



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

B-177960

August 17, 1973

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Royal Typewriter Company
1700 Wisconsin Avenue, NW.
Washington, D.C. 20007

Attention: Mr. William Grote
Director of Federal Marketing

Gentlemen:

For the reasons that follow, we are denying your protest submitted by letter of June 12, 1973, and prior correspondence, against the non-competitive award of a contract for 48 Selectric II typewriters to the IBM Corporation (IBM) by the General Services Administration (GSA) for the Bureau of Accounts (Bureau), Department of the Treasury.

Pursuant to Federal Property Management Regulations (FPMR) 101-26.105, on December 21, 1972, the Office of the Secretary of the Treasury submitted to GSA a purchase request on behalf of the Bureau for 26 IBM Selectric II typewriters with a single pitch feature and 22 with a dual pitch control. The dual pitch feature permits the characters per inch to be changed to either 10 or 12. An "06" priority designation was assigned the request in view of the required deliveries to various Bureau field offices by February 1, 1973. As stated by the Bureau, the primary consideration requiring the IBM typewriters was the need to process forms using an optical character recognition (OCR) font (approximately 70 percent of expected usage) and standard font for the remainder. Since IBM is the only typewriter with interchangeable fonts, it was determined that only IBM could meet the Bureau's needs.

On February 7, 1973, the Bureau submitted further justification for the requested non-source purchase, comporting with FPMR 101-26.105(b)(1)-(b)(iv). Contained therein was a secondary consideration that 22 typewriters be required to have the dual pitch feature so they could be used to type checks in emergency or heavy volume special payment situations with the non-OCR font because of the lengthy numerical typing in a limited space. It was stated that a three-month test by the Bureau on Royal, Olivetti, and IBM models resulted in the determination of unacceptability of the Royal and Olivetti typewriters because of the lack of interchangeable fonts. The Bureau wrote GSA on March 12, 1973, that, upon reevaluation, the typewriters would not be needed until June 1, 1973. Consequently the "06" priority designation was withdrawn by letter of March 15, 1973.

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The GSA contracting officer prepared a determination and findings (D&F) citing 41 U.S.C. 252(c)(10) as authority to negotiate the procurement noncompetitively with IBM because it was impractical to secure competition. The D&F stated in pertinent part:

* * * The typewriters are available under a current Federal Supply Schedule contract but the requisition exceeds the Maximum Order Limitation on the contract applicable to IBM typewriters.

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The Bureau of Accounts has revised the Standard Forms used in connection with disbursing office claims activities. Some of these forms require optical character recognition (OCR) while others require standard type application. In order to perform these dual tasks, there exists a need to obtain typewriters that will satisfy both needs.

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A three month test and evaluation of OCR-format standard forms and OCR-type Typewriters was conducted and it was determined that the workload requirements of the Bureau of Accounts necessitated typewriters to be used not only for standard type and OCR application, but which produce acceptable copies and are proven to be reasonably dependable in actual operation.

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Because of the requirement for typewriters which have an acceptable OCR production and oscurer reliability and which can satisfy both the OCR and standard typing workload, the IBM Selectric II was the only typewriter found to have the necessary capability and flexibility to accomplish the tasks and work processes assigned to the Bureau of Accounts. The IBM Selectric II typewriter has an interchangeable type font which can be easily and quickly taken out and replaced so that different type faces can be interchanged. This is a feature not available in any other typewriter of current manufacture. The Selectric II typewriter can be used for OCR application as well as regular typing purposes. Because of this flexibility, the requirement for two machines for one secretary or typist is eliminated when different type-style is needed.

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Upon the basis of the foregoing findings, I hereby determine that it is impracticable to secure competition there being no other typewriter available meeting the essential requirements of the Bureau of Accounts, and a contract may be negotiated with the IBM Corporation, the sole source manufacturer of the above mentioned equipment, pursuant to Section 301(e)(10) of the above cited Act.

We have been informed that award was made to IBM on May 14, 1973, due to the urgent need for delivery to the Bureau's field offices by June 1, 1973.

You contend that by specifying interchangeable fonts the Bureau has overstated its minimum needs. You assert that the purported need for a non-OCR font for the 30 percent of the Bureau's work is a matter of personal preference and subjective evaluation, which FPMR 101-26.105(b) prohibits as justification for sole-source procurement. You also assert that GSA has not fulfilled the responsibility imposed by Federal Procurement Regulations (FPR) 1-3.101(d) to take the necessary action to examine the reasons for the noncompetitive procurement and take steps to prevent repetitive noncompetitive procurements. It is your further position that the use of the public exigency exception for formal advertising requirements was not justified inasmuch as no compelling reason or unusual urgency existed and Royal could have met the required delivery date in any event. Finally, you complain that although the Bureau solicited Royal to provide a typewriter for participation in its test and evaluation program, you have been unable to ascertain the results of the test. In this regard, you state that as a result of requests for information to the Bureau, you were referred to GSA, which in turn told you that the information would have to come from the Bureau.

It is not disputed that the IBM typewriter is the only model currently available with interchangeable fonts. The Bureau provided GSA with documentation that the projected usage of the typewriters would encompass both OCR and non-OCR tasks. You dispute this determination as being a matter of personal preference of one type style over another. In our view, the procuring agency has the primary responsibility for drafting specifications which reflect the minimum needs of the Government, as well as the responsibility of determining whether offered articles meet those specifications. B-176703, February 2, 1973, with other decisions cited therein. However, there is no requirement that the Government purchase equipment which does not, in the considered judgment of the contracting agency, reasonably meet the agency's needs. It has been our position in this regard that where only one source can satisfy the legitimate needs of the Government, those requirements need not be compromised to obtain competition. B-172903,

July 6, 1971. Since the procuring activity, or in this case requisitioning activity, is in the best position to assess its requirements, we will not substitute our opinion for that of the agency absent arbitrary or capricious action. From the record before us, we are unable to conclude that the Bureau's statement of its minimum needs was without a reasonable foundation.

However, you point out that the requirements for the 26 typewriters not requiring the dual pitch feature could have been satisfied by the less expensive IBM Selectric I typewriter, which also has interchangeable fonts. Since we agree with this observation, we are by separate letter of today bringing this matter to the attention of the Administrator, GSA.

Regarding your allegation that the use of the public exigency exception to formal advertising requirements was not justified as earlier noted, the "06" priority designator was withdrawn and that exception was no longer used to justify the sole-source negotiations with IBM.

Concerning your complaints of the difficulties encountered in trying to obtain information concerning the reasons your typewriter was considered unacceptable, our Office has furnished you this information. However, it is GSA's position that the desired information should be obtained from the Bureau since it conducted the test and was the requisitioning activity. You argue that under the Freedom of Information Act (Act), 5 U.S.C. 552, the material should have been released upon request. In this regard, we note that the referenced Act provides remedial action to be taken to obtain such information, and it does not appear that you availed yourself of these procedures.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States