

(McClung)



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Westmont Industries

File: B-237289

Date: January 5, 1990

DIGEST

Protest against award of a contract to a bidder that acknowledges an amendment containing a Procurement Integrity Certificate clause but fails to sign the Certificate itself with his bid is denied since in light of the suspension of the requirement for the Certificate, the failure to sign the Certificate prior to bid opening is immaterial and provides no basis to disturb the award.

DECISION

Westmont protests the award of a contract to AmClyde Engineered Products by the Navy under invitation for bids (IFB) No. N62472-87-B-1450 for the design and construction of two 135-ton portal cranes with an option for a third crane. Westmont challenges the award and asserts that AmClyde's bid must be rejected for failure to provide a signed Procurement Integrity Certificate with its bid.

We deny the protest.

The IFB, issued on May 11, 1989, was amended several times before bid opening. Amendment No. 4 was issued on July 10, and 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 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.

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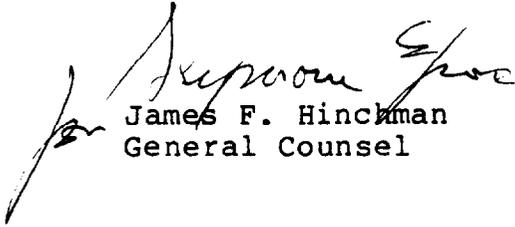
Under FAR § 52.203-8, bidders are required to list all violations or possible violations of the Act, or enter "none" if none exists, on the Procurement Integrity Certificate and sign the document.

The Navy received four bids at bid opening on August 24. The apparent low bid was rejected for failure to provide the required bid bond. AmClyde's bid then became low and Westmont's bid next low. AmClyde acknowledged amendment No. 4 and, although AmClyde indicated at the required places on the procurement integrity certificate that it knew of no violations, it submitted an unsigned copy of the certificate with its bid. At the request of the contracting officer, AmClyde submitted a signed copy of its procurement integrity certificate on September 25. On September 28, AmClyde was awarded the contract. This protest followed. The Navy reports that in accordance with its determination of the best interests of the government, performance under the contract has not been suspended.

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).

We recently denied a protest against the proposed award to a firm which failed to provide a signed and completed Procurement Integrity Certificate with its bid because of the suspension of the statutory requirement for completion and signing of the Certificate. See Hampton Roads Leasing, Inc., B-236564, et al., Dec. 11, 1989, 89-2 CPD ¶ ___.

Similarly, in light of the suspension of the Certificate requirement, we do not view AmClyde's failure to sign the Certificate by bid opening to be material and thus we find no basis to disturb the award. Id.

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General Counsel