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DECISION



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

FILE: B-218314 **DATE:** March 22, 1985
MATTER OF: DelRocco & Sons, Inc.

DIGEST:

1. Whether offeror in line for award may have engaged in collusive bidding is one circumstance to be considered by the contracting officer in determining whether bidder is a responsible, prospective contractor.
2. Protester's contention that an offeror in line for award may improperly have obtained pricing information from its competitor is potentially a dispute between private parties that must be resolved through private litigation rather than through a bid protest.

DelRocco & Sons, Inc., protests the proposed award under request for proposals No. N00140-85-R-BB11, a small business set-aside issued by the Naval Regional Contracting Center, Newport, Rhode Island, for installing contractor-furnished deck covering on ships.

We dismiss the protest.

DelRocco contends that the project manager proposed by the low offeror, Boulevard Marine, Inc., is employed by another offeror under this solicitation, Marine Offshore, Ltd., in that same capacity. DelRocco further contends that this individual helped Marine Offshore prepare its proposal and that, as a consequence, information concerning Marine Offshore's proposal may have been conveyed to Boulevard Marine. If this happened, DelRocco concludes, Boulevard Marine had knowledge of its competitor's price, an action contrary to the Certificate of Independent Price Determination, and award to that firm would therefore be improper.

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If DelRocco means to suggest that the two firms acted jointly in preparing their proposals, collusive bidding is a matter for the determination of the contracting officer who, if he perceives the evidence of collusion, is expected to report the situation to the Attorney General. Federal Acquisition Regulation, 48 C.F.R. § 3.103-2(b) (1984). With respect to the award of a contract, whether an offeror in line for award may have engaged in collusive bidding is to be considered in the contracting officer's determination of responsibility. Keystone Elevator Co., Inc., B-215540, July 20, 1984, 84-2 CPD ¶ 72. Should the contracting officer determine that either offeror is responsible, in light of the discretionary, subjective nature of the determination, we would not consider a challenge to it in the absence of a showing of possible fraud or bad faith. Surgical Instrument Co. of America, B-215026, July 25, 1984, 84-2 CPD ¶ 112.

Alternatively, DelRocco may believe that Boulevard Marine obtained pricing information from Marine Offshore without that firm's knowledge. Were that to be the case, there would be a potential basis for dispute between the private parties, a matter which would involve resolution through court action rather than through a bid protest. P-III Associates, B-213856 et al., July 31, 1984, 84-2 CPD ¶ 136; Kirk-Mayer, Inc., B-208582, Sept. 2, 1983, 83-2 CPD ¶ 288.

The protest is dismissed.

for 
 Ronald Berger
 Deputy Associate
 General Counsel