

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-205989.3**DATE:** September 27, 1982**MATTER OF:** International Typewriter Exchange**DIGEST:**

A compelling reason to cancel a solicitation for manual typewriters exists where requiring activity no longer needs item because of determination to upgrade student training technology to electric typewriters currently in use in field locations.

International Typewriter Exchange protests the cancellation of invitation for bids (IFB) No. DABT15-82-B-0005 issued by the Department of the Army, Fort Benjamin Harrison, Indiana for 260 manual typewriters for use in the Adjutant General's School. International, an importer of manual typewriters from communist countries, contends that the cancellation was motivated solely by "political sensitivities" about adverse publicity surrounding Government purchases of typewriters manufactured in communist countries. For the reasons discussed below, we deny the protest.

Bids were opened on January 4, 1982, and seven bids were received. None of the bids offered domestically manufactured typewriters. The apparent low bid of \$56,291.30, offering an "Optima" typewriter manufactured in East Germany, was rejected as nonresponsive because its type did not meet the specification requirement of 12 characters to the linear inch. International's bid of \$58,068.92, offering the "Optima" typewriter, was rejected for the identical reason and International protested this determination to our Office. However, International and its dealer, Suburban Office Machines, Inc., also submitted identical bids of \$58,068.92 offering the "Predom" typewriter manufactured in Poland. Lots were drawn and the contracting officer determined International to be the successful bidder. The award was delayed, however, pending resolution of another protest filed in our Office by Morse Typewriter Company, a bidder which offered a typewriter manufactured in Brazil.

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Morse contended that the purchase of typewriters manufactured in Poland was in contravention of Government policy as established by President Reagan in his speech of December 23, 1981 in which he imposed certain economic sanctions against the Government of Poland. In response to the protest, the Army maintained that the bids offering the Polish typewriters were properly evaluated in accordance with the Buy American Act and applicable Defense Acquisition Regulation provisions and that the President's speech did not affect its award determination which complied with proper procurement procedures. The Army also maintained, however, that International's dealer, Suburban, should receive the award since International had failed to acknowledge an amendment shortening the delivery schedule. Because Morse failed to express an interest in the protest after receiving the Army's report, we closed our file without reaching a decision on Morse's allegations. Similarly, International acquiesced in an award to its dealer and accordingly withdrew its protest on April 15, 1982 concerning the responsiveness of its bid offering "Optima" typewriters.

On May 25, the contracting officer issued an amendment canceling the solicitation because of "a change in the organizational needs of the requesting activity." The Army reports that the cancellation was due to "lack of need" resulting from a determination to convert from manual to electric typewriters at the school to reflect actual field usage. The decision to "upgrade [the] technology" came during discussions concerning the "future needs of the Army" among the Post Commander, the School Commandant, and the Director of Industrial Operations. The contracting officer subsequently received a request for cancellation of the solicitation from the requiring activity which also withdrew funding for the procurement.

Defense Acquisition Regulation § 2-404.1(a) (1976 ed.) provides that award must be made to the low, responsive, responsible bidder unless there is a compelling reason to reject all bids and cancel the solicitation. Section 2-404.1(b) lists a number of reasons sufficiently compelling to justify a cancellation after opening but prior to award, such as where, as here, it is determined that the supplies or services are no longer needed. See

The Stancil-Hoffman Corporation Magnasync/Moviola Corporation, B-193001.2, B-197279, September 29, 1980, 80-2 CPD 226. The cases, in fact, speak of the contracting officer's duty to cancel the solicitation where supplies are no longer needed. Federal Leasing, Inc.; DPF Inc., 54 Comp. Gen. 872, 877, 878 (1975), 75-1 CPD 236.

International asserts that there was no compelling reason to cancel the solicitation because, in fact, the needs of the agency actually "did not change so as to justify [the] cancellation." In support of its position, International has submitted internal Air Force communications which, according to International, show that the military services, by direction of the Secretary of Defense, have ceased purchasing manual typewriters solely because of adverse publicity surrounding purchases of manual typewriters from communist countries. According to International, the Army has not responded to the protester's request under the Freedom of Information Act for similar documents generated within that service. However, the protester believes that the Army was the recipient of similar directives from the Office of the Secretary of Defense (OSD) and that the contracting officer "merely followed instructions" in canceling the subject solicitation. The internal Air Force communications generally reflect a concern that only manual typewriters manufactured in communist countries have been offered in Government procurements, that the General Services Administration has been requested to cancel all outstanding requisitions for manual typewriters and that OSD wanted management responsibility for manual typewriters to be transferred to the Defense Logistics Agency. Until fully implemented, the new policy reflected in the directives requires cancellation of existing requirements for manual typewriters and the substitution of electric typewriters in their place.

We have recognized on many occasions that the decision to cancel an invitation is an administrative matter within the province of the agency, and we will not substitute our judgment for that of the contracting officer unless the protester can demonstrate that the decision was clearly arbitrary, capricious or not supported by substantial

evidence. Cottrell Engineering Corp., B-183759, September 22, 1975, 75-2 CPD 165; Uni-Con Floors, Inc., B-193016, April 19, 1979, 79-1 CPD 278.

In essence, International requests us to find that the cancellation of the protested solicitation resulted solely from an arbitrary administrative fiat issued in response to adverse publicity surrounding purchases of manual typewriters from communist countries. The record does not support this conclusion.

While it may well have been OSD concern about communist-made products that led the Army to reconsider its needs, the fact remains that the Army states that electric typewriters are in use in the field and that it has now decided to train its people on the same kind of typewriters they will have to use in their field assignments rather than on manual typewriters. The protester has made no effort to establish that the Army's position in this regard is incorrect. Thus, on this record, we must conclude that the Army has shown that it no longer needed manual typewriters for the school, and that the cancellation was justified.

Accordingly, the protest is denied.

Harry H. Allen
for Comptroller General
of the United States