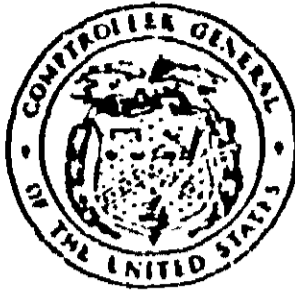


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DECISION



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

FILE: B-186479

DATE: October 20, 1976

MATTER OF: C. Joe Fuller

DIGEST:

1. It was within contracting officer's discretionary powers to cancel solicitation after bid opening and prior to award where it was determined that work could be done by agency personnel at \$20,000 saving to Government. Agency was not required to make award under solicitation which reserved right to reject any and all bids and where applicable ASPR provision authorized contracting officer to cancel invitation after bid opening, but prior to award, where cancellation is clearly in best interest of Government.
2. Where solicitation was canceled after bid opening, but prior to award, because it was determined that work covered by solicitation could be performed by agency personnel at \$20,000 saving to Government, claim for damages in amount of contract is denied since (1) there is no authority which would support recovery for full amount of contract, and (2) Government's conduct was not arbitrary or capricious so as to support claim for bid preparation costs, contracting officer being authorized by ASPR § 2-404.1(b)(viii) to cancel invitation where cancellation is clearly in Government's best interest.

By telegram of May 10, 1976, and supplementary letter of May 11, 1976, Mr. C. Joe Fuller protested the cancellation of solicitation No. DACW69-76-B-0038, issued by the Huntington, West Virginia, District Office of the United States Corps of Engineers (hereafter the Corps). The solicitation requested bids for the maintenance of public use areas at Fishtrap Lake, Millard, Kentucky.

Bids on the above solicitation were opened on April 13, 1976, and C. Joe Fuller was the apparent low bidder with a bid price of \$36,680. However, prior to award it was determined by the Corps of Engineers that the work covered by the solicitation could be accomplished by Corps personnel at a saving to the Government of \$20,000. The solicitation was subsequently canceled and Mr. Fuller was notified of the cancellation by letter dated May 6, 1976.

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Mr. Fuller contends that the fact that Corps personnel could do the work at Fishtrap Lake was no reason to cancel the solicitation since Corps employees could also perform the work at 15 or so other sites where similar type contracts were awarded. Mr. Fuller also contends that his bid price was not out of line in light of the fact that (1) the prior contract for the work at Fishtrap Lake, which was awarded in 1973 for a 3-year period, was for \$28,000 a year and (2) inflation has resulted in rising costs. Mr. Fuller further states that between the time he was notified that he was the low bidder, April 15, 1976, and the receipt of the letter notifying him of the cancellation of the solicitation he gave up numerous chances to obtain contracts in other areas and that he will not be able to bid on any maintenance contracts until the Spring of 1977.

Under section 2-404.1(b)(viii) (1975 ed.) of the Armed Services Procurement Regulation (ASPR) the contracting officer is authorized to cancel an invitation after bid opening, but prior to award, when cancellation is clearly in the best interest of the Government. Also, under paragraph No. 10(b) of the Solicitation Instructions and Conditions (Standard Form 33A, March 1969) the Government expressly reserves the right to reject any and all bids. See, also, 10 U.S.C. § 2305(c) (1970). In view of the above explanation provided by the Corps in support of its determination to cancel the subject procurement, we cannot say that the action was an abuse of the contracting officer's discretionary powers. See International Multi Services, B-183333, June 13, 1975, 75-1 CPD 359; 47 Comp. Gen. 103 (1967); B-173670, November 18, 1971.

Finally, the Corps states, in its administrative report, that "It is apparent, however, that the maintenance requirements for the Fishtrap Lake area were not fully and carefully evaluated in an overall, comprehensive maintenance program." The Corps accepts some of the responsibility for this lack of foresight in its maintenance planning and appears to recognize that this lack of foresight has resulted in the unnecessary expenditure of time and expense by the bidders in their preparation of bids. Accordingly, the Corps states that it would not be adverse to the consideration of claims from these bidders for the costs incurred in preparing their bids. In his response to the administrative report, the protester claims the full amount of the contract.

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We are aware of no authority which would support recovery for the full amount of the contract. Under certain circumstances, we may allow recovery for bid preparation costs. However, in order to allow such a recovery, it must be shown that the Government's conduct was arbitrary and capricious. See Kaco Industries Inc. v. United States, 492 F.2d 1200, 203 Ct. Cl. 566 (1974); Dairy Sales Corporation, September 20, 1974, 74-2 CPD 178. In the present case, there has been no showing that the Government's conduct was arbitrary or capricious since, as pointed out above, ASPR § 2-404.1(b)(viii) permits the cancellation of an invitation after bid opening, but prior to award, when cancellation is clearly in the best interest of the Government. We are of the view that a savings to the Government of \$20,000 could be construed as being in the best interest of the Government.

For the above reasons, C. Joe Fuller's protest, as well as his claim for damages, is denied.

Deputy


Comptroller General
of the United States