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**DECISION**

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

9201

FILE: B-191604

DATE: February 16, 1979

MATTER OF: Scona, Inc.

**DIGEST:**

Claim for bid preparation costs on basis that agency should have known before bid opening that IFB would have to be canceled because of reprogramming of funds is without merit. Record does not show that agency officials were aware before bid opening that IFB would have to be canceled.

Scona, Inc., protests the opening of bids under Invitation for Bids (IFB) No. BIA-0150-78-5 dated January 30, 1978, issued by the Bureau of Indian Affairs (BIA), Albuquerque, New Mexico, for extending various watering lines to stock watering troughs in areas surrounding Whitecone, Arizona. Scona submitted the only bid on March 2, 1978, for \$183,000. However, on March 28, Scona received notice from BIA's project office that the IFB would be canceled because funds for the project had been allotted to another project. Scona then protested here, and the IFB was canceled.

The record shows that the program funds out of which the instant project was to be funded were reprogrammed in order to provide funds for another project in accordance with a determination made by the Assistant Secretary, Indian Affairs, and communicated to the project officer responsible for contracting with Scona by teletype on February 17. The Assistant Secretary did not instruct the project officer to cancel the instant IFB but only to submit appropriate changes in his financial program so that the other project could be funded. As a result the instant project was canceled. It is reported that this project will be done in segments by Government force account personnel as funds are available.

Initially Scona protested the validity of the IFB cancellation, contending that it should have received an award. However, Scona no longer questions BIA's determination to reprogram its funds for purposes other than an award under this solicitation. Rather, Scona contends that BIA knew before bid opening that the IFB would have to be canceled but opened bids

anyway. Thus Scona alleges that bids were solicited in bad faith, without any intention on BIA's part to make an award. As a remedy Scona seeks its bid preparation costs.

We find no evidence of bad faith. As indicated, the instant solicitation was issued by BIA's Division of Facilities Engineering, Albuquerque, New Mexico. The project officer in charge of the instant project was located in BIA's Flagstaff, Arizona, office. On March 28, 1978, he notified Division of Facilities Engineering in Albuquerque that funds were not available for the contract and that the work would be done in the future by force account instead. He also stated that administration of the work had been transferred from his office to BIA's Phoenix Area office. Scona was promptly notified of the cancellation.

We cannot tell from the record exactly when the Flagstaff project officer decided to cancel the IFB. The record does show that during early February 1978, the project officer was concerned about the amount of funding available to conduct certain law enforcement duties of his office, and he notified the Assistant Secretary of Indian Affairs, Washington, D.C., of his concern. By teletype message of February 17, 1978, the Assistant Secretary advised the project officer to use "Navajo-Hopi Settlement funds" to increase and maintain his law enforcement program at the necessary level. The project officer was instructed to submit the "appropriate changes in your financial program as soon as possible" to accomplish this result. (The instant procurement was to be financed by using Navajo-Hopi Settlement funds.) In addition, by separate letter of February 17, the Assistant Secretary notified the Flagstaff project officer that administrative responsibility for the land area covered by the instant procurement was being transferred to BIA's Phoenix office. However, this message was not received by Flagstaff until February 27.

It may be that the project officer could have anticipated before March 28 that the instant procurement would be canceled. However, it does not appear to us that he was in a position before the March 2 bid opening to have known that the IFB would have to be canceled. On these facts we cannot say that bids were solicited in bad faith. Thus, Scona's claim for bid preparation costs may not be allowed. A.R.F. Products, Inc., 56 Comp. Gen. 201 (1976), 76-2 CPD 541.

B-191604

3

The claim is denied.

*R. F. K. 81m*

Deputy Comptroller General  
of the United States