

DECISION

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

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FILE: B-211746**DATE:** August 23, 1983**MATTER OF:** Heidi Holley**DIGEST:**

1. Agency properly rejected protester's bid based on an apparent conflict of interest where protester's husband would be supervising performance under the awarded contract.
2. No legal basis exists for GAO to award protester damages for lost earnings.

Heidi Holley (Holley) protests the rejection of her low offer under request for quotations No. R2-12-83-10, issued by the Department of Agriculture, Forest Service, to obtain cleaning services for Vallecito and Lemon Lakes.

The protest is denied in part and dismissed in part.

Holley submitted the low bid in response to the solicitation. However, the Forest Service learned that Holley was married to the contracting officer's representative and reviewed this factor under Forest Service Regulations (FSM) §§ 6300-4a (April 1978, amend. 161) and 6173.51(e) (April 1978, amend. 21) and Department of Agriculture Regulation (FSH) § 4G-1.302-71 (November 1978, Supp. 39). FSM § 6300-4a and FSH § 4G-1.302-71 require contracting officers to scrutinize bids submitted by relatives of Forest Service employees to determine if there is an actual or potential conflict of interest. FSM § 6173.51e provides that contracts generally should not be awarded to members of an employee's family because of the appearance of a conflict of interest. The Forest Service determined that an award to Holley would create the appearance of a conflict of interest because Mr. Holley would be directly involved in supervising performance under the contract. After the District Ranger found that Mr. Holley's duties could not be changed to eliminate the apparent conflict of interest, the Forest Service rejected Holley's offer.

Holley protests that she has been discriminated against because of her relationship to Mr. Holley. She also alleges that the Forest Service knew that she was married to

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Mr. Holley and it should have refused to open her offer and informed her that this relationship would require her offer to be rejected. Holley requests that we require the Forest Service to replace Mr. Holley with a different employee and award the contract to Holley. In the alternative, Holley asks that we award her \$450 for earnings which she lost on another contract while waiting for the Forest Service to make a decision.

The Forest Service acknowledges that there is no direct prohibition against its contracting with the spouse of a Forest Service employee. It maintains, however, that under the present circumstances an award to Holley would be contrary to the Forest Service policy of avoiding the appearance or possibility of a conflict of interest in Forest Service contracts. The Forest Service also denies that it knew of Holley's relationship to Mr. Holley before opening her offer.

A Government agency is not absolutely prohibited from contracting with the spouse of one of its employees. Thus, even if the contracting officer knew of the relationship before opening the offer he was not required to reject Holley's offer before opening it and inform her that she could not be awarded a contract. However, Government agencies are required to avoid even the appearance of favoritism or preferential treatment towards a firm competing for a contract. Del Rio Flying Services, B-197448, August 6, 1980, 80-2 CPD 92. In the present case, Mr. Holley would be directly supervising the contract work. Moreover, Holley is the daughter of the main recreation manager of the Forest Service. The Forest Service notes that many people, including other offerors, are aware of these factors. Finally, the record does not show that Mr. Holley made any attempt to notify his supervisor of his relationship with Holley. Given these circumstances, we cannot conclude that once the Forest Service determined that Mr. Holley's duties could not be changed to remove the apparent conflict of interest, it acted improperly in resolving the problem by rejecting Holley's offer. See Kidd International Data Entry, B-182694, July 30, 1975, 75-2 CPD 65; Del Rio Flying Services, supra. Thus, this protest ground is denied.

Since there is no legal basis on which GAO may award damages for lost earnings, Holley's alternative claim is dismissed. See Tennessee Valley Service Company, B-188771, December 8, 1977, 77-2 CPD 442.

for Larry R. Van Cleave
Comptroller General
of the United States