

DOCUMENT RESUME

02728 - [A1872917]

[Second Request for Reconsideration and Claim for Costs Incurred in Anticipation of Contract Award]. B-187604. June 30, 1977. 2 pp.

Decision re: ABS Duplicators, 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: Kaufman DeDell Printing, Inc.;
Department of Labor.

Authority: B-187253 (1977). B-188387 (1977).

A second reconsideration was requested of a decision that found a solicitation for photocopy services had overstated needs on the basis that the decision did not treat the merits of the protest. No additional evidence was presented concerning the defective solicitation; prior decisions were affirmed. Request for payment for costs incurred in anticipation of contract award also contained no new evidence and was denied. (RRS)

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DECISION



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

FILE: B-187604

DATE: June 30, 1977

MATTER OF: ABS Duplicators, Inc., Reconsideration
(second)

DIGEST:

1. Where second request for reconsideration presents no evidence demonstrating error in fact or law in previous two decisions and no arguments not previously considered, prior decisions are affirmed.
2. Claim for costs incurred in anticipation of contract award is denied where claimant's bid was returned unopened by agency. Such costs would not be compensable if a contract had been awarded to claimant and, even if such damages could be considered reasonable bid preparation costs, record does not support payment of such claim in circumstances.

Kaufman DeDell Printing, Inc. (Kaufman) requested a reconsideration of our decisions in the matter of ABS Duplicators, Inc., 56 Comp. Gen. _____, B-187604, April 8, 1977, 77-1 CPD 247 and May 25, 1977, 77-1 CPD 364. The first decision found that the Department of Labor had overstated its minimum needs in a solicitation for photocopy services and recommended that the requirement be resolicited under a solicitation accurately reflecting its minimum needs. Kaufman requested reconsideration on the grounds that the decision did not treat the merits of Kaufman's protest concerning the Government's mishandling of its bid. The thrust of our reconsideration of May 25, 1977, which affirmed the original decision, is that because no award should have been made under the defective solicitation, it was unnecessary to consider the merits of Kaufman's protest and that the question as to which company was the low bidder was not relevant.

Kaufman has again requested reconsideration and now claims that it is entitled to payment for costs it incurred in anticipation of receiving a contract.

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Kaufman has not presented any evidence demonstrating any error of fact or law in the original decision of April 8, 1977 or in the reconsideration decision of May 25, 1977. The arguments it now presents were, in substance, presented in its previous correspondence and were thoroughly considered in our two decisions on this matter. Thus, the decisions of April 8, 1977 and May 25, 1977 are affirmed.

The costs for which Kaufman claims payment were incurred as a result of its rental of photocopy machines in anticipation of its being awarded a contract. Kaufman does not contend that it was ever told, verbally or otherwise, that it would be awarded a contract. Kaufman's amended bid was returned unopened by the Department of Labor. The record reveals no reasonable basis upon which Kaufman could have concluded that a contract award to it would be made. We see no legal grounds for authorizing payment of Kaufman's claim for photocopy machine rentals incurred in anticipation of a contract award. Even if such expense can be considered a reasonable bid preparation cost, there is no indication in the record showing a deliberate or arbitrary attempt to disqualify the firm for award, a prerequisite for such damages. Amram Nowak Associates, Inc., B-187253, March 15, 1977, 77-1 CPD 189. In fact, we concluded that in the circumstances, no award should have been made under the subject solicitation. The agency's failure to exercise ordinary care either in stating its requirements or in handling the claimant's bid is not tantamount to arbitrary or capricious action for which compensation may be paid. Morgan Business Associates, B-188387, May 16, 1977, 77-1 CPD 344. Accordingly, the claim is denied.

Deputy


Comptroller General
of the United States