



Comptroller General  
of the United States  
Washington, D.C. 20548

# Decision

**Matter of:** Gurley's Inc.  
**File:** B-253852  
**Date:** August 25, 1993

Mawandashi T. Gurley for the protester.  
Gerald M. Grimes, Department of the Air Force, for the agency.  
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

## DIGEST

Procuring agency properly rejected the bid of a firm listing government employees as its president and vice president since the agency had reason to believe that these government employees substantially controlled the firm's business.

## DECISION

Gurley's Inc. (a/k/a Gurley's Inter-National Co.) protests the rejection of its bid under invitation for bids (IFB) No. F02601-93-B0017, issued by the Department of the Air Force, for the military postal services at Davis-Monthan Air Force Base, Arizona. The Air Force rejected Gurley's bid because it found that Gurley's Inc. was substantially controlled by government employees.

We deny the protest.

The Air Force received four bids at bid opening on June 8, 1993. The low bid was submitted by Gurley's Inc. It was signed by Larry Gurley, an active military member, as president, and listed, Mr. Gurley's wife Sandra Gurley, also an active military member, as vice president, and their daughter, Mawandashi Gurley, as secretary.<sup>1</sup> The

<sup>1</sup>Larry Gurley, an active member of the Department of the Air Force, had previously sought advice from Air Force officials regarding how to compete for government contracts. Apparently based upon his understanding of the advice provided, the entity variously styled as Gurley's Inc. and Gurley's Inter-National Co. was used as a vehicle to bid under the present solicitation.

contracting officer determined that government employees, as president and vice president of the bidder (with their daughter being the only other company official), had substantial control over the firm, and rejected the bid pursuant to Federal Acquisition Regulation (FAR) § 3.601 which, among other things, precludes award to a firm substantially controlled by a government employee.

Under FAR § 3.601, a contract may not be awarded to a business substantially owned or controlled by a government employee except where, pursuant to FAR § 3.602, an agency official not below the head of the contracting activity finds that there is a "most compelling reason to do so, such as when the (g)overnment's needs cannot reasonably be otherwise met."<sup>2</sup> This prohibition is intended to avoid any conflict of interest that might arise between an employee's interests and government duties, and to avoid the appearance, much less the fact, of favoritism or preferential treatment. FAR § 3.601(a); KSR, Inc., B-250160, Jan. 13, 1993, 93-1 CPD ¶ 37.

The protester argues that Mawandashi Gurley, the daughter of Larry and Sandra Gurley, actually has the power to control all business transactions for the firm, and that Larry and Sandra Gurley are only "agents" for the firm. The protester explains that, based on certain "minor understandings," it may have unintentionally used some incorrect terms in its bid, such as referring to itself as Gurley's Inc., instead of Gurley's Inter-National Co., and listing the firm as a partnership, rather than as a sole proprietorship.

The protester's argument is misplaced since the agency is not required to establish with certainty that a government employee has a substantially controlling interest; the agency need only have "reason to believe" that a government employee has such control. See Marc Indus., B-246528 et al., Mar. 10, 1992, 92-1 CPD ¶ 273. Gurley's Inc.'s bid, listing government employees as the firm's president and vice president and their daughter as secretary provided a reasonable factual basis for the contracting officer's determination that government employees had a substantially controlling interest in the bidding entity. Even if the protester's representation that Mawandashi Gurley was the owner of the firm is given credence, in view of the fact that Ms. Gurley's father, a government employee, signed the bid and acted on behalf of the company in its dealings with the government, the agency had a reasonable basis to conclude that a government employee had a substantially controlling interest in this small firm, which claims average annual sales of only \$20,000.


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<sup>2</sup>No such determination was made here.

The protester also complains that when Larry Gurley met with agency officials to discuss competing for this award, the agency did not advise him of the existence of FAR § 3.601, or provide him with a copy of the regulation, otherwise "[his] daughter's name would have been the only name on the contract." Without addressing the dubious implication of this argument, we note that since the FAR is published in the Federal Register and the Code of Federal Regulations, thus putting the protester on constructive notice of its contents. See All Destinations, B-233505.3, Dec. 29, 1988, 88-2 CPD ¶ 640.

While Gurley's Inc. also argues that the government would save a significant amount of money by contracting with that firm, cost savings alone do not outweigh the strong public policy against the government contracting with its own employees. Minnco, Inc., B-219584, Oct. 25, 1985, 85-2 CPD ¶ 461.

The protest is denied.

  
for James F. Hinchman  
General Counsel