

Williams



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Seyforth Roofing Company, Inc.

File: B-241719.2

Date: March 11, 1991

Carl A. Calvert, Esq., Crider, Calvert & Bingham, for the protester.
Paula A. Williams, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging proposed awardee's compliance with the certificate of independent price determination clause is dismissed as it challenges an issue of responsibility which the General Accounting Office does not generally review.

DECISION

Seyforth Roofing Company, Inc., protests the proposed award of a contract to Luther Construction Company, Inc. under invitation for bids (IFB) No. BIA-0150-90-14, issued by the Bureau of Indian Affairs (BIA), Department of the Interior, for roof repair/replacement at the Southwestern Indian Polytechnic Institute in Albuquerque, New Mexico. Seyforth contends that Luther is ineligible for award because it submitted a false certificate of independent price determination. We dismiss the protest.

The proposed award to Luther is consistent with our decision, Luther Constr. Co., Inc., B-241719, Jan. 28, 1991, 91-1 CPD ¶ 76, in which we sustained the protest by Luther, a self-certified small business concern, against the rejection of its low bid and the subsequent award to Seyforth. We found BIA's rejection of Luther's bid constituted a nonresponsibility determination which should have been referred to the Small Business Administration (SBA) for review under its certificate of competency (COC) procedures. We recommended that BIA refer the issue of Luther's responsibility to the SBA and if the SBA issued a COC, BIA should terminate the award to Seyforth and award the contract to Luther, if otherwise appropriate.

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Seyforth alleges that Luther falsely certified that it independently arrived at its bid price because Luther's bid was based on a quote from a subcontractor, Goodrich Roofing, which also participated in the competition as a bidder. Seyforth states that it initially protested this matter to the contracting officer but later withdrew the protest when the contracting officer rejected Luther's bid and made award to Seyforth.

The Certificate of Independent Price Determination clause requires a bidder to certify that it has arrived at its price independently, has not disclosed its price to other competitors, and has not attempted to induce another firm either to submit or not to submit a bid for the purpose of restricting competition. Federal Acquisition Regulation, § 52.203.2. An allegation that a bidder has violated this provision is not for resolution by this Office, Florida Transp. Servs., Inc.-- Recon., B-235559.2, Sept. 6, 1989, 89-2 CPD ¶ 214, but is a matter for consideration by the contracting officer in determining the responsibility of the proposed awardee. Since collusive bidding is a criminal offense, if the contracting officer suspects that there is collusion, the matter should be referred to the Attorney General. Id.

The protest is dismissed.

Paul Liberman

for John F. Mitchell
Assistant General Counsel