



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

B-178259

December 28, 1973

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Lewis and Poca  
First National Bank Plaza  
One Hundred West Washington Street  
Phoenix, Arizona 85003

Attention: Paul G. Ulrich, Esq.

Gentlemen:

We refer to your letter of November 9, 1973, and prior correspondence protesting on behalf of the Aviation Specialties Company against the Bureau of Indian Affairs (BIA) cancellation of a telegraphic request bids, solicitation No. 2426, issued March 7, 1973.

The solicitation sought bids on helicopter freight services for emergency delivery of food, fuel, and animal feed to certain groups of Indians. The telegraphic bids were to be opened at 2 p.m. on March 1, 1973.

Just prior to bid opening, it was ascertained by BIA officials that the Arizona National Guard had agreed to provide the necessary services as a training mission. The solicitation was canceled immediately thereafter and notification to all firms initially contacted was made by telegram and telephone.

As of the time of the cancellation and therefore prior to schedule bid opening the agency knew that the services of a commercial helicopter service were no longer required. Even in a situation where cancellation of a solicitation has occurred after bid opening but before award, section 1-2.404-1 of the Federal Procurement Regulations and our decisions have permitted such action on this basis. See B-174225, November 22, 1972; B-173670, November 18, 1971.

It is contended that the use of military equipment in this instance is a clear violation of the Department of Defense (DOD) policy as stated in DOD Directive 4500.9, November 29, 1971, against the use of DOD transportation capabilities to move non-DOD material. As such, it is alleged that the cancellation was improper. We do not believe, however, that violation of the DOD policy would affect the propriety of the solicitation's cancellation. Where an item or service is no longer needed prior to bid opening, irrespective of the reason, an agency has no choice of when to cancel the solicitation.

[Protest of BIA Solicitation Cancellation]

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From the standpoint of procurement law, we are unable to conclude that the escalation of the solicitations by H&A was improper. Accordingly, we have no alternative other than to deny the protest.

However, since you cite the foregoing situation and a number of others as circumstances wherein DOD policy on the use of military transportation for nonmilitary purpose is being violated, we are bringing this matter to the attention of our audit staff for consideration in possible future reviews of DOD activities.

Sincerely yours,

R.F.KELLER

[Deputy Comptroller General  
of the United States