



The Comptroller General  
of the United States

Washington, D.C. 20548

# Decision

Matter of: Israel Military Industries  
File: B-222448.6  
Date: May 19, 1987

---

## DIGEST

An invitation for bids may be canceled after bid opening and the exposure of bid prices when a compelling reason exists for doing so. Agency has a compelling reason to cancel the invitation where agency determines that solicitation requirements fail to reflect the agency's need because a required product is no longer available and award based on revised requirement is expected to result in lower overall price to the government.

---

## DECISION

Israel Military Industries (IMI) protests the post-bid-opening cancellation of invitation for bids (IFB) No. DAAH01-86-B-0002, issued by the Department of the Army for a specified quantity of launchers (LAU 68 D/A launchers and LAU 61 C/A launchers) for the HYDRA 70 Rocket System. IMI also protests the Army's decision to resolicit the requirements. We deny the protest.

The solicitation was issued on October 7, 1985, and, as amended, established February 6, 1986, as the bid opening date. Seven bids were received with Urdan Industries, Ltd., and IMI the apparent low and second low bidders, respectively. Urdan apparently withdrew its bid<sup>1/</sup> and IMI then became the lowest responsive bidder subject to a preaward survey. On August 27, 1986, IMI was advised that it was found to be nonresponsive because the firm had not

---

1/ Initially, both Urdan's and IMI's bids were rejected by the Army as nonresponsive for reasons not germane to this protest and both firms protested the agency's action to our Office. Before resolution of the protests, the Army reversed its position and we therefore dismissed the protests.

obtained a price quote for RX-2370A, the required thermal coating compound. On September 4, IMI filed an agency-level protest challenging the nonresponsibility determination. Without resolving the merits of the protest, the contracting officer issued an amendment on December 23 canceling the IFB because of "significant changes in the solicitation requirements and the specifications." On January 2, 1987, and February 5 and 19, the agency published notice in the Commerce Business Daily of its intent to solicit rocket launchers at increased quantities, including the rocket launchers required under the canceled IFB. This protest by IMI followed.

The thrust of IMI's protest is that the Army lacks any cogent or compelling reason to cancel the solicitation some 10 months after bid opening. IMI argues that the agency's alleged justification for cancellation, i.e., significant changes in the solicitation requirement and the specifications, is a subterfuge designed to avoid awarding the contract to the firm and that such actions should not be sanctioned by our Office. IMI requests that the original solicitation be reinstated and the contract awarded to it as the lowest responsive, responsible bidder.

The Army responds that cancellation of the original solicitation was premised on several factors: (1) a technical deficiency in the specifications made the original specifications obsolete; (2) revisions to the specifications would significantly lower prices; and (3) a significant increase in the item quantity is needed.

The specifications required that bidders furnish a thermal coating compound, RX-2370A, which is on the qualified product list (QPL) for MIL-C-81945 and which is produced by only one manufacturer, Phizer, Inc. The agency reports that the contracting officer learned subsequent to bid opening that Phizer discontinued the manufacture of RX-2370A because it contains asbestos, a known carcinogen. The contracting officer was further advised that Phizer was offering a nonasbestos thermal compound, RX-2390 as a replacement product but that this compound had to be evaluated for purposes of determining if it could be included on the QPL for MIL-C-81945. (QPL approval of the replacement compound is expected for the new IFB). The contracting officer concluded that the agency's needs, as identified by the specifications, could not be met and any contract awarded thereunder could not be performed.

Additionally, the agency asserts that cancellation was also based on cost data obtained from Phizer in October 1986 which indicated that use of RX-2390 in lieu of the discontinued RX-2370A compound would significantly reduce

the production cost of each launcher because the new compound was less expensive. Specifically, the Army reports that by letter dated October 2, the Army requested that Phizer provide cost estimates for the two compounds in quantities of 80,000 to 100,000 pounds shipped in 55 gallon drums. In an October 6, 1986, letter received from Phizer, that firm's quote for 80,000 to 100,000 pounds of RX-2390 packaged in 55 gallon drums was \$8.95 per pound as compared to \$14.92 per pound for RX-2370A. It further advised that RX-2370A was no longer in production. The Army states that the net price difference between these two products would lower the cost of each LAU 68 D/A launcher by \$130, and for each LAU 61 C/A by \$206, for a total decrease in production quantity cost of approximately \$628,326. Moreover, the agency notes that Phizer stated that it had quoted RX-2370A at \$25 per pound in "late[r] 1985." The agency was unable to determine if any bids received were based on the \$25 per pound quote. In any event, the contracting officer decided that in order to minimize any prejudice to bidders, occasioned by the disparity in price quotes given by Phizer, and because of the expectation of lower prices, the IFB would be canceled and the specifications revised to incorporate the less expensive substitute compound which would meet the government's actual needs.

