



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** BASIX, Inc.  
**File:** B-255613  
**Date:** March 15, 1994

D. Lee Roberts, Jr., Esq., Smith, Currie & Hancock, for the protester.  
Sam Jankovich, Jankco Holding Corporation, for Federal Protection Services, an interested party.  
Emily C. Hewitt, Esq., and Barry D. Segal, Esq., General Services Administration, for the agency.  
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Contracting officer reasonably excluded firm from competition where the firm had been suspended from federal procurements by another agency.

### DECISION

BASIX, Inc. protests the rejection of its bid by the General Services Administration (GSA) under invitation for bids (IFB) No. GS-04P-93-LCC-0025, for the procurement of protection and patrol services at various federal buildings in Florida. The protester contends that GSA improperly determined that BASIX had been suspended from competing for federal government contracts. We deny the protest.

The IFB, as amended, established a bid opening date of September 19, 1993. When the apparent low bid was determined to be nonresponsive and was rejected, BASIX's bid, which was the apparent second-low bid, was considered for award. However, the contracting specialist found that the Department of Veterans Affairs (VA) had suspended Mr. Aarif Dahod, the former president of BASIX, and the firm itself from federal contracting by letter dated July 21. The VA letter stated, in pertinent part, that:

"This is to notify you that the Department of Veterans Affairs is proposing to suspend you from competing for, and being awarded, contracts with any agency within the executive branch of the Federal Government,"

and

"You are hereby excluded from receiving contracts from Federal Government agencies and agencies shall not solicit offers from, award contract to, or consent to subcontracts with you."

The letter explained that this action was based on the indictment of Aarif Dahod for conspiracy to defraud the Securities and Exchange Commission and for commission of securities fraud, bank fraud, and mail fraud. The letter further advised that ". . . a suspension from the date of this letter will be imposed pending completion of [these] legal proceedings" and that "your name is being placed on the lists of parties excluded from Federal Procurement and Nonprocurement Programs."

The GSA contracting officer contacted the VA on October 15, to verify the accuracy of the suspension letter. The VA confirmed that BASIX had been suspended and that the suspension would remain in effect pending the results of Mr. Dahod's criminal indictment. On October 19, the contracting officer and contracting specialist prepared a "Findings and Determinations" to reject the bid from BASIX based on the firm's suspension from competing for contracts. The Findings and Determinations memorandum cited Federal Acquisition Regulation (FAR) § 14.404-2(h), which requires the rejection of a bid from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date, unless the contracting agency has a compelling reason to justify overriding the suspension or debarment. The memorandum included a summary of the factual support for the suspension, including information about the relationship between BASIX and Mr. Dahod, Mr. Dahod's resignation from his position as president of BASIX following the suspension, his continued role as license holder for the firm, and the VA's advice to GSA that the suspension of both Mr. Dahod and BASIX would remain in effect until the trial based on Mr. Dahod's indictment had been resolved.

The Findings and Determinations memorandum was approved on October 22 and BASIX's bid was rejected. Award was made to the next low, responsible bidder, Federal Protection Services, Inc., on October 29. This protest followed on November 1.

BASIX argues that it was not suspended at the time of bid opening or award and that it was improperly found ineligible for award. BASIX appears to base its argument on the fact

that the VA's July 21 letter to BASIX started out with the phrase, "the Department of Veterans Affairs is proposing to suspend you . . .," although the same letter also stated:

"a suspension from the date of this letter will be imposed pending completion of the legal proceedings against Aarif Dahod . . . . Your name is being placed on the Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs . . . ."

The protester argues that it was only proposed for suspension, not actually suspended, and thus was eligible for award. We think GSA properly rejected BASIX's bid.

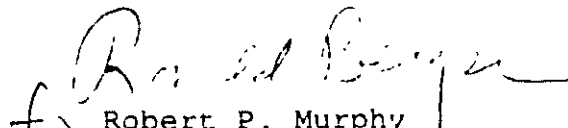
Under FAR § 14.404-2(h) (FAC 90-5), bids received from any person or concern that is suspended, debarred, proposed for debarment or declared ineligible as of the bid opening date shall be rejected, unless a compelling reason determination is made. The VA letter to BASIX explicitly advised the protester that it was excluded from receiving contracts, that a suspension would continue until legal proceedings were complete and that the protester was being placed on GSA's list of parties excluded from federal procurements. Thus, notwithstanding the introductory language in the letter, the protester was clearly on notice that it had been suspended.

BASIX also argues that its suspension was not in effect at the time it submitted its bid, alleging that "any intended suspension of BASIX necessarily expired after BASIX submitted information and argument in response to the changes," and citing Horne Brothers Inc. v. Laird, 463 F.2d 1268 (D.C. Cir. 1976) in support of its argument. However, as the agency points out, Horne is inapplicable here because that case concerned a suspension that was not based on an underlying indictment. Under FAR § 9.407-2(b), Mr. Dahod's indictment constitutes adequate evidence for suspension; under FAR § 9.407-4(a), the suspension may remain in effect pending the completion of the legal proceedings involved.

Under the circumstances, the contracting officer's actions in viewing BASIX as suspended were reasonable. The contracting officer not only was aware of the letters to Mr. Dahod and to BASIX advising them that they were suspended, but also received unequivocal confirmation from the VA that it had suspended BASIX and, after reviewing

BASIX's statements opposing the suspension, had determined that the suspension would remain in effect pending resolution of the indictment of Mr. Dahod.

The protest is denied.

  
Robert P. Murphy  
Acting General Counsel