

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
BOARD OF CONTRACT APPEALS  
WASHINGTON, D. C.

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In the Matter of:	:	
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DARDEN ELECTRICAL	:	
CO., INC.,	:	HUDBCA No. 83-768-D12
	:	
Appellant	:	
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	:	

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Goldsboro, North Carolina 27532                      For the Appellant

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and Urban Development  
Washington, D. C. 20410                                      For the Government

DETERMINATION

Statement of the Case

By letter dated October 28, 1982, Darden Electrical Company, Inc. ("Darden"), was notified that the Department of Housing and Urban Development intended to debar it and its affiliates from participation in all Departmental programs until December 4, 1984 based on the conviction of Darden for engaging in a combination and conspiracy in unreasonable restraint of trade, in violation of General Statute 75-1 of the State of North Carolina. Darden and its affiliates were temporarily suspended pending determination of debarment.

Because the proposed debarment is based upon a criminal conviction, the hearing was limited to submissions of a brief and documentary evidence. 24 C.F.R. §24.5(c)(2). Darden made a timely request to file such written submission. This determination is based on the briefs and documentary evidence filed by Darden and the Government in support of their respective positions.

Findings of Fact

1. From June, 1978 through November 9, 1981, Darden engaged in a combination and conspiracy in unreasonable restraint of trade in the State of North Carolina with Watson Electrical Construction Company and others by agreeing to submit collusive, noncompetitive rigged bids to the State of North Carolina in connection with public contracts for electrical construction, and specifically concerning a contract for electrical construction on the Medical Education Facility, School of Medicine, East Carolina University, Greenville, North Carolina (Govt. Exh. B).

2. On November 9, 1981, a Grand Jury for the County of Wilson, State of North Carolina returned a two-count indictment against Darden charging it with false pretenses and combination and conspiracy in restraint of trade in connection with the submission of a collusive, rigged bid on the contract for electrical construction on the Medical Education Facility at the East Carolina University School of Medicine (Govt. Exh. B).

3. Based on the November 9, 1981, Indictment, on December 4, 1981, Darden was temporarily denied participation in electrical contracts and subcontracts for the construction or rehabilitation of HUD-assisted housing projects in the State of North Carolina for a period of twelve months (Govt. Exh. A).

4. On December 16, 1981, Darden entered a plea of guilty to combination in restraint of trade. The court levied a fine of \$10,000 and ordered Darden to pay the State of North Carolina compensatory damages of \$15,000 by December 1, 1982. Darden was ordered to institute an antitrust compliance program approved by the North Carolina Department of Justice, and its President was placed on supervised probation until all financial responsibilities were fulfilled (Govt. Exh. B).

5. In August, 1981, Darden was a subcontractor on HUD Project Number [REDACTED] for electrical work on University Apartments, Durham, North Carolina (Govt. Exh. C).

DISCUSSION

The purpose of debarment is to assure the Government that it only does business with responsible contractors and grantees. 24 C.F.R. §24.0. Darden is a "contractor or grantee" within the scope of the departmental regulation applicable to debarment because it was a subcontractor on a HUD project. 24 C.F.R. §24.1(f). Responsibility is a term of art in Government contract law. It encompasses not only the ability to perform a contract acceptably but the honesty and integrity of the contractor. Roemer v. Hoffman, 419 F. Supp. 130 (D. D.C. 1976); 49 Comp. Gen. 139 (1969). The test for whether debarment is warranted is the present responsibility of the contractor. Roemer v. Hoffman,

supra. However, a finding of present lack of responsibility can be based on past acts. Schlesinger v. Gates, 249 F. 2d 111 (D.C. Cir. 1965).

The ground for the proposed debarment is Darden's criminal conviction for bid rigging in violation of a state antitrust statute. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public contract is a cause for debarment. 24 C.F.R. §24.6(a)(1). Furthermore, that criminal offense indicates a lack of business integrity and honesty which seriously and directly affects the question of present responsibility. 24 C.F.R. §24.6(a)(9). Although the existence of a cause for debarment does not necessarily require imposition of the sanction, the contractor facing a proposed debarment action must submit compelling evidence in mitigation of the seriousness of the offense and also establish that it is presently responsible. 24 C.F.R. §24.6(b)(1).

I find that Darden has failed to carry its burden of establishing that it is presently a responsible contractor or that factors existed that would mitigate the seriousness of the offense on which the proposed debarment is based. Bid rigging is a most serious offense which goes to the very heart of the Government procurement system by removing the two vital elements of competition and low prices from the procurement process. Darden's brief and evidence in support of its position in no way acknowledge the detrimental effect of bid rigging on the system or its ultimate cost to the taxpayer. Rather, Darden contends that it should not be debarred because it agreed to be the losing bidder on the medical school contract. Darden has missed the point. It engaged in a bid rigging scheme over a period of time in which it was a beneficiary. The sentencing court's order of a substantial fine and a payment of \$15,000 in compensatory damages to the state reflects the magnitude of those benefits to Darden at the public's expense.

Because of the seriousness of Darden's past acts and its failure to realize their impact on a sound procurement system, I find that Darden Electric Company, Inc. is not presently a responsible contractor. I find that a substantial period of debarment is necessary to protect the public and the best interests of the Government. Darden has been subject to a temporary denial of participation and a temporary suspension \*/ since December 4, 1981, which has effectively limited Darden's

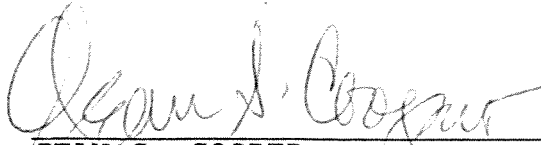
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\*/ Conviction of a criminal offense is adequate evidence to warrant imposition of a suspension pending debarment. 24 C.F.R. §24.13(c).

participation in Departmental programs for about two and one-half years. In light of the duration of these prior sanctions, I find that a period of debarment from this date up to and including December 4, 1984, is appropriate.

CONCLUSION

For the above reasons, Darden Electric Company, Inc. and its affiliates, shall be debarred from all programs of the U. S. Department of Housing and Urban Development from this date until December 4, 1984.

  
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JEAN S. COOPER  
Administrative Judge

Issued at Washington, D. C.  
July 1, 1983.