



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Howema Bau-GmbH  
**File:** B-245356; B-245386  
**Date:** September 4, 1991

Michael J. Murphy, Esq., von Maur, Matthews & Partners, for  
the protester.

### DIGEST

Protests challenging suspension are dismissed where suspension was based on evidence of bribes by protester's former president to obtain contracts for protester, and agency complied with applicable procedural requirements; agency did not arbitrarily determine that protester was an affiliate subject to suspension, or otherwise act arbitrarily to avoid awarding protester contracts to which it was entitled.

### DECISION

Howema Bau-GmbH protests the award of contracts to any other firms under invitation for bids (IFB) Nos. DAJA04-91-B-0079 and DAJA04-91-B-0083, issued by the Department of the Army. Howema alleges it was the low bidder, and that the Army has denied Howema the awards because the firm has been suspended from contracting with any component of the Department of Defense. Howema maintains that the suspension was improper.

We dismiss the protests.

The suspension was based on evidence that Mr. Horst Hesterberg, as president, secretary and treasurer of Howema, paid bribes to various employees of the United States in order to receive federal contracts. This evidence consisted of statements made to the German police, who currently are investigating the charges. Howema challenges the suspension on the basis that, as of May 16, 1991, Mr. Hesterberg was separated from Howema; the company is owned, not by Mr. Hesterberg, but by his three sons; and that the owners, managers and employees did not participate in and had no knowledge of Mr. Hesterberg's activities.

Our Office will consider protests of allegedly improper suspensions and debarments occurring during the pendency of an award decision to ensure that the contracting agency is not acting arbitrarily in order to avoid making award to a firm

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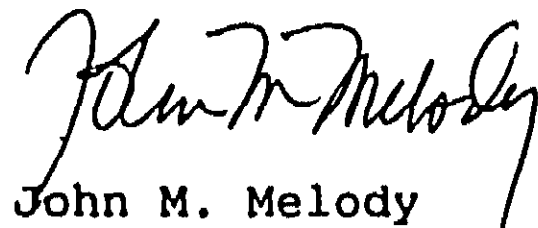
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otherwise entitled to the award, and to assure that minimal due process standards have been met. Darby Dev. Co., Inc.; James J. Kerr, B-234944.2; B-234944.3, Nov. 9, 1989, 89-2 CPD ¶ 452. The agency has met this standard here.

Under Federal Acquisition Regulation (FAR) § 9.407-2(a), a contractor may be suspended if, upon adequate evidence, it is suspected of "[c]ommission of fraud or a criminal offense in connection with . . . obtaining . . . a public contract or subcontract." Upon proper written notice and an opportunity to respond, the suspension may be extended to any named affiliate, FAR § 9.407-1(c), defined as "business concerns, organizations, or individuals [where] one controls or has power to control the other. . . . Indicia of control include . . . identity of interests among family members . . . ."

As indicated, Howema does not dispute the facts on which the Army's action was based; rather, it essentially argues that, Mr. Hesterberg allegedly having been walled off from Howema, the suspension should not extend to the company as an affiliate of Mr. Hesterberg. The facts show, however, that Mr. Hesterberg was the president, secretary, and treasurer of the company at the time of the alleged bribes aimed at securing contracts for Howema. The agency determined that these facts, together with Mr. Hesterberg's father-son relationship with the owners of Howema, warranted suspending Howema pending investigation of the matter.<sup>1/</sup> The suspension of Howema on this basis on its face clearly was consistent with the FAR as to the type of evidence upon which suspension may be based, and as to the type of firm that may be deemed an affiliate; the suspension was not arbitrarily extended to Howema as an affiliate to deprive Howema of the contracts. As the Army apparently complied with other procedural requirements, we conclude that there is no basis for finding that the suspension was an improper attempt to deprive Howema of the awards.

The protests are dismissed.



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<sup>1/</sup> See our prior decision, Howema Bau-GmbH, B-244848; B-245098, Aug. 15, 1991, 91-2 CPD ¶ \_\_\_\_, which dealt with the same suspension action in issue here.