An IFB may be canceled after bid opening only when there is a cogent and compelling reason to do so. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a)(1) (1986). We will not question a contracting officer's decision to cancel so long as it reflects a reasoned judgment based upon the investigation and evaluation of information available at the time the decision is made. Mid Atlantic Communications, B-221277, Mar. 27, 1986, 86-1 C.P.D. ¶ 294 at 3. Where it is determined that the specifications contained in an IFB do not adequately describe the government's actual needs or an agency finds after bid opening that the needs of the government can be satisfied by a less expensive method differing from than on which bids were solicited, the best interests of the government requires cancellation of the IFB. International Trade Overseas, Inc., B-221824, Apr. 1, 1986, 86-1 C.P.D. ¶ 310; Uffner Textile Corp., B-204358, Feb. 8, 1982, 82-1 C.P.D. ¶ 106.

In its response to the agency report, the protester concedes that if, in fact, the price for the new compound is less than the price for the old compound, the contracting officer would have a compelling reason to cancel since any award based on bids originally received could result in the awardee obtaining a windfall profit through use of the lower priced compound. However, IMI disputes the agency's position that RX-2390 is a lower priced substitute compound.

The protester has provided an affidavit from the individual within Phizer with primary responsibility for issuing price quotations for the thermal compound, which that person states that the price for RX-2390, "quantity, packaging and other factors being equal" will be more than the price for RX-2370A, the discontinued compound. Thus, the affidavit seems to contradict the same individual's October 6, 1986, price quotation to the Army for RX-2370A and RX-2390, since he now indicates the original compound is less expensive than the replacement compound.

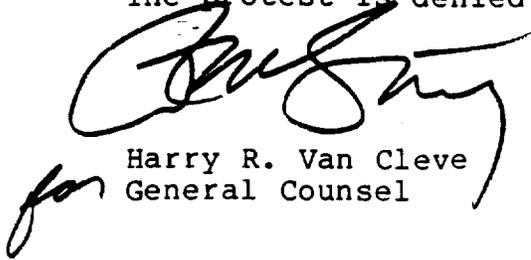
The record establishes that the Army reasonably determined that its present need could be met by the use of RX-2390, a substitute thermal coating compound which was not a requirement of the original IFB, and that the original compound is no longer available. The agency, in our view, properly relied upon the pricing information submitted to it by Phizer in concluding that an award under the original solicitation would result in bidders being treated unfairly and disparately and be more costly to the government.

In its letter of October 6, 1986, Phizer represented its January 1986 cost estimates for RX-2370A varied from \$14.92 to \$25 per pound and that its present cost estimate for RX-2390 was \$8.95 per pound. In conjunction with its protest, IMI has submitted an affidavit of March 13, 1987, regarding the price estimate for the two compounds which now appears to contradict what Phizer advised the Army in October and on which the Army relied to justify cancellation of the IFB. Phizer's employee does not explain this seemingly contradictory information. There is no suggestion in the record that the agency had reason to question Phizer's initial pricing information which it was advised would be used for government estimates of the rocket launchers. We thus conclude that the contracting officer reasonably relied on Phizer's letter of October 1986 and had a reasonable basis to cancel the IFB based on the expected reduced prices for the launchers by requiring use of the replacement compound.

Finally, IMI contends that instead of canceling the IFB because an additional quantity of rocket launchers are needed, the Army should issue a separate solicitation for the additional requirements above those contained in the original IFB as contemplated by FAR, 48 C.F.R. § 14.404-1(a)(3). However, in view of our finding that cancellation of the IFB was proper based on the agency's reasonable expectation of reduced prices for the launchers, we need not consider whether the other grounds relied on by the Army

also provided a proper basis for cancellation. NDT-1, Inc.,  
B-220570, Nov. 20, 1985, 85-2 C.P.D. ¶ 576.

The protest is denied.



for Harry R. Van Cleve  
General Counsel