

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

50952

FILE: B-182694

DATE: July 30, 1975

97331

MATTER OF: Kidd International Data Entry

DIGEST:

1. Potential conflict of interest created by Government employee's ability to direct contract work to her sons was resolved by agency through rejection of the sons' low offer. Although for reasons stated, award will not be disturbed, GAO believes it would have been more consistent with the concept of obtaining maximum competition if the agency had first explored the possibility of changing the employee's duties so as to eliminate the potential for conflict.
2. Contracting officer is required by FPR to advise unsuccessful bidders of fact that award was made elsewhere, but the failure to adequately do so is a procedural matter which does not justify disturbing contract award.

Kidd International Data Entry (Kidd) has protested the rejection by the Department of State (State) of its offer for providing key-punch and keyverifying services.

As of July 1, 1973, State had blanket purchase agreements for keypunch and keyverifying services with Kidd and Data Prep Corporation (Data Prep). On July 23, 1973, State became aware that a Payroll Supervisor in State's Fiscal and Financial Services Division was the mother of two Kidd officers. According to her position description statement, that employee's duties included work "* * * on existing and/or proposed electronic data processing systems and procedures applicable to the payroll operation." In that capacity she was responsible for placing orders for keypunch and keyverifying services. Because her responsibilities created a potential conflict of interest State ceased placing orders for Kidd's services under its July 1, 1973 blanket purchase agreement.

Throughout April and May of 1974, State negotiated a follow-on blanket purchase agreement for keypunch and keyverifying services with Data Prep. Although Kidd was not provided with a copy of the solicitation it apparently was aware of the procurement action and it submitted price proposals for the new contract on April 2, 1974.

Together with that proposal Kidd submitted a letter referring to a telephone conversation in March of 1974 in which the contracting officer apparently told Kidd that a new contract was being solicited. That letter does not reflect whether Kidd was informed that its bid could not be accepted in light of the continuing conflict of interest situation.

The record indicates that the new contract was awarded to Data Prep with an effective date of July 1, 1974. On June 23, 1974, after award of the contract with Data Prep, but before its effective date, the mother of the two Kidd principals was transferred to a new position with the Washington Finance Center. The Department of State has indicated that as of the date of her position transfer, the conflict of interest ceased.

In protesting to this Office, Kidd points out that the prices quoted in its letter of April 2, 1974, were lower than those offered by Data Prep. Kidd also protests against State's failure to provide a written statement informing it of the fact that its unsolicited bid would not be considered.

In the instant case, a potential conflict of interest created by a Government employee's ability to direct contract work to her sons was resolved through rejection of the sons' low offer. We believe that rather than rejecting the offer out of hand it would have been preferable for State to have formally notified Kidd of the conflict of interest situation and to have afforded the Kidd principals and their mother the opportunity of removing the conflict prior to award. It may have been possible, for example, for another employee to have undertaken the ordering of the services. Such a course of action would have been consistent with the concept of obtaining maximum competition. By letter of today we are notifying the agency of our view in the matter.

Although in our opinion State should have provided an opportunity of correcting the conflict of interest situation, we are not prepared to conclude that the agency's failure to do so constituted an abuse of discretion since it appears the Department acted in good faith. In addition, there is no indication in the record that the Kidd principals or their mother took any measures prior to award to resolve the conflict of interest situation. Under these circumstances, we are not recommending that the award be disturbed.

Section 1-2.408 of the Federal Procurement Regulations (FPR) requires that contracting officers promptly notify unsuccessful bidders of the fact that award is being made elsewhere, and FPR § 1-2.408(b) states:

"(b) Notification to unsuccessful bidders may be accomplished either orally, or in writing through the use of a form postal card, self-mailer, or other appropriate means. When giving such notification, the contracting activity also should extend to each bidder its appreciation for the interest the bidder has shown in submitting a bid."

The contracting officer states throughout the record that she orally informed Kidd of the reason for the rejection of its offer at least by July of 1974, and perhaps earlier. However, it appears that Kidd did not have a clear understanding of the Department's position. Although we believe it would have been advisable for State to inform Kidd in writing, rather than orally, of the reasons for rejection of the offer, we do not feel this procedural matter justifies overturning the contract award.


Deputy Comptroller General
of the United States