

Timmerman



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Marann Inventories, Inc.

File: B-237651

Date: February 13, 1990

Darcy V. Hennessy, Esq., Hennessy Law Office, for the protester.
John W. Miller Jr., Diversified Contract Services, Inc., an interested party.
John R. McCaw, Esq., Federal Aviation Administration, Department of Transportation, for the agency.
Barbara Timmerman, Esq. and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest against proposed award of a contract to a bidder that failed to complete and sign the Procurement Integrity Certificate is denied where bids were opened prior to December 1, 1989, but award has not been made, since the requirement for the Certificate has been suspended from December 1, 1989 to November 30, 1990 and current regulatory guidance requires agencies to ignore the Certificate in determining eligibility for award.

DECISION

Marann Inventories, Inc., protest the proposed award of a contract to C&C Enterprises, under invitation for bids (IFB) No. DTFA04-89-B-20004, issued by the Federal Aviation Administration (FAA) for warehousing services at the FAA Logistics Support Complex, Anchorage, Alaska. Marann contends that the C&C bid should be rejected as nonresponsive because it failed to complete and sign the Procurement Integrity Certificate.

We deny the protest.

The IFB, issued on August 23, 1989, incorporated the Certificate of Procurement Integrity clause, Federal Acquisition Regulation (FAR) § 52.203-8. This clause

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implements section 27(d)(1) of the Office of Federal Procurement Policy Act (OFPP Act), as added by 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 involved soliciting or discussing post-government employment, offering or accepting a gratuity, and soliciting or disclosing proprietary or source selection information. Under the clause, 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 FAA received 14 bids at bid opening on September 22. C&C was the apparent low bidder, but it did not complete or sign the Certificate of Procurement Integrity. The contracting officer determined that C&C should be allowed to sign and complete the certificate which it did on November 1. The agency proposes to award the contract to C&C, arguing that the Act and its implementing regulations permit it to accept a contractor's Procurement Integrity Certificate at any time before award. Marann protests the proposed award.

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 52.237-9 in any solicitation issued on or after December 1989 through November 30, 1990. See FAR §§ 3.104-2, 3.104-10 (FAC 84-54). 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 its 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 FAA may proceed with award to C&C. Hampton Roads Leasing, Inc., B-236564 et al., Dec. 11, 1989, 89-2 CPD ¶ 537.

The protest is denied.

for *Ronald Berger*
James F. Hinchman
General Counsel