

**DECISION**

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

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Phillip  
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**FILE:** B-213973

**DATE:** April 23, 1984

**MATTER OF:** Bauer Compressors, Inc.

**DIGEST:**

1. Award of a contract to a firm that was on the Consolidated List of Debarred, Suspended and Ineligible Contractors prior to and at the time of bid opening, but whose name was removed from the list prior to award, is proper since proper time for determining the effect of a suspension on a firm's eligibility for award is at time of award.
2. Bid submitted by firm that was on Consolidated List of Debarred, Suspended and Ineligible Contractors prior to and at time of bid opening need not be rejected at bid opening; therefore, determination that there is compelling reason not to reject its bid may be made any time prior to award.
3. While DAR § 604.1(a) provides that bids shall not be solicited from and contract awards cannot be made to suspended or debarred bidders, there is no proscription against a suspended or debarred firm submitting a bid, even though it cannot receive award unless removed from the list.

Bauer Compressors, Inc. (Bauer), protests the award of a contract to the Davey Compressor Company (Davey) under solicitation No. F09603-83-B-0135 issued by Warner Robins Air Force Base (Air Force), Georgia.

The protest is denied.

The solicitation, issued on July 11, 1983, covered requirements for type MC11 compressors. Bids were opened on September 14, 1983, and the low bidder was Davey. Bauer protests that at the time of solicitation of bids, as

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well as at the time of bid opening, Davey was on the Consolidated List of Debarred, Suspended, and Ineligible Contractors published by the General Services Administration (GSA). Bauer states that it was its understanding that Davey's bid was rejected subsequent to bid opening and that, under the circumstances, it was not possible to evaluate Davey's bid for award even though Davey's suspension was terminated on October 7, 1983.

According to the Air Force, Davey was suspended by the Air Force on June 22, 1983, pursuant to sections 1-606.2(a) (3), (4) and (c) of the Defense Acquisition Regulation (DAR), and subsequently placed on the Consolidated List of Debarred, Suspended and Ineligible Contractors. The Air Force states that it did not solicit a bid from Davey; however, Davey obtained a copy of the solicitation and submitted a bid which was opened and entered on the abstract sheet. Subsequently, Davey and the Department of Justice reached a plea agreement in which Davey pleaded guilty to 25 counts of filing false claims and agreed to pay fines of \$250,000. This plea agreement, as well as a consent judgment in which Davey consented to pay restitution of \$2,750,000, was to be filed with the United States District Court, Southern District of Ohio. Also, in the plea agreement and consent judgment, Davey agreed to institute certain audit and accounting procedures which would prevent a recurrence of the wrongdoing.

On the basis of the plea agreement and consent judgment, coupled with the fact that the individual responsible for the wrongdoings was no longer employed by Davey, the Air Force, on October 7, 1983, lifted Davey's suspension. Davey received award on December 13, 1983.

While DAR § 1-604.1(a) (Defense Acquisition Circular (DAC) No. 76-41, December 27, 1982) provides that bids shall not be solicited from and contract awards cannot be made to suspended or debarred bidders, we have held that there is no proscription against a suspended or debarred bidder's submitting a bid, as Davey did in the present case, even though it could not receive the award unless removed from the list. See B-168496, January 16, 1970. Thus, Davey's submission of a bid was proper.

Concerning the treatment of bids after receipt, DAR § 1-604.1(a)(1) (DAC No. 76-41, December 27, 1982) provides in part:

". . . Bids received from any listed contractor in response to an Invitation for Bids shall be opened (see DAR § 2-402), entered on the Abstract of Bids (see DAR § 2-403), and rejected (see DAR § 2-404) unless the Secretary concerned or his authorized representative determines in writing that there is a compelling reason to make an exception."

DAR § 2-404.2(f) (DAC No. 76-41, December 27, 1982) provides that:

"Bids received from any person or concern whose name is included in the current 'Joint Consolidated List of Debarred, Ineligible, and Suspended Contractors' [this list was superseded by GSA's Consolidated List of Debarred, Suspended and Ineligible Contractors] shall be rejected if required by Section I, Part 6."

A review of section I, part 6, reveals that DAR § 1-604.1(a)(2) (DAC No. 76-41, December 27, 1982) lists several examples of compelling reasons for not rejecting a bid. One of the reasons given is when "the contractor and the Department have entered into an agreement covering the same events which resulted in the listing and agreement includes a decision by the Department not to debar or suspend the contractor." While no specific compelling reason exception was made for Davey's bid, we believe that the plea agreement and consent judgment, coupled with the Air Force's subsequent decision to lift the suspension, are analogous to the above reason and, as such, constitute a compelling reason for not rejecting Davey's bid.

However, Bauer contends that since the government did not know at the time of bid opening that Davey's suspension would be lifted, it could not use the above reason as justification for not rejecting Davey's bid. While, admittedly, Davey was not eligible for award at bid opening time, we do not agree with Bauer's contention that Davey's bid should have been rejected at bid opening time, since the proper time for determining the effect of a suspension on a firm's eligibility for award is at award time. See Kings Point Mfg. Co. Inc.; Gibraltar Industries, Inc.; Geonautics, Inc., B-210389.4; .5; .6, December 14, 1983, 83-2 CPD 683.

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In this case, the contracting officer had good cause to lift the suspension. DAR § 1-601(b) (DAC No. 76-41, December 27, 1982) requires that debarment and suspension be imposed only in the public interest, for the government's protection and not for purposes of punishment. We believe that in light of the plea agreement, consent judgment and Davey's removal of the individual responsible for the wrongdoings, the government's interest is protected. Therefore, we believe that when the Air Force terminated Davey's suspension, it was acting within its authority to impose and terminate suspensions. Since Davey's eligibility status was changed prior to award, we believe that the contracting officer properly determined Davey to be a bidder which was eligible for award.

Accordingly, the protest is denied.

*for Milton J. Fowler*  
Comptroller General  
of the United States