

DOCUMENT RESUME

03856 - [A2733973]

[Insufficient Time to Prepare Bid Samples and Ambiguities in Solicitation Were Alleged]. B-189528. September 23, 1977. 4 pp.

Decision re: Kaufman DeDell Printing, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).

Contact: Office of the General Counsel: Procurement Law II.

Budget Function: General Government: Other General Government (806).

Organization Concerned: Bureau of the Public Debt.

Authority: B-183547 (1975). P.P.R. 1-2.202-4(d).

A company protesting provisions in a solicitation contended that there was insufficient time for preparation of a responsive bid or to seek clarifications in writing. The requirement for samples of the exact materials to be used in the printing of bonds was alleged to be unrealistic and to give an unfair competitive advantage to the incumbent contractor who was the only bidder to whom all essential information was available. The protest was denied, but the agency should review its procurement approach to provide a longer bid preparation period and a full description of the samples required. (SW)

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*A. Smith*  
*Acting*

**DECISION**

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

FILE: B-189528

DATE: September 23, 1977

MATTER OF: Kaufman DeDell Printing, Inc.

**DIGEST:**

1. Protest received by agency one day before bid opening and based, among other grounds, on insufficient bid preparation time is denied where protester did not specifically request postponement and agency had insufficient reason to conclude that postponement of bid opening date of urgently needed item would result in increased competition.
2. Protest based on alleged ambiguities in IFB is denied where record indicates that agency had clarified alleged ambiguities to same protester in report on protest of previous procurement. However recommendation is made to agency to review its procurement approach in order to obtain increased competition.

Kaufman DeDell Printing, Inc. (Kaufman) protests the provisions of invitation for bids (IFB) No. BPD-70-1 issued by the Bureau of the Public Debt, Department of the Treasury (Bureau). The IFB, which solicited fixed price bids for the printing of various bonds, was issued on June 6, 1977, calling for bids by July 8, 1977. On July 5, 1977, Kaufman's protest was received in this Office and the Bureau was so notified on July 7, 1977. Only the incumbent contractor had submitted a bid by the bid opening date. Award has been deferred pending the decision on Kaufman's protest.

Kaufman contends that there was insufficient time for preparation of a responsive bid between its receipt of the IFB on June 22, 1977 and the bid opening date of July 8, 1977 or to seek clarifications in writing as required by the IFB. It states that the requirement in the IFB for samples consisting of the exact materials to be used for the bonds, including carbon paper and assemblies,

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was unrealistic because the manufacture of such bonds is illegal except under contract with the Government and that the bonds from which the samples could be prepared are unavailable except by purchase at great cost. Kaufman further contends that the specifications were nebulous and indefinite in that they failed to specify paper lengths, widths and weights, shades of color, type faces and sizes and other parameters. Thus, it asserts the procurement gave an unfair competitive advantage to the incumbent contractor who was the only bidder to whom all essential information was available.

The Bureau insists that a reasonable bidder would not presume that the Government intended the performance of an illegal act as a requirement for securing a contract and it believes the bidder should have contacted the contracting officer for an explanation. It states that because of the distinctive characteristics of the bonds and its need to insure that prospective contractors possess the resources, skills and know-how necessary to print the bonds, the bid samples were required in accordance with Federal Procurement Regulations (FPR) 1-2.202-4, which permits such samples to determine responsiveness. The Bureau also asserts that use in the IFB of the words "illustrative" and "to illustrate" in connection with the sample requirements made clear that bidders were not expected to print and submit as samples exact copies of the bondsets. It contends that the Bureau never expected prospective bidders to purchase bonds to use as templates in preparing the samples but was prepared to furnish, as it had in the past, the necessary information, material, dummy samples and mock-ups to any bidder requesting them. It states that Kaufman never asked the Bureau for such sample information and materials.

The Bureau concedes that the 30 days between issuance of the IFB and the bid opening date may provide a first-time bidder insufficient time to prepare necessary samples to support its bid if it did not possess the necessary resources, know-how and facilities. It points out that Kaufman, in this instance, did not request an extension of the bid opening date and had not accepted the suggestion of the Bureau after a bond procurement two years ago that it provide, in advance of the next procurement, the information necessary to establish itself with the Bureau.

