

Hajowski

DECISION



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

FILE: B-220276 **DATE:** December 23, 1985
MATTER OF: Ace Reforestation, Inc.

DIGEST:

1. Mere fact that individual bidders are partners and share common business address does not establish that they engaged in price collusion in violation of their Certificates of Independent Price Determination.
2. There is no blanket prohibition against partners and their partnership competing on the same procurement.
3. It is not legally objectionable for a member of a partnership to bid as an individual on several solicitation items, and to include a \$25,000 award limitation so that it would not have to secure the Miller Act bond applicable to awards in excess of \$25,000, even though its bid, if combined with the partnership's bid, would exceed \$25,000.

Ace Reforestation, Inc. (Ace), protests the proposed award of contracts to other firms and individuals under United States Forest Service solicitation No. R6-15-85-86, which included six bid items covering the construction of six big game fences in the Umpqua National Forest in Oregon. Ace claims that the firms and individual partners in the firms violated their Certificates of Independent Price Determination (CIPD), engaged in multiple bidding, and structured their bidding in a manner that enabled them to avoid the solicitation's various bond requirements. Ace contends that any award to these bidders, therefore, would be improper. We deny the protest.

The solicitation stated that multiple awards, by item, would be made based on the lowest acceptable prices per item. The bids challenged by Ace were submitted by S&S Contractors (S&S) and three S&S partners. Each of these bidders offered prices on no more than three of the six

items, and each bid totaled less than \$25,000. As this was the amount above which bonds (bid bond, and Miller Act performance and payment bonds, see 40 U.S.C. § 270a-270f (1982)) were required by the solicitation, none of the bids included bonds.

Mr. Holmgren, a partner in S&S, bid only on items 1, 2 and 3, and S&S bid only on items 4, 5 and 6. The bids were low for all six items; each bid included an award limitation of \$25,000 or three items and, thus, did not include bonds. The S&S bid was signed by Mr. Holmgren, and the Forest Service subsequently learned from records on file with the state of Oregon that S&S was a business name used by Mr. Holmgren. The Forest Service thus deemed the Holmgren and S&S bids a single bid and proposes awarding S&S/Holmgren items 1, 3 and 6, which yields the combined bid's lowest three-item price, totaling less than \$25,000.

The second low bid on items 1, 2 and 3 covered only those three items and was submitted by an individual, Mr. Perry, who, according to information Mr. Holmgren gave the Forest Service, also was a partner in S&S. The Forest Service proposes awarding Mr. Perry a contract for item 2. The second low bidder on items 4, 5 and 6 was another S&S partner (according to Mr. Holmgren), Mr. Nash. The Forest Service proposes awarding items 4 and 5 to Mr. Nash. Both Mr. Perry and Mr. Nash also included a \$25,000/three-item limitation in their bids, obviating the need for bonding.

Ace was the third low bidder, after S&S and its partners, on items 1, 2 and 5.

Independent Price Determination

Ace argues that the proposed awards to S&S/Holmgren, Mr. Perry, and Mr. Nash would be improper because these bidders violated their CIPDs. Ace's argument is based on the fact that S&S and its partners were affiliated through their partnerships and the fact that some of the parties share business addresses. Ace believes the bidders thus must have acted in concert when arranging their bid prices.

The purpose of the certification is to assure that bidders do not collude among themselves to set prices or restrict competition by inducing others not to submit bids, which would constitute a criminal offense. B.F. Goodrich Co., B-192602, Jan. 10, 1979, 79-1 C.P.D. ¶ 11. We have

specifically held that the fact that two bidders may have common offices, ownership or business addresses is not by itself sufficient to establish a violation of the CIPD or, in other words, price collusion. Ace has presented no other evidence showing that the S&S partners did not arrive at their bid prices independently, and we will not assume that this was the case. Northwest Janitorial Service, B-203258, May 28, 1981, 81-1 C.P.D. ¶ 420.

In any event, it is within the jurisdiction of the Attorney General and the federal judiciary, not our Office, to determine what constitutes a violation of a criminal statute. Thus, if Ace wishes to pursue this matter, it should do so through the Department of Justice. Northwest Janitorial Service, B-203258, supra.

Multiple Bidding

Ace also contends that the bidders engaged in multiple bidding. Multiple bids are bids submitted on the same requirement by more than one commonly owned or commonly controlled company, or the same entity. Multiple bidding is not objectionable where not prejudicial to the interests of the government or other bidders. Atlantic Richfield Co., 61 Comp. Gen. 121 (1981), 81-2 C.P.D. ¶ 453 (prejudice where awardee to be selected by lottery, so submission of multiple bids unfairly increased chance for award).

Here, although S&S and three of its partners submitted bids, there were no multiple bids as each partner bid in his own name, as an individual, not on behalf of the partnership. We are aware of no blanket prohibition against partners competing as individuals for awards for which their partnership also is competing and, in any case, the mere submission of bids by a firm and its partners does not necessarily prejudice the other bidders. See Pioneer Recovery Systems, Inc., B-214700, B-214878, Nov. 13, 1984, 84-2 C.P.D. ¶ 520 (no prejudice from multiple bidding by two divisions of same company where award is based on lowest bid and all offerors had same opportunity to submit lowest bid).

Bonding Requirement

Ace claims that S&S and its partners improperly evaded the bid bond and Miller Act bond requirements by each submitting separate bids on no more than three of the items,

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limited to \$25,000, so that no individual bid reached the \$25,000 bonding floor.

The Miller Act requires that performance and payment bonds be acquired for federal construction contracts in excess of \$25,000. The performance bond is for the protection of the government in case of default by the contractor, and the payment bond is for the protection of persons supplying labor and material in the performance of the contract. The purpose of a bid bond is to guarantee that the government will recover its costs if the bidder revokes its offer after award, and also to insure that the successful bidder will furnish the Miller Act bonds. Southern Systems, Inc., B-193884, Feb. 14, 1980, 80-1 C.P.D. ¶ 133.

The solicitation provided for multiple awards and allowed bidders to exempt themselves from the bonding requirements by limiting their potential awards to \$25,000. This exemption well may have been the incentive for the S&S partners to compete as individuals, but we see nothing legally objectionable in any individual deciding to submit a bid based on such an incentive. In so doing, the individual bidder, even if also a member of a partnership that also submitted a bid, accepts sole legal responsibility for performing the contract.

Ace speculates that if the bidding on this procurement is condoned, partnerships bidding on future similar procurements will engage in similar practices and thereby undermine the bonding requirements. The advisability of a bonding exemption, and the proper dollar amount below which the exemption may be involved are matters for the contracting agency to consider for each future procurement. The Forest Service currently does not share Ace's concerns in this regard.

The protest is denied.

Harry R. Van Cleve

Harry R. Van Cleve
General Counsel