



Comptroller General  
of the United States

Washington, D.C. 20548

Glass

## Decision

**Matter of:** Childers Service Center

**File:** B-246210.3

**Date:** June 17, 1992

Annie Burlene Childers for the protester.  
Robert W. Ruth, Esq., and James S. Roberts, Jr., Esq.,  
Sirote & Permutt, for John Bransby Productions, Ltd., an  
interested party.  
Craig E. Hodge, Esq., Walter A. Baker, Esq., and Douglas  
DeMoss, Esq., Department of the Army, for the agency.  
Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of  
the General Counsel, GAO, participated in the preparation of  
this decision.

### DIGEST

Protest is denied where contracting officer reasonably  
determined that conduct likely occurred during the  
procurement which may have afforded the protester an unfair  
competitive advantage and that in order to protect the  
integrity of the competitive procurement system, the  
contract with the protester should be terminated for the  
convenience of the government.

### DECISION

Childers Service Center protests the termination of its  
contract for the convenience of the government which  
resulted from request for proposals (RFP) No. DAAH03-91-R-  
0089, issued by the U.S. Army Missile Command, Redstone  
Arsenal, Alabama (MICOM) for audio-visual support services.  
The protester argues that the termination of its contract  
was improper.

We deny the protest.

The RFP was issued on June 11, 1991, as a total small  
business set-aside for the acquisition of audio-visual  
support services to include still photographs, video  
services, motion picture services, MOPIC/VIDEO services,  
graphic arts, and the maintenance of visual information  
equipment for a period of 1 year plus two 1-year options.

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The RFP contemplated the award of a firm fixed-price, indefinite quantity contract, based on an evaluation of proposals in the following four areas: (1) technical, (2) pricing, (3) management, and (4) past performance.

Offers were received from Childers, John Bransby Productions, Ltd., the incumbent contractor, and Gradwell Company, Inc. by the closing date of August 21. After the initial evaluation, all offerors were determined to be within the competitive range and discussions were held. After discussions, on September 20, best and final offers (BAFOs) were requested with a closing date of September 23. All three offerors' technical proposals were rated "good" by the technical evaluation panel. All three offerors received a rating of "low risk" as a result of the Performance Risk Analysis Group's evaluation of past performance references. All three offerors also received a "go" under the management factor. Since all offerors received equal ratings for the technical, past performance, and management factors, award was made to Childers, the lowest priced offeror, on October 1.

On October 11, Bransby protested the award to Childers and argued that Childers maintained a close relationship with, was aided by, stated its intent to employ (if awarded the contract), and ultimately did employ the spouse of the contracting officer's representative (COR) for the predecessor contract. Bransby maintained that Childers's participation in the procurement violated the Ethics in Government Act of 1978, 18 U.S.C. § 208 (Supp. I 1989).<sup>1</sup> Bransby further asserted that the COR on Bransby's predecessor contract possessed Bransby historical work load and performance data which, if combined with her knowledge of the independent government estimate, would make it possible for the awardee to safely underbid those line items which were suspected to be overestimated and thus produce an artificially low bid.

The Army, in its report filed with our Office on November 19, stated that the employee in question was the alternate COR on Bransby's prior contract. The record showed that the employee, as alternate COR, typed the monthly delivery order to be issued to Bransby and prepared modifications to delivery orders as required. The employee also approved overtime for the contractor, gathered work

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<sup>1</sup>18 U.S.C. § 208 generally prohibits federal employees from participating personally and substantially as a government employee in an application, contract, or other particular matter in which, to his knowledge, he, his spouse, or the organization in which he is serving has a financial interest.

load data for the visual information reports, and provided work load information to the regular COR. With respect to the current solicitation, the Army stated that the employee's duties were limited to typing the statement of work, Section B of the solicitation, and a cover memorandum forwarding the independent government estimate to another office. The Army reported that once the solicitation was issued, the employee had no access to source selection information and did not participate in the source selection process. The employee further stated that she was not aware that her spouse would be working for Childers until long after she ceased to be involved with the solicitation and until before contract award.