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In this connection we note that Kaufman filed a very similar protest two years ago. Kaufman was determined to be nonresponsive because of failure to submit samples, and its protest alleged that bonds were needed to enable it to provide the samples but were unavailable except by purchase, that the manufacture of such bonds was illegal, and that the incumbent contractor had an unfair competitive advantage. Although its protest was ultimately dismissed as untimely (Kaufman DeDell Printing, Inc., B-183547, June 23, 1975, 75-1 CPD 380), the Bureau submitted a substantive report, dated April 30, 1975, in which Kaufman commented in a letter, dated May 5, 1975. The report discussed the sample requirement and emphasized that no illegal manufacturing was required, that dummy samples and mock-ups were available from the Bureau and that the samples were not intended to be exact duplicates of the bondsets to be produced.

We note that Kaufman states that it received its copy of the solicitation on June 22. This may or may not have permitted sufficient time for bid preparation and submittal on July 8, 1977. The record indicates, however, that on June 6, 1977, IFBs were mailed to 15 companies on the bidders' list. On the same date, a notice was sent for publication in the Commerce Business Daily. Ten more IFBs, including one to Kaufman, were later sent in response to requests resulting from the notice published on June 13, 1977 in the Commerce Business Daily. Kaufman had been removed from the bidders' list because of its failure to respond to the Bureau's suggestion of March 25, 1975 that it establish itself as a qualified producer for the next bond procurement. Kaufman had made no request for IFBs for two bond printing requirements last year although notices thereof were published in the Commerce Business Daily. In short, there is no persuasive evidence that the Bureau deliberately attempted to exclude Kaufman from the competition.

Kaufman did not request an extension of the bid opening date before sending to the Bureau and this Office its protest by letter received here on July 5, 1977. While the letter did not specifically request a postponement of the bid opening date, its complaint about the insufficient bid preparation time could reasonably be interpreted as such a request. However, this letter

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was received by the Bureau one day before the bid opening date and the Bureau did not grant a postponement. The contract had to be awarded sufficiently before October 1, 1977 to insure continuity of essential bond supplies. A postponement sufficient to enable Kaufman to gather the materials necessary to prepare the samples would have had to be substantial and the Bureau was without reasonable assurance that a responsive and responsible bid would have resulted. The Bureau had no indication that Kaufman had or could obtain at that late date and in a timely fashion the special equipment necessary for manufacture of bonds of such high quality. Many of its objections had been discussed by the Bureau during the course of its previous protest. Under these circumstances, we think that the Bureau reasonably believed that the best interest of the Government did not dictate a postponement of the bid opening date. Moreover, we find no reason to question the bid sample requirements in this case.

Accordingly, Kaufman's protest is denied.

However, the fact that the incumbent has been the sole bidder on a number of these procurements causes us concern. In order to encourage greater competition for this requirement, we recommend that the Bureau review its procurement approach and provide a longer bid preparation period and a full description of the samples required, listing all characteristics for which the samples will be examined, as required by FPR 1-2.202-4(d). Moreover the solicitation should state whether or not the Bureau will provide upon request the dummy samples and mock-up necessary for bid sample preparation.

By letter of today, we are asking the Bureau to advise us of any action taken in this regard.

Deputy

*R. G. Kettner*  
Comptroller General  
of the United States



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

*R. Martin*  
*Pres II*

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September 23, 1977

The Honorable William S. Beckman, Jr.  
Assistant Secretary (Administration)  
Department of the Treasury

Dear Mr. Beckman:

Enclosed is a copy of our decision of today to Kaufman DeDell Printing, Inc. denying its protest regarding invitation for bids No. BPD-78-1. As you will note we have made a recommendation that the Bureau of the Public Debt review its procurement approach in an effort to encourage greater competition.

It is our understanding that the incumbent contractor has had the contract since 1957 and that no other company has submitted a bid except in 1975 when a nonresponsive bid was received. Whatever the reason for this reluctance to compete, it appears that adequate competition has not been obtained and that the incumbent's prices have not been tested by effective competition or by cost analysis. If your review indicates that effective competition through formal advertising is not feasible for this requirement, we recommend that consideration be given to procurement by negotiation. While negotiation may not insure effective competition, it can enhance confidence in the reasonableness of the prices. See Comptroller General's report "Contracting for Navy Ships Repairs and Overhaul--Need for Change", PSAD-77-44, December 10, 1976, which is enclosed.

It is requested that you advise us of the action taken in this matter.

Sincerely yours,

Deputy

*Bob Kettner*  
Comptroller General  
of the United States

Enclosures