

DECISION



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

FILE: B-183795

DATE: September 22, 1975

MATTER OF: Cottrell Engineering Corporation

DIGEST:

Corps of Engineers IFB for removal of shoals from Cape Fear River was properly canceled pursuant to ASPR § 2-404 where record indicates that after bid opening but prior to award, weather conditions radically changed scope of dredging work required and as reflected in IFB's specifications.

Invitation for bids (IFB) DACW54-75-B-0010, issued by the Corps of Engineers (Corps), United States Army Engineer District, Wilmington, North Carolina, solicited bids for maintenance dredging in the Cape Fear River, North Carolina. The specifications called for the removal of specified shoals by hydraulic pipeline dredge at 10 locations along the river.

Three bids were received at the January 8, 1975, opening. The low bid of \$195,550 submitted by Cottrell Engineering Corporation (Cottrell) exceeded the Government estimate (\$126,600), without profit, by 54 percent, and all bids were considered to be excessive. By a January 9, 1975, telegram to the Corps, Cottrell protested the reasonableness of the Government estimates. Final disposition of the protest was made on March 25, 1975 (76 days after bid opening), when the Government estimate was revised to \$164,667; however, by letter dated April 28, 1975, all bidders were notified that the IFB was being canceled and the requirement would be resolicited. Cottrell protested this decision to our Office.

The District Engineer's letter stated that pursuant to Armed Services Procurement Regulation (ASPR) § 2-404.1 (1974 ed.), the IFB was being canceled for the following reasons:

"1. When bids were taken on 8 January 1975, the river was in a low flow stage. The survey upon which the Invitation was based was a compilation of surveys taken

in July and September 1974. Floods and freshets have occurred in the Cape Fear River almost continually since bids were taken. With flooding and high water, the shoal patterns, quantity of material above project dimensions and relationships between quantities, distances to disposal areas, average bank or station yards have changed and the present conditions bear little resemblance to the surveyed conditions of July and September 1974. Therefore, differing site conditions unquestionably exist.

"2. Environmental restrictions prohibit dredging in the Cape Fear River above Wilmington between 1 April and 1 June of each year. In addition, flows generally remain high enough to provide navigable depths through the summer months. Therefore, the services being procured are not needed at this time.

"3. I have concluded that it is obviously not in the best interests of the Government to award a contract based upon the subject Invitation for Bids."

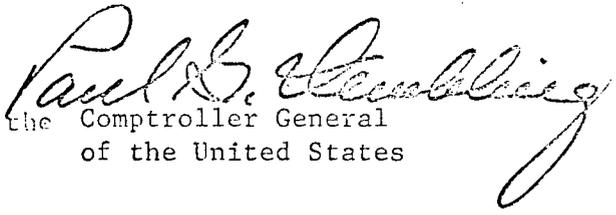
In its report to this Office, the Corps contends that preliminary surveys indicate that the number of shoals had increased to about 40 to 50 instead of the 10 shoals advertised in the IFB. In this regard, one of those shoals was said to have contained almost as much yardage (of material to be removed) as the entire yardage originally advertised. It is reported that the scope of the work if performed under the original IFB might have resulted in a possible overrun of 300 percent or more.

Cottrell asserts that the rationale of "differing site conditions" and that the "services being procured are not needed at this time" were not sufficient justification for the contract not being awarded to it as the low bidder. It argues that these circumstances would only have occurred after award, if at all, but for the Corps' delay in deciding the protest. Nevertheless, Cottrell concedes that conditions at the site had changed and the magnitude of the work had increased greatly, but maintains that the character or nature of the work had not changed. Thus, it is contended that any increase in the volume or scope of the work occurring after bid opening would have been a proper subject for negotiation under the appropriate provisions of the contract. Therefore, Cottrell maintains that the preservation of the integrity of the competitive bid

system required that it be given the award since no compelling reason existed to reject all bids at the time of bid opening.

ASPR § 2-404.1(b) (1974 ed.) provides guidance as to when all bids may be rejected and an invitation canceled. Such action is allowed, for example, if the contracting officer determines in writing that the specifications need to be revised and the services as stated specified in the solicitation are no longer needed. The decision to cancel an invitation is an administrative matter and will not be questioned unless it was clearly arbitrary, capricious, or not supported by substantial evidence. Cancellation is proper in those instances where after bid opening but prior to award it has been determined that the original specifications no longer serve the Government's actual needs. See 49 Comp. Gen. 211 (1969). Although it is regrettable that revision of the Government estimate took 76 days, it our view that the intervening changes in the site conditions reasonably justified the contracting officer's decision not to make an award, and the subsequent cancellation of the IFB. Furthermore, it would be improper to make an award on the basis of solicitation which it was known did not accurately reflect the Government's actual needs with the intent to thereafter negotiate the necessary changes.

Accordingly, the protest is denied.


For the Comptroller General
of the United States