



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Huynh Service Company

File: B-242297.2

Date: June 12, 1991

Phuong T. Huynh and Byron E. Hazlett for the protester. Paul M. Fisher, Esq., Department of the Navy, for the agency. Linda S. Lebowitz, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where contracting officer reasonably determined that conduct likely occurred during the procurement which 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

Huynh Service Company protests the termination of its contract for the convenience of the government which resulted from invitation for bids (IFB) No. N62474-90-B-3728, issued by the Department of the Navy for maintenance of jet engine air-start systems at the Naval Air Station, Point Mugu, California. The protester argues that the termination of its contract was improper.

We deny the protest.

The IFB, issued on June 13, 1990, contemplated the award of a firm, fixed-price/indefinite quantity service maintenance contract. Two firms--Huynh Service Company and Springfield Service, Inc.--submitted bids by the amended bid opening date of August 9. Huynh Service Company, a firm established in July 1990, submitted the low bid of \$226,650, while Springfield, the incumbent contractor, submitted the second low bid

of \$229,600. (Huynh Service Company bid \$15,125 per month and Springfield bid \$15,225 per month for the firm, fixed-price portion of the IFB schedule.) After completion of the preaward survey, the agency, on December 3, awarded the contract to Huynh Service Company, the low, responsive, responsible bidder.

On December 10, Springfield filed a protest with our Office, alleging that the award to Huynh Service Company was improper. Prior to and at the time Springfield was preparing its bid for this procurement, Byron Hazlett, whom Springfield believed to be the husband of Phuong T. Huynh, the owner of Huynh Service Company, was employed as an operations manager/maintenance technician at Springfield's Point Mugu field operations site. Springfield alleged that Byron Hazlett "reviewed and supervised the bid process" prior to submitting Springfield's bid at bid opening. Springfield further alleged that Byron Hazlett, using its confidential and proprietary information, prepared and submitted a bid for this procurement on behalf of, and in the name of, his wife's recently established firm. Springfield contended that Byron Hazlett and Phuong T. Huynh, on behalf of Huynh Service Company, engaged in deceptive and unfair competitive practices.

On January 17, 1991, after reviewing Springfield's allegations, the agency notified our Office that it was terminating the award to Huynh Service Company because of evidence of irregularities in the competitive bidding process which might have afforded Huynh Service Company an unfair competitive advantage. Additionally, the agency reported that it was investigating the matter for possible criminal violations. By notice of January 24, our Office dismissed Springfield's protest as academic.

After receiving notice that its contract had been terminated, Huynh Service Company filed this protest, challenging the termination of its contract.


Although the decision by an agency to terminate a contract for the convenience of the government generally is a matter of contract administration not reviewable under our Bid Protest Regulations, we will consider the reasonableness of such a decision where the agency determines that the initial award was improper and 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. Here, we find that the agency's decision to terminate the award to Huynh Service Company was reasonable.

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. Compliance Corp., B-239252, Aug. 15, 1990, 90-2 CPD ¶ 126, recon. denied, B-239252.3, Nov. 28, 1990, 90-2 CPD ¶ 435. Here, the agency's investigators found the following: Byron Hazlett was employed by Springfield, the incumbent contractor for the past 5 years, as its operations manager/maintenance technician, the key staff person for this work. For this procurement, Byron Hazlett "reviewed and supervised the bid process" for Springfield. Byron Hazlett sent to Springfield's home office IFB amendments necessary to bid and then formally acknowledged these amendments on behalf of Springfield prior to bid opening. Although Byron Hazlett claimed he had no knowledge of the particular contents of Springfield's bid, he did help prepare the bid, had the bid in his possession for a period of time, and prior to bid opening hand-carried the bid to the bid opening location. The agency concluded that Byron Hazlett had the opportunity, as alleged by Springfield, to reveal the contents of Springfield's bid to his wife. The agency further determined that Huynh Service Company was established after the solicitation was issued, was not on the bidder's mailing list, and did not independently request a copy of the solicitation. Byron Hazlett also had requested and received a copy of the solicitation, supposedly in order to submit a bid on behalf of his own company, but no such bid was submitted. Finally, agency documents showed that "Phuong T. Huynh" and "Phuong T. Hazlett" were the same individual, and that she was Byron Hazlett's wife (although the protester states that they had been separated since March 1990).

In these circumstances, and in light of the fact that there was only a \$2,950 difference between the total bids of Huynh Service Company and Springfield, and only a \$100 per month difference between the two bids for the firm, fixed-price portion of the IFB, we think the agency could reasonably determine that conduct likely occurred during this procurement which afforded Huynh Service Company an unfair competitive advantage. That being so, the contracting officer, to protect the integrity of the competitive procurement system, properly could terminate the contract awarded to Huynh Service Company. Compliance Corp., supra.

The protest is denied.


James F. Hinchman
General Counsel