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DECISION



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

FILE: B-206325

DATE: May 24, 1982

MATTER OF: Elogene Thurman

DIGEST:

1. Contracting agency did not act improperly in rejecting low bid from concern substantially controlled by employee of Federal Government because such contracts are undesirable and should not be authorized except where the Government cannot otherwise be reasonably supplied.
2. Contracting agency reasonably determined that bidder would be substantially controlled by Government employee where, under previous contract for similar services, all meetings, negotiations and dealings with agency were conducted by husband of bidder who was then, and is now, a Government employee and bidder has not provided any information that husband's involvement in contract will change.

Elogene Thurman (Mrs. Thurman) protests the determination by the General Services Administration (GSA) that her company was ineligible for award of a small business set-aside contract for custodial services at the Social Security Administration building in Wichita Falls, Texas, under solicitation No. 07D2-0389-01/7PFFW, because the contracting officer determined that her company was substantially owned or controlled by a Government employee.

The protest is without merit.

Prior to award of the 1981 contract for these services, Mrs. Thurman's husband, Mr. Robert Thurman, a Government employee, served as the field representative for Reliable Maintenance Service, Inc., the predecessor contractor which performed the custodial services. Mr. Thurman expressed an interest in

competing himself for the contract. GSA advised him that, as a Government employee, he was ineligible for consideration because Federal Procurement Regulations (FPR) § 1-1.302-3 (1964 ed, amend, 95) requires that contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns which are substantially owned or controlled by Government employees, except under exceptional circumstances which are not present in this situation. Subsequently, Mrs. Thurman submitted the low bid and was awarded the contract for 1981.

During the course of the performance of the 1981 contract, GSA representatives had difficulty contacting Mrs. Thurman. Throughout the term of the contract, Mr. Thurman represented the company in all dealings with GSA concerning contract performance matters. Mrs. Thurman again submitted the low bid for the current 1982 contract, but GSA determined that, while her name appeared on the bid, in fact, Mr. Thurman would again exercise substantial control over the company if it were awarded the contract. Accordingly, GSA determined that Mrs. Thurman was ineligible for award pursuant to FPR § 1-1.302-3. Award was made to Conner Building Maintenance, Inc., the next low bidder.

Mrs. Thurman first questions what documents exist which establish that Mr. Thurman is a Government employee, pointing out that he resigned from his civil service position in 1981. However, as Mrs. Thurman concedes, Mr. Thurman then immediately entered the employ of the Federal Government in the military service where apparently he remains employed. Thus, there is no question that Mr. Thurman was and is a Government employee.

Mrs. Thurman also points out that more than 50 percent of the time Mr. Thurman was and is away on official military duty. Therefore, she contends that he has not "controlled the contract" as GSA asserts he has. The record indicates that Mr. Thurman has exercised control. As noted by GSA, Mr. Thurman was the only company representative at the prework conference; telephone calls to Mrs. Thurman during contract performance were referred to Mr. Thurman who represented the company throughout the course of contract performance in all of its dealings with GSA; and it has always been necessary to call or meet with Mr. Thurman in order to get any action on contract deficiencies.

In view of these circumstances, we believe that GSA had a reasonable basis for its conclusion that Mr. Thurman exercised substantial control over the company. See Metro Electric, Inc., 58 Comp. Gen. 802 (1979), 79-2 CPD 226; Capital Aero, Inc., 55 Comp. Gen. 295 (1975), 75-2 CPD 201. In this regard, we note that the regulation being relied upon implements a general, well-established Government policy that contracts between the Government and its employees are undesirable from a public policy standpoint and should be authorized only in exceptional cases where the Government's needs cannot reasonably be otherwise supplied, because they invite criticism and give rise to the appearance of favoritism and fraud. Valiant Security Agency, B-205087, October 29, 1981, 81-2 CPD 367; Biosystems Analysis, Inc., B-198846, August 25, 1980, 80-2 CPD 149; Metro Electric, Inc., supra; 55 Comp. Gen. 681, 683 (1976). In view of the relationship between the Thurmans and the conduct of the prior contract, GSA reasonably determined that Mr. Thurman's conduct with respect to the company's business dealings with the Government brought the company within the purview of "substantially controlled business concerns," awards to which are proscribed by the regulation.

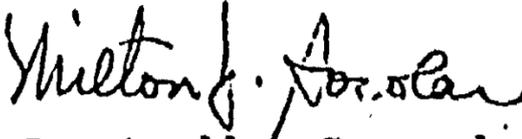
There is nothing in the record to suggest that Mr. Thurman's exercise of substantial control over the company has diminished. In its January 26, 1982, letter to Mrs. Thurman, GSA advised of the rejection of her low bid because of Mr. Thurman's exercise of substantial ownership or control and further stated: "Should conditions affecting award of contract change in the future we will be happy to consider your business along with others in making our awards." Mrs. Thurman has not provided any information that Mr. Thurman's relationship with the company has changed or will change. Rather, her correspondence and arguments indicate that the relationship may be expected to remain the same.

Mrs. Thurman seems to rely on the fact that Mr. Thurman was permitted to work as a field representative for other predecessor contractors while he was employed by the Federal Government. Therefore, in essence, she argues that to fail to permit him to continue to do so constitutes discrimination against her company. However, the previous awards are of

no effect in the determination not to consider her company for this award. First, there is no indication in the record of what, if any, degree of ownership or control Mr. Thurman exercised over the other companies which were awardees of this contract. Moreover, as we recognized in Biosystems Analysis, Inc., supra, the regulation in question proscribes a contracting officer from "knowingly" entering into a contract with a company substantially owned or controlled by a Government employee. The regulation does not require the termination of such a contract if it is made by a contracting officer without knowledge of the objectionable relationship even if he subsequently becomes aware of it. Biosystems Analysis, Inc., supra. There is no indication that any information regarding the existence of such a relationship was available to the contracting officer at the time of award of the predecessor contracts.

Mrs. Thurman raises a number of other allegations mainly relating to her alleged competent performance under the previous contract. However, these are unrelated to the issue at hand. The material submitted by the agency in this regard, at which the allegations are directed, is only germane in that it provides evidence of Mr. Thurman's exercise of substantial control over the company during the conduct of the contract. Similarly, Mrs. Thurman's argument that award to her would result in cost savings to the Government is irrelevant. We have held that possible cost savings in this situation are outweighed by the strong public policy against the Government's contracting with its own employees. Valiant Security Agency, supra; 55 Comp. Gen. 681, 683 (1976).

We deny the protest.

for 
Comptroller General
of the United States