

Mr. Carter

18269



DECISION

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

FILE: B-203258

DATE: May 28, 1981

MATTER OF: Northwest Janitorial Service

DIGEST:

1. GAO does not review affirmative determinations of responsibility absent showing that procuring officials may have committed fraud or failed to apply definitive responsibility criteria.
2. Mere fact that two bidders have same business address does not establish that they falsely certified in their bids that their bid prices were arrived at independently. In any case, jurisdiction in such matters is committed to Attorney General and Federal courts, not GAO.

Northwest Janitorial Service protests the award of a contract for custodial services by the Department of the Navy to Franko Building Maintenance Co., the low bidder under solicitation N62474-81-B-2958. Northwest contends that Franko cannot perform the contract satisfactorily. Northwest also points out that Franko and another bidder have the same business address, which Northwest suggests is evidence that the firms falsely certified in their bids that their bid prices were arrived at independently.

We will not consider the matters.

The protest that Franko cannot perform the contract involves the firm's responsibility. *Emerald Maintenance, Inc.*, B-201208, December 30, 1980, 80-2 CPD 451. Northwest's protest indicates that the Navy has decided that Franko is a responsible concern. This Office does not review affirmative determinations of responsibility unless the protester shows either that procuring officials

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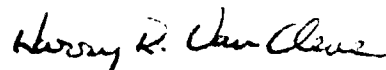
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may have committed fraud or that the solicitation contained definitive responsibility criteria which were not applied. Patterson Pump Company; Allis-Chalmers Corporation, B-200165, B-200165.2, December 31, 1980, 80-2 CPD 453. Neither exception is involved here.

With respect to the remaining issue, the purpose of a certification of independent price determination is to assure that bidders do not collude to set prices or to restrict competition by inducing others not to bid, which would constitute a criminal offense. See Columbus Marble Works, Inc., B-193754, August 24, 1979, 79-2 CPD 138. In our view, the mere fact that two bidders have the same business address does not establish that they have conspired in either respect. See 51 Comp. Gen. 403, 405 (1972); Grimaldi Plumbing & Heating Co., Inc., B-183642, May 20, 1975, 75-1 CPD 307.

In any event, it is within the jurisdiction of the Attorney General and the Federal courts to determine what constitutes a violation of a criminal statute, not the General Accounting Office. See Industrial Design Laboratories, Inc., B-190031, May 19, 1978, 78-1 CPD 385. Defense Acquisition Regulation §§ 1-111.2 and 1-115(f) (1976 ed.) do require that where a certification of independent price determination is suspected of being false or there otherwise is an indication of collusion, the matter be referred to the Attorney General by the procuring agency. While Northwest's protest shows that the Navy refused to question either bidder's certification based only on Northwest's unsupported allegation, we know of nothing that would prevent Northwest itself from asking the Attorney General to review the matter. See Columbus Marble Works, Inc., supra; Industrial Design Laboratories, Inc., supra.

The protest is dismissed.



Harry R. Van Cleve
Acting General Counsel