

DECISION

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

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FILE: B-212986**DATE:** March 5, 1984**MATTER OF:** J. Allen Grafton**DIGEST:**

An agency unreasonably rejected a quotation from the son of an agency employee, in order to avoid actual or apparent favoritism or preferential treatment, where the employee, although employed in the administrative district in which the procurement occurred, had no responsibility for the resulting contract, there was no indication that the employee disclosed confidential agency information about the procurement or otherwise influenced the procurement, and adequate competition was publicly sought and obtained.

J. Allen Grafton protests the rejection of the quotation which he submitted and the subsequent award of contracts under request for quotations No. 11-83, issued by the Department of Agriculture, Forest Service, for the clearance of undergrowth for purposes of timber management in the Cheat Ranger District, Monongahela National Forest. The Forest Service rejected the quotation because Mr. Grafton's father was an employee of the Forest Service. We sustain the protest.

Mr. Grafton submitted the apparent second low quotation on all three items in the RFQ and was in line for award after the apparent low quoter was found non-responsible following his incarceration on a felony charge. However, after an administrative review of Mr. Grafton's qualifications for award, the Forest Service rejected his quotation because his father was an assistant ranger in the Cheat Ranger District. Mr. Grafton thereupon filed this protest with our Office. The Forest Service, citing an urgent need for the services, has since made award to other quoters notwithstanding the protest.

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Department of Agriculture Procurement Regulation § 4G-1.302-71 (November 1978, Supp. 39), cited by the Forest Service in rejecting Mr. Grafton's quotation, provides that:

"The general restrictions applying to contracts with or purchases from Government employees do not specifically apply to contracting with relatives of an employee. The same potential problems, however, do exist. It is recognized that there are inherent problems in doing business with individuals where there is, or appears to be, possible favoritism or preferential treatment. . . ."

Section 6173.51e of the Forest Service Manual (April 1980, amend. 161) further provides that contracts between the government and the immediate family of an employee "are usually not permissible, because of the appearance of or conflict of interests."

In disapproving award to Mr. Grafton under this solicitation, the Forest Service found that several factors would create the potential for or appearance of favoritism or preferential treatment if award were made to Mr. Grafton, including:

- (1) that Mr. Grafton is a member of the immediate family of a staff employee in the ranger district where the project was to be undertaken;
- (2) that it was reasonable to assume that the employee, as a staff member of that district, had knowledge of the project and did or could have had access to privileged information, such as information concerning the estimated costs of the project;
- (3) that Mr. Grafton, a municipal employee who had not previously bid on a government contract, was not considered a recognized or regular supplier of the services being procured;

(4) that the possibility for impartial contract administration would be called into question.

Mr. Grafton argues that he was improperly denied award, alleging that his father had absolutely nothing to do with the procurement, that he, Mr. Grafton, is married and lives away from home, that there were no restrictions in the RFQ upon contracting with the relatives of Forest Service employees, that children of other Forest Service employees have been allowed to work in the Youth Conservation Corps, thus rendering the Forest Service action here a discrimination against Mr. Grafton, and that the Equal Employment Opportunity Commission allegedly has held that an employer may not refuse to hire the qualified relative of one of its employees merely because of that relationship.

We have held that government agencies are required to avoid even the appearance of favoritism or preferential treatment towards a firm competing for a contract. See Heidi Holley, B-211746, August 23, 1983, 83-2 CPD 241. Further, although an agency may not entirely exclude a class of bidders from competing for award in the absence of a law or government-wide regulation sanctioning the exclusion, see Edward R. Jereb, 60 Comp. Gen. 298 (1981), 81-1 CPD 178, the responsibility for determining whether a firm competing for a contract should be excluded from competition in order to avoid actual or apparent favoritism or preferential treatment primarily rests with the procuring agency so long as its determination is reasonable. See N.D. Lea & Associates, Inc., B-208445, February 1, 1983, 83-1 CPD 110.

While the Forest Service in part justified its rejection of Mr. Grafton's bid on the ground that Mr. Grafton's father might have had access to confidential information such as that concerning the government cost estimates, we note that the Forest Service has not alleged that the employee actually disclosed any confidential information concerning the procurement or in any other way influenced the procurement. On the contrary, the Forest Service declared that the rejection of Mr. Grafton's bid was in no way a reflection upon the honesty or integrity of his

father. We also note that nothing in the bidding seems to contradict this, to suggest the influence of favoritism or inside information. The procurement was synopsized in the Commerce Business Daily (CBD), 12 quotations were received, and, depending upon the item in question, from 7 to 9 of these quotations were below, many substantially below, the government estimate.

Further, we question the extent to which award to Mr. Grafton would have created even the appearance of favoritism or preferential treatment. The CBD announcement was a public indication of the Forest Service's attempt to secure adequate competition.

By the Forest Service's own admission, Mr. Grafton's father's duties related to recreation, wildlife, fire and human resource programs, rather than to timber management, and the father had nothing to do with the procurement. Presumably, neither would he be responsible for the administration of any contracts awarded to Mr. Grafton.

Since it appears that award to Mr. Grafton would not have resulted from favoritism or preferential treatment towards Mr. Grafton, or created a significant potential for, or even the substantial appearance of, such favoritism or preferential treatment, the Forest Service's rejection of Mr. Grafton's quotation on the grounds stated was unreasonable.

The protest is sustained.

We have been advised by the agency that the contracts awarded under this RFQ have already been fully performed. However, the protester may be reimbursed its quotation preparation costs. See Fitts Construction Co., Inc., 62 Comp. Gen. 615 (1983), 83-2 CPD 190.

for Milton J. Dowler
Comptroller General
of the United States