



Comptroller General  
of the United States

1116102

Washington, D.C. 20548

## Decision

**Matter of:** The Calvin Corporation/CRIT Constructors, a  
joint venture

**File:** B-258756; B-258947

**Date:** February 13, 1995

Betty L. Hum, Esq., Lewis and Roca, for the protester.  
Manuel M. Savala, Eagle Asphalt & Oil, Inc., an  
interested party.  
Sherry Kinland Kaswell, Esq., Department of the Interior,  
for the agency.  
John L. Formica, Esq., and James A. Spangenberg, Esq.,  
Office of the General Counsel, GAO, participated in  
the preparation of this decision.

### Digest

Agency properly rejected low bids submitted by a purported joint venture, where the document purporting to create the joint venture agreement provided that the joint venture was only for the purpose of bidding on contracts and that in the event contract awards were made, another joint venture would be created to perform the contracts.

### DECISION

The Calvin Corporation/CRIT Constructors, a joint venture protests the rejection of its bids and the award of contracts to Eagle Asphalt & Oil, Inc. under invitations for bids (IFB) Nos. SB-94-0051 (-0051) and SB-94-0052 (-0052), issued by the Bureau of Indian Affairs (BIA), Department of the Interior, for road construction at the Colorado River Indian Reservation, Arizona.

We deny the protest.

The IFBs were issued as total set-asides for Indian-owned and controlled concerns pursuant to the Buy Indian Act, 25 U.S.C. § 47 (1988). The IFBs required that each bidder certify that it was an "eligible Indian economic enterprise."

Seven bids were received by the August 30, 1994, bid opening date in response to IFB -0051, and eight bids were received by the same bid opening date in response to IFB -0052. Calvin/CRIT submitted the apparent low bids under both IFBs. In each of its bids, Calvin/CRIT certified that it was an eligible Indian economic enterprise.

In response to requests made by the contracting officer, Calvin/CRIT submitted what purported to be a copy of the joint venture agreement between The Calvin Corporation and CRIT Constructors. This document, dated August 29, 1994, and entitled "Agreement to Form a Joint Venture," stated that the purpose of the joint venture was to "prepare contract proposals for [IFBs -0051 and -0052] and if successful secure contracts for these construction projects as mutually agreed upon by the parties." The Agreement further stated that "[i]n the event the parties are successful in being awarded a contract, performance of the contract will be governed by a joint venture agreement which will be negotiated at that time."

On September 30, the contracting officer notified Calvin/CRIT that its bids were being rejected because "[t]he documents submitted to the BIA revealed [that Calvin/CRIT's] joint venture agreement was not finalized at the time of bid opening." The agency argues that because the joint venture agreement was not finalized by the time set for bid opening "no business entity to which the contract could be awarded had been created." The agency also contends that because there was no final joint venture agreement, the contracting officer could not definitively conclude that the joint venture would be Indian-controlled as well as owned.

Calvin asserts that, contrary to the agency's assertion, "the existence of a final Joint Venture agreement does not affect . . . the existence [of the Calvin/CRIT] joint venture," and that the rejection of the Calvin/CRIT bids on the basis that the joint venture agreement was not finalized was thus improper.

Joint ventures are recognized legal entities for contracting with the government. See Federal Acquisition Regulation § 9.601 et seq.; T.V. Travel, Inc. et al.--Recon., 65 Comp. Gen. 109 (1985), 85-2 CPD ¶ 640. A joint venture is an association of persons or firms with an intent, by way of contract, to engage in or carry out a single business venture for joint profit for which they combine their efforts, property, money, skill and knowledge. T.V. Travel, Inc. et al.--Recon., supra.

Here, even assuming for the sake of argument that at the time of bid opening a Calvin/CRIT joint venture existed, we believe that the agency acted properly in rejecting the Calvin/CRIT bids.<sup>1</sup> In this regard, the "Agreement to Form a Joint Venture" states that the purpose of the joint venture is to "prepare contract proposals" in response to BIA solicitations, and specifies that if the parties are successful, "the performance of the contract will be governed by a joint venture agreement which will be negotiated at that time." That is, the agreement, by its own terms, does not provide for the performance of contracts, but only for the preparation of proposals, and contemplates that the performance of contracts will be accomplished by another joint venture to be created at the time of contract award. While the joint venture for contract performance will presumably be comprised of the same parties as the joint venture that submitted the bids (i.e., The Calvin Corporation and CRIT Constructors), it nonetheless will be a different joint venture than that which submitted the bids.

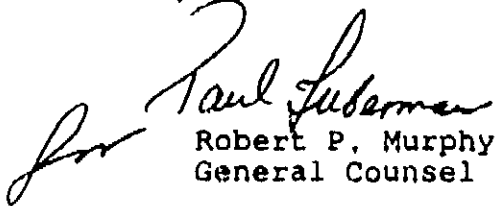
Once an entity submits a bid in its own name, it cannot change the bid after bid opening to substitute another party as the real party in interest for contract award. Gravelly & Rodriguez, B-256506, Mar. 28, 1994, 94-1 CPD ¶ 234. A contract cannot be awarded to any entity other than that which submitted the bid, and an offer from an entity which seeks the opportunity to substitute itself for the bidding entity must be rejected. Id.; KB Indus.--Recon., B-244120.2, June 14, 1991, 91-1 CPD ¶ 570. Accordingly, because Calvin/CRIT intended to substitute a joint venture for the performance of the contracts for the joint venture

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<sup>1</sup>The protester asserts that, contrary to the agency's view, a final joint venture agreement was reached by oral agreement of Calvin and CRIT in the 1-day period between the date of the agreement and the date of bid opening.

which submitted the bids--which constitutes the transfer of the Calvin/CRIT bids to a nonbidding entity--its bids were properly rejected.<sup>2</sup> Gravelly & Rodriguez, supra.

The protest is denied.

  
for Paul Luberman  
Robert P. Murphy  
General Counsel

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<sup>2</sup>To the extent that Calvin/CRIT is contending that, in the 1-day period from the August 29 date of the agreement and August 30 date of bid opening, it orally agreed upon the essential terms of the joint venture that would perform the contracts in addition to orally agreeing on the essential terms of the joint venture for the preparation of proposals, and that the bids therefore can be accepted, we find this contention without merit. Given the specific provision in the written agreement that the joint venture to perform the contracts would only be created upon award, and the CRIT letter dated August 29 which stated in part that "[w]e hope . . . that the bid is accepted so that this venture becomes a reality," there was insufficient evidence extant at bid opening that the joint venture to perform the contracts existed and that it was the same entity as that which submitted the bids.