

DECISION

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

FILE: B-221820 **DATE:** May 12, 1986
MATTER OF: Hero, Inc.

DIGEST:

1. Whether or not agency followed proper procedures for termination of contract is a matter of contract administration which is not for consideration under GAO's Bid Protest Regulations.
2. GAO will not consider protest that agency improperly solicited bids for services covered under an allegedly improperly terminated contract, because protester has been suspended from government contracting and is ineligible to receive a government contract and, therefore, is not an interested party to protest under Bid Protest Regulations.

Hero, Inc. (Hero), protests the procedures for termination of contract No. F33601-85-D-0133 (contract -0133) awarded to Hero by the United States Air Force for the maintenance of family housing units at Wright-Patterson Air Force Base, Ohio, and the award of a contract under request for proposals (RFP) No. F33601-86-R-0139 (RFP -0139) issued by the Air Force for the services which had been covered by the terminated contract.

We dismiss the protest.

On August 2, 1985, Hero was awarded contract -0133, which had a performance period of September 30, 1985, to December 31, 1985. On December 30, the Air Force exercised its option to extend the contract through September 30, 1986. However, by letter of December 24, received by the contracting activity and Hero on December 31, the Air Force

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advised that Hero was suspended from future contracting with any agency in the executive branch of the government. Consequently, on January 9, the Air Force terminated the contract extension for the convenience of the government effective January 31, 1986. The agency later revoked the termination and instead voided the extension of the contract. On January 10, Hero was included on the Consolidated List of Debarred, Suspended, and Ineligible Contractors published by the General Services Administration (GSA). That same day, the Air Force issued RFP -0139 for the services covered under the terminated contract and, on January 29, due to compelling and urgent circumstances, award under this solicitation was made to Lockhart Builders, Inc., notwithstanding this protest.

As a general rule, our Office will not review an agency's decision to terminate a contract for the convenience of the government or to void a contract, since by law this is a matter of contract administration for consideration by a contract appeals board or by a court of competent jurisdiction. We review contract terminations only where the contracting agency's action is based upon a determination that the contract was improperly awarded. Amarillo Aircraft Sales & Services, Inc., B-214225, Sept. 10, 1984, 84-2 C.P.D. ¶ 269.

Hero argues that the Air Force improperly terminated the contract extension because, at the time the extension was signed, Hero was not effectively suspended. Hero asserts that we should find that the contract extension was proper and that the resolicitation was therefore unnecessary. We do not think the issue raised by Hero is for our review.

Here, it is clear that even if the contract was properly awarded to Hero, the Air Force has the right to terminate the contract because Hero has been suspended from contracting with the government. FAR, 48 C.F.R. § 9.405-1(a) (1984). Thus, even if we were to conclude that Hero was eligible for the award on December 30, when the Air Force exercised its option under Hero's contract, the fact remains that the Air Force could terminate the contract because Hero was placed on the GSA consolidated list on January 10.

At this point, the only question is whether the proper termination procedures were followed and not whether the award was proper. This is not an issue which we will review

since it concerns a matter of contract administration which is not reviewable under our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(1) (1985).

To the extent that Hero is protesting award under RFP -0139, a party must be "interested" before we will consider its protest. GAO Bid Protest Regulations, 4 C.F.R. §§ 21.0(a) and 21.1(a) (1985). A party is not interested if it would not be eligible for award should its protest be upheld. Solid Waste Services, Inc., B-218445 et al., June 20, 1985, 85-1 C.P.D. ¶ 703. Since Hero is suspended and ineligible for award of this contract even if its protest were sustained, the firm is not an interested party capable of maintaining a protest. See Space Dynamics Corporation, B-220168.2, Nov. 29, 1985, 85-2 C.P.D. ¶ 620. Furthermore, we point out that if the Air Force had decided not to exercise the option under Hero's contract in the first place, an agency's decision not to exercise an option under a contract is not a matter our Office will review under our Bid Protest Regulations. See Excel Services, Inc., B-218039, May 8, 1985, 85-1 C.P.D. ¶ 518.

The protest is dismissed.

The protester has requested that it be paid attorney's fees. However, since we are dismissing the protest, we deny the claim for costs. R. S. Data Systems, B-220961, Nov. 21, 1985, 65 Comp. Gen. _____, 85-2 C.P.D. ¶ 588.

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