

DECISION

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

FILE: B-212956

DATE: October 4, 1983

MATTER OF: Department of Interior Request for Advance
Decision

DIGEST:

There is no authority for payment of a potential subcontractor's bid preparation costs where the government played no role in the selection of another subcontractor.

The Bureau of Indian Affairs has requested an advance decision regarding its authority to pay bid preparation costs incurred by a prospective subcontractor where the Bureau has awarded a prime contract under section 102 of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. § 450f (1976).

We conclude that there is no authority to make such payment.

The Bureau awarded a prime contract to the Crow Creek Sioux Tribe for an irrigation program on the reservation. The prime contract was awarded pursuant to the Act's direction that the Secretary of the Interior contract with Indian tribes under various circumstances if they so request. See Boyer, Biskup, Bonge, Noll, Scott & Associates, Inc., 55 Comp. Gen. 765 (1976), 76-1 CPD 110.

The Bureau reports that Valmont Industries has filed a bid preparation cost claim in connection with the Tribe's procurement of a subcontractor. Investigation by the Bureau has established that, although the solicitation documents issued by the Tribe included a design specification, the Tribe informally advised some of the bidders that they could submit their own designs as long as tribal needs were met. The claimant contends that it was not advised that it could deviate from the specifications, and that the design offered by the awardee is nonresponsive to the specifications as written. In this respect, the Bureau states that its regulations require that subcontract opportunities pursuant to section 102 be advertised or negotiated in a manner that provides full and free competition

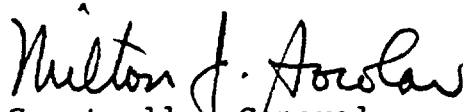
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to the maximum extent practicable, and that subcontracts be awarded according to sound business practices.

We find no legal basis on which to permit payment of Valmont's claim. Payment of bid or proposal preparation costs in a direct federal procurement proceeds upon the basis that the federal government breached its promise to the claimant to evaluate fairly and honestly any offer submitted in reliance on that promise. See T&H Company, 54 Comp. Gen. 1021 (1975), 75-1 CPD 345, and cases cited therein. Valmont's claim, however, is based on an alleged failure by a prime contractor, the Tribe, to follow proper procurement procedures. While the government's prime contractors often are expected to follow federal procurement standards in contracting, that is primarily for the government's benefit to assure consistency with federal procurement policy, see Cohu, Inc., 57 Comp. Gen. 759 (1978), 78-2 CPD 175, and does not give rise to direct liability to a potential subcontractor where, as here, the government apparently played no role in the subcontractor selection process. J.F. Small & Co., Inc.--Reconsideration, B-207681.3, July 14, 1983, 83-2 CPD 89. Thus, any obligation to Valmont concerning the evaluation of its bid was an obligation of the Tribe, not of the Bureau of Indian Affairs.

Accordingly, the claim may not be paid.

for 
Comptroller General
of the United States