

**DECISION**

11673 Shipman Trans  
**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-194511.2

DATE: October 16, 1979

MATTER OF: KLS Enterprises, Inc.

*[Protest of Bid Rejection Due To Affiliate of Protesting Firm  
Being on Debarred List]*

DIGEST:

Determination of whether low bidder's employment of debarred individual renders bidder ineligible for award as an affiliate is for head of contracting agency and Secretary of Labor, not GAO.

The Naval Supply Center, Charleston, South Carolina, issued invitation for bids (IFB) No. N00612-79-B-0057 on February 28, 1979, for guard services at the Naval Air Station, Key West, Florida. During the preaward survey of KLS Enterprises, Inc. (KLS), the low bidder, the contracting officer learned that James Martin, Jr., the firm's General Manager, was included in the "Type E" listing on the Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors as a result of his former association with another firm. "Type E" involves concerns or individuals that have been reported by the Secretary of Labor to have violated labor standards provisions of the statutes listed in Defense Acquisition Regulation (DAR) § 1-603(a) (1976 ed.).

Since it appeared that Mr. Martin as KLS' general manager would be managing the contract, the contracting officer determined to reject the firm's bid pursuant to DAR § 1-604.2(b) and § 2404.2(f), even though KLS was not itself included in the list of debarred or suspended contractors. Award of the contract was made made to the second low bidder. DAR § 1-604.2(b) states that "Debarment may include all known affiliates of a concern or individual," and DAR § 2-404.2(f) requires the rejection of a bid from any person or concern currently listed on the Joint Consolidated List if required by DAR Section I, part 6.

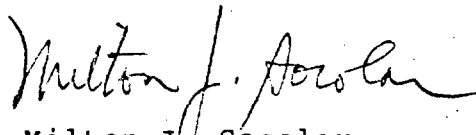
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KLS protests the rejection of its bid, essentially disputing the contracting officer's view that DAR § 1-604.2(b) applies to it as an affiliate of Mr. Martin. KLS contends that although Mr. Martin is employed by KLS in a managerial capacity, he is an employee only, and does not control the firm as required by the regulation to be considered an affiliate. KLS argues that automatically denying KLS the opportunity to contract with the Government because of the employment of Mr. Martin violates both the firm's constitutional right to due process and Mr. Martin's constitutional right to employment in his chosen field.

The matter is not appropriate for our consideration. We first point out that DAR § 1-604.2(b) applies to "Type A" administrative debarments, not "Type E" statutory debarments. Thus while we do consider questions relating to administrative debarments, see 51 Comp. Gen. 65 (1971), the determination of a firm's eligibility for award because of its affiliation with a "Type E" listed individual is the responsibility of the Secretary of Labor and the contracting agency head, not our Office. M. C. & D. Capital Corporation, B-189450, July 14, 1977, 77-2 CPD 31.

Moreover, our records show that Mr. Martin has also been debarred under the Service Contract Act of 1965, 41 U.S.C. § 351 et seq. (1976). The enforcement of that Act, including determinations of affiliation, also rests with the Secretary of Labor and the contracting agency head. See Enviro-Development Company, B-195215, July 12, 1979, 79-2 CPD 30; Integrity Management International, Inc., B-187555, December 21, 1976, 76-2 CPD 515.

The protest is dismissed.

  
Milton J. Socolar  
General Counsel