



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## **Decision**

**Matter of:** Cedar Valley Corp.

**File:** B-225475; B-225723

**Date:** February 24, 1987

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### **DIGEST**

Probable changes in performance costs from those reflected in already-submitted bid prices, due to a 4-month delay in the start of performance anticipated in the invitation for bids, is a reasonable basis for agency determination that award under the solicitation would prejudice bidders, and that solicitation thus should be canceled.

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### **DECISION**

Cedar Valley Corp. protests the United States Army Corps of Engineers' cancellation of invitations for bids (IFB) No. DACA45-86-B-0094 (-0094) and No. DACA45-87-B-0019 (-0019), for the repair of a taxiway and runway aprons at Offutt Air Force Base, Nebraska, and the resolicitation of that project under IFB No. DACA45-87-B-0020 (-0020). We deny the protest.

The Army issued IFB-0094 on July 8, 1986. The five bids received were opened on August 7, and Cedar Valley was the low responsive, responsible bidder. The specifications called for four work phases: Phases I and II were to be completed within 60 days of the anticipated September 1 notice to proceed, and Phase III was to begin approximately 200 calendar days after issuance of the notice to proceed, Phase IV to follow. The 200 day delay in the start of the last two phases was to account for a seasonal dormant period, running from November 1, 1986, through March 15, 1987.

As of the end of October, funds for the project had not yet been made available. Since because of this delay it no longer would be possible to complete the first two phases by November 1, it became necessary for the Corps to reschedule the project to eliminate the dormant period and set March 1, 1987, as the overall start date. It also became necessary to

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delete a requirement that construction materials be removed from the site during the dormant period. The Army believed these changes could have a material effect on the bids, and decided that the project thererfore should be resolicited. However, rather than preparing a formal written determination stating the compelling reason to cancel, as required by the Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1 (1986), the Army readvertised the project by issuing an amendment on October 28, redesignating the solicitation IFB-0019, rescheduling the project to begin in March 1987, and establishing a new bid opening date of November 13.<sup>1/</sup> The Army also sent a letter of bid rejection to Cedar Valley, dated October 30, stating that because funds were not available for the project, the work would be readvertised by amendment. Cedar Valley received that letter on November 5 and protested the rejection of its bid to the Army on November 10.

After further consideration, the Army determined that since security improvements were also needed at the location during the time period now scheduled for the taxiway repair, the agency would combine the two projects into a single contract, thereby avoiding the interference and possible delay associated with having two contractors perform simultaneously. Accordingly, although funding finally had been made available on November 3, the Army canceled the amended solicitation on November 12 before the new bid opening. The new solicitation combining the projects, IFB-0020, was issued in January 1987.

Cedar Valley argues that the Army should not have delayed award to it as low bidder, that IFB-0094 should not have been canceled, and that Cedar Valley should have received the award based on its low responsive bid. Cedar Valley maintains that it was improper for the Corps to readvertise the requirement instead, because neither the work required nor the government's needs had changed, and no bidder would have been prejudiced by an award based on the rescheduling of the project.

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<sup>1/</sup> The Army acknowledges that the cancellation of IFB-0094 was procedurally deficient since the contracting officer did not make the written determination stating a compelling reason for cancellation as required by the FAR. Such a procedural failure does not in itself constitute a basis to sustain a protest, however, where the cancellation in fact is warranted. Feinstein Construction, Inc., B-218317, June 6, 1985, 85-1 C.P.D. ¶ 648.

Preliminarily, we find that the delay in the award due to the unavailability of funds was legally unobjectionable. An agency's failure to meet a target date for award, due to the unavailability of funds or some other administrative reason, is purely a matter of procedure and does not invalidate the procurement or provide a basis of protest. See, for example, COMSEC Systems Corp.--Reconsideration, B-216596.3, Dec. 11, 1984, 84-2 C.P.D. ¶ 652.

As for the merits, a solicitation may be canceled after bids have been opened and prices have been exposed only where supported by a cogent and compelling reason. Tektronix, Inc., B-219981.4, June 12, 1986, 86-1 C.P.D. ¶ 545. A change in a material term of a solicitation that would render the specifications inadequate for the agency's needs or result in prejudice to other bidders if award under the deficient IFB were made constitutes such a reason. Intercomp Co., B-213059, May 22, 1984, 84-1 C.P.D. ¶ 540.

We find the Army's determination to cancel IFB-0094 and to afford all bidders an opportunity to compete under an amended performance schedule proper under the stated standard. We think a 4 month delay in performance of a construction contract reasonably could be expected to have a substantial effect on bids depending on possible wage rate changes, the availability of equipment, and other similar factors subject to change during the delay. Cedar Valley maintains the delay in performance would have no major effect on its or other bidders' prices since the delayed portion of the work--Phases I and II--made up only 15 percent of the total project. It is not clear how Cedar Valley arrived at this calculation. Even accepting it as accurate, however, it remains that if 2 months are allotted for performance of Phases I and II in 1987, Phases III and IV will have to be delayed 2 months. The fact that Cedar Valley believes its price will not be affected by the initial 4 month delay and the 2 month delay in the remainder of the project does not establish that no other bidder's prices would be affected. We note that any impact would not have to be especially significant to affect the outcome of the competition, as Cedar Valley's bid of \$2,398,955 was only approximately \$60,000 less than the second low bid. Thus, we think the Army reasonably found that awarding a contract to Cedar Valley instead of soliciting bids on the changed schedule would be prejudicial to other bidders.

Cedar Valley requests reimbursement of the costs it incurred in submitting a bid and pursuing its protest with this Office. As we have concluded that the protest is without

merit, however, these costs are not recoverable. 4 C.F.R.  
§ 21.6(d) (1986).

The protest is denied.

*for Seymour E. Fros*  
Harry R. Van Cleve  
General Counsel