



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: C & L Diversified Enterprises, Inc.
File: B-224912
Date: January 30, 1987

DIGEST

1. Provisions of the Service Contract Act preclude award of a contract to firm in which a debarred contractor has a substantial interest. 41 U.S.C. § 354.
2. Issue of whether debarred contractor has a substantial interest in firm seeking a government contract is for determination by the contracting agency and the Secretary of Labor, and our review of the matter is limited to whether that determination was reasonable.
3. It was reasonable for agency to conclude that an individual debarred from contracting with the government had a substantial interest in a company where he served as company president up until his debarment, the firm is in part owned and is operated by his wife as its current president, and the debarred individual continues to be employed by the firm.

DECISION

C & L Diversified Enterprises, Inc. (C & L), protests the Forest Service's rejection of the bid it submitted pursuant to invitation for bids (IFB) No. R6-6-86-93. C & L contends that it is entitled to award of the contract as the low responsive bidder. The Forest Service responds that C & L is ineligible for award due to its affiliation with C. R. Jones, a contractor debarred by the Department of Labor for violations of the Service Contract Act, 41 U.S.C. § 351 et seq. (1982).^{1/} We deny the protest.

^{1/} Records on file in our Office indicate that, on June 26, 1985, a Department of Labor Administrative Law Judge (ALJ) issued a decision which found C. R. Jones had violated the minimum wage provisions of the Service Contract Act in his performance of another government contract. On February 28, 1986, the Undersecretary of Labor affirmed the ALJ's decision. Effective May 1, 1986, C. R. Jones was placed on the list of debarred bidders.

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The IFB issued by the Forest Service sought bids to bulldoze the debris generated by logging operations in the Mt. Hood National Forest. By letter dated September 10, 1986, the Forest Service's contracting officer notified C & L that it had submitted the low bid. In this letter, the contracting officer also inquired as to the "current status" of C. R. Jones in view of his debarment; advised that the bidder would have to positively show that it had taken steps to improve its performance which had resulted in its failure to complete a prior contract on time; and, because the bid price was 35 percent below the government estimate, asked the bidder to verify the bid if no mistakes were claimed. A verified bid was to be supported by the submission of a cost estimate worksheet.

In response, by letter signed by "Linda M. Jones, President," the bidder advised that C. R. Jones was "removed from holding any office" in the corporation upon his debarment and was now "only a dozer operator" for the firm; that Linda Jones currently was the firm's president; and that repairs to existing equipment and the purchase of another bulldozer should correct the problems experienced under the prior contract. In addition, the bidder verified the correctness of its bid price, in support of which it submitted a cost estimate worksheet showing that its payroll costs for this contract were limited to a crew of one with the same individual also serving as foreman.

On September 26, the contracting officer advised C & L that it would not be awarded the contract due to his determination that C. R. Jones had a substantial interest in the company. Linda Jones, wife of C. R. Jones as well as part-owner of C & L (together with their two children) and its current president, protests that determination.

Ms. Jones acknowledges that her husband was president of C & L prior to his debarment. However, she states that she assumed the role of company president after her husband was debarred, and asserts that he is now merely an employee, retained by the company as a "dozer" operator. She argues that since her husband has no stock in the company and is no longer an officer, he has no interest in the firm. Ms. Jones maintains that the regulations concerning debarment should not be construed in such a way as to prevent her husband from retaining his employment.

The Forest Service responds that, as a former president of the corporation and the spouse of a part-owner and its current president, C. R. Jones has a substantial interest in C & L. Further, the Forest Service believes that C & L

intends to use C. R. Jones as its agent on this contract, based on C & L's cost estimate worksheet and correspondence from Ms. Jones which suggests that C. R. Jones will be the only employee on the job site. The Forest Service notes that the terms of the IFB require the site representative to have authority to act for the contractor, and the agency anticipates that, if awarded the contract, C & L intends to use C. R. Jones as its site representative and agent.

The Service Contract Act provides that no government contract may be awarded to any firm in which a debarred contractor has a substantial interest. 41 U.S.C. § 354 (1982). However, our Office will not conduct an in-depth inquiry into the issue of whether C & L is affiliated with C. R. Jones, since such determinations are to be made by the federal contracting agency and the Secretary of Labor. Atchison Engineering Co., B-208148.5, Aug. 30, 1983, 83-2 C.P.D. ¶ 278. Our review of this matter is restricted to an examination of whether the contracting officer's determination was reasonable. Solid Waste Services, Inc., B-218445 et al., June 20, 1985, 85-1 C.P.D. ¶ 703.

Based on the record presented, we believe the contracting officer reasonably rejected C & L's bid. Our Office previously considered a case involving a married couple in a similar situation. See ALB Industries, Inc., B-207335, Aug. 9, 1982, 82-2 C.P.D. ¶ 119. There, as here, the husband and his company had been debarred and the wife sought to contract with the government through a corporation previously controlled by her husband. In that case, we stated that, in the context of contract performance, it is reasonable for a contracting officer to conclude that family members, and specifically a married couple, have an identity of interest.^{2/} We believe that principle is applicable here.

C. R. Jones' proposed involvement in the performance of this contract provides additional support for the conclusion that he has a substantial interest in the company. After reviewing the record, we believe the contracting officer reasonably

^{2/} Ms. Jones asserts here, as did the protester in ALB Industries, Inc., supra, that a denial of her protest will constitute sexual discrimination. There is no merit in this argument since our decision today would be the same if the roles were reversed, i.e., if the wife had been suspended and her husband owned another company seeking to contract with the government. See ALB Industries Incorporated--Request for Reconsideration, B-207335.2, June 27, 1983, 83-2 C.P.D. ¶ 20.

concluded that C & L intends to use C. R. Jones as its agent in performing this contract. In addition to the letter in which Ms. Jones stated that C. R. Jones is employed as a "dozer" operator, and with which she submitted a cost estimate worksheet showing only one employee will be used to perform the required work, in her response to the Forest Service's administrative report, Ms. Jones indicates that the effect of the ineligibility determination will be to keep her husband from working.

In summary, we believe that the contracting officer's determination that C. R. Jones has a substantial interest in C & L is amply supported by the fact that he served as president of that company up until his debarment, he is married to the current president and part-owner, and he continues to perform an active and substantial role in the company's business. Accordingly, we find nothing improper in the Forest Service's rejection of C & L's bid.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel