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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20545**

*P.L. II
Baker*

FILE: B-187841

DATE: March 23, 1977

MATTER OF: Hugh Maher

CIGEST:

Agency did not abuse its discretion in rejecting bid by individual who was employed by contracting activity at time he submitted his bid.

Hugh Maher (Maher) has protested the rejection by the Department of the Army of a bid by Hugh Maher & Sons to provide garbage removal services at West Point, New York. Maher asserts that the agency incorrectly found that he was not a responsible bidder due to his employment by the Government at the time he submitted his bid.

On September 13, 1976, the United States Military Academy issued IFB No. DAHCO2-76-B-1771, requesting bids for garbage removal services at several public buildings and family housing areas in West Point and Newburgh, New York. Bids were opened on September 28, 1976. The bid of Hugh Maher & Sons, signed by "Hugh Maher, owner" was the low bid on three of the items. On September 30, 1976, Hugh Maher visited the Contracting Officer complaining that he had been informed by a contract specialist that he was not a responsible bidder since he was a government employee. Maher stated that it was his intention to resign from his temporary employment with the government if awarded the contract.

On November 12, 1976, Maher protested to our Office the rejection of his bid and the award of the contract items to higher bidders. Maher's protest asserts that there is no prohibition against accepting a bid from a Government employee per se, and the contract could have been executed with him after he resigned.

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Contracts between the Government and its employees are not prohibited by statute except where an employee of the Government acts as an agent for both the Government and the contractor in the particular transaction or where the service to be rendered under the contract is such as could have been required of the contractor in his capacity as a Government employee. 18 U.S.C. § 208; 27 Comp. Gen. 735 (1948). However, paragraph 1-302.6 of the Armed Services Procurement Regulation (1976 ed.) states that contracts shall not knowingly be entered into between the Government and employees of the Government or business organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

Maher asserts that the implication that he had access to inside information concerning the procurement is not supported by the record. He states that as a machine operator and laborer, it would require a stretch of the imagination to claim or suggest he had access to procurement information or that the appearance of evil existed. However, at the time the solicitation was prepared, Mr. Maher was working in the Directorate of Facility Engineering, the same activity that developed the technical specifications for the solicitation. Merely because Mr. Maher was a laborer does not prevent the appearance of favoritism or eliminate the possibility that he might have access to information not available to other bidders.

Maher finally asserts that he was a temporary employee whose employment was to end in less than a month in any event. However, it is irrelevant whether the employee is a temporary or permanent employee for the purpose of determining whether the award to him would be in the public interest. 14 Comp. Gen. 403 (1934). While Maher states that the contracting officer could have entered into a contract with him after his employment was terminated, we do not believe the contracting officer was required to delay making an award pending termination of Mr. Maher's employment with the Government.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States