

J. Melody



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Howema Bau-GmbH
File: B-244848.2; B-245098
Date: August 15, 1991

Michael J. Murphy, Esq., von Maur, Matthews & Partners, for the protester.
Herbert F. Kelley, Jr., Esq., Department of the Army, for the agency.

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 suspend protester arbitrarily to avoid awarding it contracts it otherwise was entitled to receive.

DECISION

Howema Bau-GmbH protests the award of contracts to any other firms under invitation for bids (IFB) Nos. DAJA04-91-B-0060 and DAJA04-91-B-0049, issued by the Department of the Army. Howema alleges it was the low bidder on both IFBs, 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

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award decision to ensure that the contracting agency is not acting arbitrarily in order to avoid making award to a firm 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 the above standard under both IFBs here. 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. The record shows, 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. 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." The suspension of Howema clearly was based on appropriate evidence; it was not imposed arbitrarily to deprive Howema of the contracts. It also appears that the Army complied with procedural requirements, including the requirement that the contractor be promptly notified of the suspension, as well as the cause and the effect of the suspension. FAR § 9.407-3(c).

We conclude that there is no basis for finding that the suspension was an improper attempt to deprive Howema of the award. The question of whether the facts relied upon by the Army actually support the suspension of Howema and other future actions is for consideration, not by our Office, but by the agency in the course of its investigation of the matter.

The protests are dismissed.



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