

DECISION

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

B-219001

FILE:

Hewitt, Inc.

DATE: August 20, 1985**MATTER OF:****DIGEST:**

1. Protester's failure to furnish contracting officer with a copy of its protest to GAO within 1 day of its filing, as required by GAO's Bid Protest Regulations, will not result in dismissal of protest because the purpose of this requirement was otherwise satisfied where contracting officer was telephonically advised through agency channels of the protest on the same day it was filed with GAO and the Army command conducting the procurement received a copy of the protest, electronically transmitted to it from higher headquarters, the day after the protest was filed, which copy was provided to the contracting officer the following day.
2. In a negotiated procurement, the contracting agency need only establish a reasonable basis to support its decision to cancel a solicitation. A reasonable basis exists to cancel a request for proposals where the contracting agency determines that the item required is excessive in cost and inadequate for its intended use.

Hewitt, Inc. protests the cancellation of request for proposals (RFP) No. DAAH01-84-R-A843, issued on September 7, 1984, by the U.S. Army Missile Command (MICOM), Redstone Arsenal, Alabama, for the procurement of 66 wedge assemblies for the TOW/COBRA Missile System. The protest is denied.

The only acceptable proposal was submitted by Hewitt, Inc. Since the procurement was considered an urgent requirement, noncompetitive negotiation with Hewitt, Inc. was approved and commenced in March 1985. In April 1985, Hewitt submitted two best and final offers, one having a delivery date of 297 days after award, the other having a delivery date of 180 days after award, both priced in

excess of government estimates and contract prices for recent procurements of similar items. After unsuccessfully attempting to negotiate a lower price with the protester, the contracting officer canceled the solicitation.

Hewitt protests, without stating a specific basis, that the cancellation of the solicitation was not in the best interest of the government and that its price was competitive.

The agency contends initially that the protest should be dismissed under the provisions of 4 C.F.R. § 21.3(f) (1985) (GAO Bid Protest Regulations) because the protester failed to furnish a copy of its protest to the contracting officer within 1 day after the protest was filed with GAO, as required by 4 C.F.R. § 21.1(d). Although the contracting officer did not receive a copy of the protest from the protester within 1 day of its filing within our Office, the contracting officer was telephonically advised through agency channels of the protest on the same day it was filed in our Office, MICOM received a copy of the protest, electronically transmitted to it from higher headquarters, the day after the protest was filed, and that copy was provided to the contracting officer the following day. Preparation of the agency report was promptly commenced.

Thus, while the contracting officer did not receive a copy of the protest from the protester in the manner prescribed by applicable regulations, the protest will not be dismissed under 4 C.F.R. § 21.3(f), since in this instance the essence and purpose of the regulation were otherwise effected. See Container Products Corp., B-218556, June 26, 1985, 64 Comp. Gen. _____, 85-1 C.P.D. ¶ 727; Motorola Inc.--Reconsideration, B-218888.2, June 24, 1985, 85-1 C.P.D. ¶ 719.

Hewitt's protest of the cancellation of the solicitation is, nevertheless, without merit. Contracting agencies have broad discretion in determining when it is appropriate to cancel a solicitation. In a negotiated procurement, the contracting agency need only establish a reasonable basis to support a decision to cancel a solicitation. See Francis Technology, Inc., B-205278.2, Aug. 29, 1983, 83-2 C.P.D. ¶ 265; Baucom Janitorial Service, Inc., B-210216, May 31, 1983, 83-1 C.P.D. ¶ 584.

After the contracting officials were unable to negotiate a lower price with Hewitt, a determination was requested as to whether the urgency of the need for the wedge assembly parts justified procurement at the price offered by Hewitt, particularly in view of the government's recent purchase of similar parts at a substantially lower cost. This inquiry prompted a reexamination of the item solicited, following which the agency decided to replace the requirement because of its excessive cost, as well as its lack of accuracy for use in the TOW/COBRA Telescope Sight.

We have upheld an agency's cancellation of a solicitation in a negotiated procurement where the goods or services called for by the solicitation were no longer required, or where substantial cost savings could accrue to the government as a result of the cancellation. Flagg Integrated Systems Technology, B-214153, Aug. 24, 1984, 84-2 C.P.D. ¶ 221; Science Information Services, Inc., B-205899, June 2, 1982, 82-1 C.P.D. ¶ 520.

In view of the agency's determination regarding the deficiencies of the item and the potential savings to the government as a result of its replacement of the parts requirement with a more reasonably priced assembly, it is our opinion that the agency had a reasonable basis to cancel the solicitation.

The protest is denied.

Harry R. Van Cleve
Harry R. Van Cleve
General Counsel