based on its reasonable determination that the debarred contractor, John Richards, had a substantial interest in the company.

The protest is denied.

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¹We note that while the Act does not define the term "substantial interest," additional guidance in this area can be derived from a Department of Labor regulation, 29 C.F.R. § 4.188(c)(2), which discusses the term for purposes of implementing the Service Contract Act, 41 U.S.C. § 351 *et seq.* (where the term is also not defined). That regulation states that "interest is not determined by ownership alone"; rather, "a debarred person will also be deemed to have a 'substantial interest' in a firm if such person has participated in contract negotiations, is a signatory to a contract, or has the authority to establish, control, or manage the contract performance and/or the labor policies of a firm." (Emphasis added.)