

DOCUMENT RESUME

03011 - [A2093180]

[Protests concerning Nonresponsibility Determination and Bid Preparation Costs]. B-188931. July 25, 1977. 4 pp.

Decision re: Kent Uniform Co., 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: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Alamo Manufacturing Co., Inc.; Defense Supply Agency: Defense Personnel Support Center, Philadelphia, PA; Volare, Inc.

Authority: 15 U.S.C. 637(b)(7). 53 Comp. Gen. 496. 13 C.F.R.

124.8-16. A.S.P.R. 1-705.4. A.S.P.R. 2-407.8(b)(3)(iii).

B-188885 (1977). B-188319 (1977). B-185740 (1976). B-181350

(1974). B-185259 (1976). B-185390 (1975). B-184477 (1976).

B-185963 (1976). B-184476 (1975). B-185332 (1976).

Protester alleged that agency failed to consider information forwarded to confirm company's responsibility and that they should be reimbursed for bid preparation and protest costs. Information sent by protest after denial of Certificate of Competency by Small Business Administration was properly considered by agency and found not to be substantively new. Protester may not be reimbursed bid preparation costs since good reason existed for rejecting bid. Expenses of protest were also noncompensable. Protest was denied. (Author/DJM)

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DECISION



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

FILE: B-188931

DATE: July 25, 1977

MATTER OF: Kent Uniform Company, Inc.

DIGEST:

1. Protest alleging that agency abused its discretion by not properly considering information forwarded after denial of COC by SBA and by not requesting SBA to reconsider its denial of COC is denied where record indicates that information forwarded by protester was reviewed by agency and found not to be substantively new.
2. Claim by protester for reimbursement of bid preparation costs is denied since sufficient reason existed to permit rejection of protester's bid.
3. Expenses incurred in pursuing protest are noncompensable.
4. Since GAO has held that strict maintenance of established principles of competitive procurement is infinitely more in the public interest than for Government to obtain pecuniary advantage in particular case by violation of rules, protester's argument that denial of its protest and award to next low bidder should not be permitted because it would be more expensive to Government is without merit.

Kent Uniform Company, Inc. (Kent) has protested to our Office in connection with solicitation for bids (IFB) No. DSA100-77-B-0827, issued by the Defense Personnel Support Center (DPSC), Philadelphia, Pennsylvania.

Bids for the 50,484 pairs of women's slacks sought under the instant procurement were opened on February 14, 1977. The low bidder, Volare, Inc. (Volare), was found nonresponsible by DPSC and the matter was then referred to the Small Business Administration (SBA) which on May 6, 1977, closed its file in the matter due to Volare's failure to apply for a Certificate of Competency (COC).

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In Volare, Inc., B-188885, May 19, 1977, 77-1 CPD 350, our Office dismissed Volare's protest in connection with the instant procurement.

Kent, the second low bidder, was also found by DPSC to be nonresponsible following a negative preaward survey which indicated that Kent lacked the technical and production capability required for successful contract performance. DPSC, pursuant to Armed Services Procurement Regulation (ASPR) § 1-705.4 (1976 ed.), forwarded its determination to SBA in order to give Kent the opportunity to apply for a COC under 15 U.S.C. § 637(b)(7) (1970) and 13 C.F.R. § 124.8-16 (1977). The SBA denied Kent's request for a COC on May 31, 1977 "[b]ased on a comprehensive analysis of all available information." Thereafter, Kent forwarded to the contracting officer on June 2, 1977, materials relating to its production capability and capacity and a newly revised Quality Control Manual. Kent further advised our Office that this information had not been available to SBA in "the form presented herein" at the time of the SBA survey. On June 20, 1977, following a written determination that a prompt award would be advantageous to the Government, award was made to the third low bidder, Alamo Manufacturing Company, Inc.

With regard to DPSC's decision to make award to the third low bidder on June 20, 1977, ASPR § 2-407.8(b)(3)(iii) (1976 ed.) provides in part that award may be made notwithstanding receipt of a written protest to GAO, when a contracting officer documents in writing that a prompt award will be otherwise advantageous to the Government. Here the record indicates that the third low bid would have expired had award not been made and that award was therefore necessary to avoid a resolicitation. Our Office will not question a determination to make an award in such circumstances unless the contracting officer's determination was unreasonable or unjustified. The instant determination was not unreasonable.

