

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

51670

FILE: B-183833

DATE: September 30, 1975

MATTER OF: Capital Aero, Inc.

97396

DIGEST:

Where Government employee owns 39.95 percent of stock of corporation, it is concluded that he has substantial ownership in corporation. Conclusion is reached in view of significant history which has discouraged contracting between Government and its employees. Therefore, while agency restricted its view to employee's role in day-to-day management of corporation, since reasonable ground did exist, rejection of corporation low bid was not improper.

Invitation for bids (IFB) No. R1-11-75-44 was issued on March 21, 1975, by the United States Department of Agriculture, Forest Service, seeking bids to provide aircraft services for the Helena National Forest. Bid opening was held on April 23, 1975. The low bid was submitted by Capital Aero, Inc.

However, subsequent to bid opening it was discovered that Mr. John F. Patten, who had signed Capital's bid as president of that corporation, was a full-time employee of the United States Government.

Section 1-1.302-3 of the Federal Procurement Regulations (FPR) (1964 ed. amend. 95) states that:

"Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied."

The contracting officer relates that on several occasions, he telephoned Capital with regard to determining the bidder's responsibility. Each time he was informed by the answering party that

he would have to discuss the matter then in question with Mr. Patten, and only Mr. Patten. This indicated to the contracting officer that Mr. Patten exercised substantial control over the management of the corporation's business activities and, consequently, the contracting officer determined that in accordance with FPR § 1-1.302-3, supra, award should not be made to Capital. Award was thereafter made to Morrison Flying Service, the second low bidder, on May 2, 1975.

Capital protested the agency's actions since the Capital bid was signed by Mr. Patten, not as an individual, but as an agent of the corporation and the contracting officer should have made an inquiry to determine whether or not Mr. Patten substantially owned or controlled Capital. With regard to this latter point, Capital relates that had such an inquiry been made the contracting officer would have found that Mr. Patten does not "substantially own or control a majority of the stock of said corporation."

As set out in 41 Comp. Gen. 569, 571 (1962) "* * * contracts between the Government and its employees have been considered subject to criticism from a public policy standpoint on the grounds of possible favoritism and preferential treatment. Our Office has often expressed the view that such contracts should not be made except for the most cogent reasons. See 4 Comp. Gen. 116, 5 id. 93, 14 id. 403, 21 id. 705, 25 id. 690, 27 id. 735." See § 4-1.302-3 Agriculture Procurement Regulations, 41 C.F.R. § 4-1.302-3 (1974).

This rule is equally applicable to corporations owned or controlled by Government employees. B-167036, February 18, 1970; B-124557, October 10, 1955.

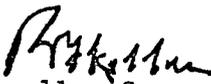
In the instant case, we have been advised that John Patten owns 499 shares of Capital stock and that his wife, Judith, owns 750 shares. By our calculations, Mr. Patten owns 39.95 percent of the stock of the corporation. Viewing FPR § 1-1.302-3 against the significant history which has discouraged contracting between the Government and its employees, we conclude that Mr. Patten has a substantial ownership in the corporation. In that connection, FPR § 1-1.302-3 does not speak of "majority" ownership, only "substantial" ownership.

The Forest Service, in determining to reject Capital's bid, restricted its consideration to Mr. Patten's role in the day-to-day management operations of the company. We need not rule on

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the validity of the basis underlying the Forest Service's action, since it is clear that a reasonable ground did, in fact, exist to support the rejection. In light of Mr. Patten's substantial ownership interest in the corporation, we cannot conclude that the rejection of Capital's bid was improper.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States