

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

50817

FILE: B-183547

DATE: June 23, 1975

97/60

MATTER OF: Kaufman DeDell Printing, Inc.

DIGEST:

Protest against restrictiveness of samples requirement in solicitation only after bidder attempted to obtain information regarding preparation of samples prior to bid opening and was rejected after bid opening for failing to submit samples with bid is untimely under 4 C.F.R. § 20.2(a) which provides that protests based upon alleged improprieties in solicitations which are apparent prior to bid opening shall be filed prior to bid opening.

Solicitation PBD-76-1 was issued on January 31, 1975, by the Bureau of the Public Debt for the production of all savings bond, savings note, and other card bond stock for the fiscal year beginning July 1, 1975. Only two bids were received by the March 21 bid opening date. One bid was from Kaufman DeDell Printing, Inc. (Kaufman), and the other was from the International Business Machines Corporation (IBM). Although Kaufman submitted the low bid, it was rejected as nonresponsive because it did not contain the required bid samples. The contract was awarded to IBM. By telefax of March 27, Kaufman protested against the failure to make award to it as low bidder.

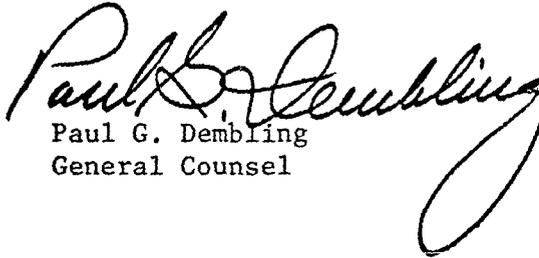
Kaufman contends that it attempted to obtain information regarding how the samples were to be prepared from the Treasury Department, local banks, and the incumbent contractor, IBM, all to no avail. In view of these unsuccessful attempts, Kaufman believes the samples requirement to be deficient and unlawful if it is permissible to reject its bid thereunder.

In essence, Kaufman is protesting against the alleged restrictiveness of a solicitation provision. Kaufman believes it was impossible for it as a bidder to comply with the samples requirement. Our Interim Bid Protest Procedures and Standards provide at 4 C.F.R. § 20.2(a) (1974) that:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening * * * shall be filed prior to bid opening * * *."

Inasmuch as Kaufman did not protest the alleged impossibility of complying with the samples requirement prior to bid opening, we must regard the protest as untimely filed and, consequently, not for consideration. Daconics, B-182309, May 19, 1975.

In its letter of May 5, 1975, Kaufman inquired whether IBM submitted samples with its bid. As indicated in the agency report of April 30, 1975, IBM, as a current supplier of savings bonds and notes stock, was excused by the terms of the solicitation from furnishing samples.


Paul G. Dembling
General Counsel