



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Hampton Roads Leasing, Inc.

File: B-236564, B-236564.2

Date: December 11, 1989

DIGEST

Protest against proposed award of a contract to a bidder that acknowledges an amendment containing a Procurement Integrity Certificate clause but fails to complete and sign the Certificate itself is denied where bids were opened prior to December 1, 1989, but award has not been made, since the requirement for the Certificate, which implements section 27(d)(1) of the Office of Federal Procurement Policy Act Amendments of 1988, has been suspended from December 1, 1989 to November 30, 1990, by section 507 of the Ethics Reform Act of 1989.

DECISION

Hampton Roads Leasing, Inc., protests the proposed award of a contract to either Anderson Funding Group or Capital Equipment Co., Inc., under invitation for bids (IFB) No. N62470-89-B-2238, issued by the Norfolk Naval Shipyard, Portsmouth, Virginia, for the leasing of a mobile hydraulic propeller pulling crane. Hampton challenges award to either bidder on the ground that Anderson's low bid and Capital's second low bid were nonresponsive because the firms failed to provide signed and completed Procurement Integrity Certificates with their bids. Hampton also alleges that the Navy's correction of a mistake in Capital's bid was improper.

We deny the protests.

The IFB, issued on July 14, 1989, was amended three times. Amendment No. 1, also issued July 14, incorporated in the IFB the Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8, as required by FAR § 3.104-10. This clause implements section 27(d)(1) of the Office of Federal Procurement Policy Act Amendments of 1988 (OFPP Act), Pub. L. No. 100-679, 101 Stat. 4055, 4064 (1988), which essentially provides that an agency shall not award a contract unless a bidder or offeror certifies in

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writing that neither it nor its employees has any information concerning violations or possible violations of the OFPP Act pertaining to the procurement. The activities prohibited by the Act involve soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. Under FAR § 52.203-8, bidders are required to list all violations or possible violations of the Act, or enter "none" if none exists, on the Procurement Integrity Certificate and sign the document.

The Navy received five bids at bid opening on August 9. Anderson was the apparent low bidder; Capital was the apparent second low bidder. Anderson acknowledged amendment No. 1 by signing the cover sheet of the amendment but did not complete or sign the Certificate of Procurement Integrity itself. Capital acknowledged receipt of amendment No. 1 and signed the certificate, but did not complete the section requiring the bidder to either list violations or possible violations of the Act, or enter the word "none" if none exists. Two weeks after bid opening, Anderson submitted a signed Procurement Integrity Certificate to the Navy. The Navy proposes to award the contract to Anderson, arguing that the Act and implementing regulations permit the Navy to accept a contractor's Procurement Integrity Certificate at any time before award. Hampton, the third low bidder, protests the proposed award of a contract to either Anderson or Capital.

Effective December 1, 1989, section 27 of the OFPP Act was suspended by section 507 of the Ethics Reform Act of 1989, Pub. L. No. 101-194, Stat. ____ (1989), which provides that section 27 "shall have no force or effect during the period beginning on the day after the date of enactment of this Act and ending one year after such day." Accordingly, agencies are not to include the Certificate of Procurement Integrity clauses at FAR §§ 52-203-8, 52.203-9, 52-203-10 and 52.327-9 in any solicitation issued on or after December 1989 through November 30, 1990. The FAR provisions affected by the suspension were changed to provide that agencies are to amend solicitations issued prior to December 1, 1989, for which bids have not been opened or proposals received before that date, to delete the Certificate provision and clauses. In the case of solicitations for which bids have been opened or offers received prior to December 1, 1989, but where award has not been made, agencies are to disregard the lack of a Certificate in determining eligibility for award and delete the Certificate clauses by administrative change. 54 Fed. Reg. 50,713 (1989).

Consistent with the FAR guidance, we find that since the statutory requirement for completion and signing of the Procurement Integrity Certificate as a condition of award has been suspended and no contract has yet been awarded in this case, the Navy may proceed with award to Anderson. In view of our finding, we need not resolve Hampton's challenge to the correction of an alleged mistake in Capital's second low bid.

The protests are denied.



James F. Hinchman
General Counsel