The Army reported that at the time Bransby's initial protest was filed, since the employee was not a procurement official within the meaning of the Act and was precluded from participation in the instant procurement following the issuance of the solicitation, its only concern was with a potential release of procurement-sensitive information. The employee was advised of the procurement integrity provisions of the Office of Federal Procurement Policy Act, 41 U.S.C. § 423 (1988 and Supp. I 1989), and submitted sworn statements to the effect that she had not disclosed such information.

After receipt of Bransby's comments to the agency report on December 19, the agency concluded that Bransby had presented sufficient information to lead it to believe that an investigation may be warranted, and the Criminal Investigation Division (CID) was requested to look into the allegations. In an interview with the CID on January 31, 1992, the employee admitted she had told her spouse about the protested procurement in "general terms." This information was reported to the agency in a preliminary report by the CID on February 7, and on that same day the agency decided to terminate the protested contract since this statement was inconsistent with prior sworn statements made by the employee and her spouse.

On February 7, the agency notified our Office that as a result of the investigation there was reason to believe the integrity of the procurement process had been jeopardized and although the investigation continues in order to determine the full extent of the corrective action which will be required, the agency had decided to terminate the contract. By notice of February 7, our Office dismissed Bransby's protest as academic.

After receiving notice that its contract had been terminated, Childers filed this protest, challenging the termination of its contract.<sup>2</sup>

An agency decision to terminate a contract for the convenience of the government is not reviewable by our Office, except where the agency determines that the initial award was improper and the contract should be terminated for that reason. Robinson Mills & Williams, B-236956.3, Feb. 7, 1990, 90-1 CPD ¶ 156; see Naddaf Int'l Trading Co., B-238768.2, Oct. 19, 1990, 90-2 CPD ¶ 316.

An agency has broad discretion to terminate a contract for convenience and take appropriate corrective action. Thus, where an agency concludes that there is an impropriety in the procurement process such that termination of the award and other corrective action is necessary, it need only show that the impropriety or conflict, if occurred, might have affected the award decision. NES Gov't Servs., Inc.; Urgent Care, Inc., B-242358.4; B-242358.6, Oct. 4, 1991, 91-2 CPD ¶ 291. Stated differently, a contracting officer may take appropriate corrective action to protect the integrity of the competitive procurement system where the circumstances show that a firm's conduct likely resulted in an unfair competitive advantage. Huynh Serv. Co., B-242297.2, June 12, 1991, 91-1 CPD ¶ 562; Compliance Corp., B-239252, Aug. 15, 1990, 90-2 CPD ¶ 126, recon. denied, B-239252.3, Nov. 28, 1990, 90-2 CPD ¶ 435; Compliance Corp. v. United States, 22 Cl. Ct. 193 (1990); aff'd Compliance Corp. v. United States, No. 91-5048 (Fed. Cir., Mar. 26, 1992).

Here, we find reasonable the agency's decision to terminate for convenience Childers's contract to ensure the integrity of the competitive system because of the appearance of an unfair competitive advantage. The record shows that the employee had access to the independent government estimate (IGE) and other procurement-sensitive information. While the CID investigation did not explicitly determine that the employee specifically discussed this information with her spouse, the employee during the CID interviews did state that she discussed in "general" terms the procurement, a fact that she unequivocally denied in several affidavits previously provided to the Army. These discussions took place during the time that the employee's spouse was seeking employment with Childers. Although the record does not show that Childers actually obtained any procurement-sensitive


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<sup>2</sup>Childers also objects to the agency's handling of its termination settlement proposal and the agency's failure to make a partial payment. These issues involve matters of contract administration and are not for review by our Office. See 4 C.F.R. § 21.3(m)(1) (1992).

information, it does show that the employee and her spouse had not been thoroughly candid with the agency concerning discussions about the procurement. In this regard, the agency cannot be sure that the integrity of the procurement had not been compromised during the course of this procurement and has evidence from its investigation that strongly suggests that it may have been. For example, the IGE, if disclosed, could be useful to an offeror in the preparation of its proposal and an offeror's access to the IGE could give it an advantage over other offerors.

Under these circumstances, we think the agency could reasonably determine that conduct may have occurred during this procurement which compromised the integrity of the procurement process. That being so, the contracting officer, to protect the integrity of the competitive procurement, properly could terminate the contract award to Childers. Huynh Serv. Co., supra.

The protest is denied.

  
for James F. Hinchman  
General Counsel