The protester, citing Inflated Products Company, Incorporated, B-188319, May 25, 1977, 77-1 CPD 365, has indicated that DPSC failed to properly consider the information forwarded on June 2, 1977, and as such that DPSC abused its discretion. In this connection Kent has also asserted that reconsideration by SBA based on additional information pertaining to the Kent quality control system, personnel, and equipment, could have been undertaken in a week and would have already been completed had DPSC requested SBA to conduct another review. Additionally, the protester asserts both that award to the third low bidder will be more expensive for the Government and that Kent should be reimbursed for bid preparation and bid protest costs.

Under 15 U.S.C. § 637(b)(7) (1970), the SBA has the authority to issue or deny a COC. Therefore, our Office will not review

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SBA determinations or require the SBA to issue a COC or reopen a case when a COC has been denied. Z.A.N. Company, B-185740, March 4, 1976, 76-1 CPD 157, Unitron Engineering Company, B-181350, August 20, 1974, 74-2 CPD 112. Consequently, the contracting officer's determination must be regarded as having been affirmed by the SBA, and that determination must be accepted by our Office. Environmental Telectronics Corporation, B-185259, February 13, 1976, 76-1 CPD 101; Zinger Construction Company, Inc., B-185390, December 19, 1975, 75-2 CPD 597.

In Inflated Products Company, Incorporated, *supra*, we reaffirmed our well-established position that where the record discloses that information vital to a responsibility determination has not been considered our Office will review the matter or take appropriate action. See Shiffer Industrial Equipment, Incorporated, B-184477, October 28, 1976, 76-2 CPD 366; Gallery Industries - Request for Reconsideration, B-185963, June 19, 1976, 76-1 CPD 383. In Inflated, we concluded that in the circumstances of that case the contracting officer, prior to making award, should review information first made available subsequent to the SBA's denial of that protester's request for a COC. Moreover, as noted in Inflated, in these types of cases we have limited our review to recommending that the agency reassess the bidder's responsibility where such newly available information has not been considered. See, Harper Enterprises, 53 Comp. Gen. 496 (1974), 74-1 CPD 31.

Here, DPSC has advised our Office by letter dated June 15, 1977, that they reviewed the material submitted June 2, 1977 by the protester and did not find it to be substantively new. In these circumstances it is our view that DPSC properly considered the information forwarded by Kent on June 2, 1977, and in so doing complied with our decision of Inflated Products Company, Incorporated, *supra*. Furthermore, we note that DPSC was apparently of the opinion that reconsideration by SBA would take at least three weeks (rather than one week as claimed by the protester) and might unduly delay timely delivery of the product, a final component of a three-piece pantsuit. In any event we note that DPSC was under no legal obligation to request reconsideration by SBA.

Since we have concluded that sufficient reason existed to permit the rejection of Kent's bid, it would logically follow that there was no arbitrary or capricious action toward the protester, and, thus, there is no basis to support the recovery of bid preparation costs. The costs of pursuing this protest, also claimed by Kent, are noncompensable in any event. Machinery Associates, Inc., B-184476, November 18, 1975, 75-2 CPD 323.

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Moreover, with respect to Kent's argument that award to the third low bidder would be more expensive for the Government, our Office has held the strict maintenance of the established principles of competitive procurement to be infinitely more in the public interest than for the Government to obtain a pecuniary advantage in a particular case by a violation of the rules. Engineering Design & Development, B-185332, February 11, 1976, 76-1 CPD 92.

We note that the protester has advised our Office that it is requesting from DPSC, pursuant to the Freedom of Information Act, a copy of the preaward survey prepared for DPSC and that when received this information will be forwarded to our Office as part of the Kent protest. However, it appears that no useful purpose would be served by our holding this protest in abeyance.

In view of the foregoing the protest is denied.


Deputy Comptroller General
of the United States