



Comptroller General  
of the United States

Washington, D.C. 20548

154175

## Decision

**Matter of:** S. Systems Corporation

**File:** B-259827

**Date:** April 25, 1995

---

Irene M. Guimera, Esq., Guimera & Guimera, for the protester.

Gregory H. Petkoff, Esq., and Milton D. Watkins, Esq., Department of the Air Force, for the agency.

Henry J. Gorczycki, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

---

### DIGEST

Agency has a compelling reason to cancel after bid opening an invitation for bids for repairs to an airport runway where performance of another project, which was not funded until after bid opening but which if completed first would enable the agency to mitigate the adverse mission capability impacts with substantial costs that would have been incurred if the canceled project had been performed as planned.

---

### DECISION

S. Systems Corporation protests the cancellation of invitation for bids (IFB) No. F34650-94-B-0038, issued by the Department of the Air Force for the replacement of a portion of Runway 17/35 (the main runway) at Tinker Air Force Base (AFB), Oklahoma.

We deny the protest.

On July 20, 1994, the Air Force issued the IFB as a total small disadvantaged business set-aside contemplating the award of a contract for the replacement of 1,605 feet of pavement on the main runway. This is the only runway on the base with sufficient length and width to handle all of the types of aircraft needed for full mission performance at Tinker AFB. During contract performance, the usable portion of the main runway will be sufficiently reduced so as to prohibit the arrival and departure of some types of aircraft at Tinker AFB. Therefore, while construction on the main runway is in progress, these large aircraft will have to be supported by in-air refueling services or diverted to other bases. Since the Air Force cannot substantially increase in-air refueling services for Tinker AFB, most of the affected missions will have to

be relocated, along with personnel, to other bases during the construction period. The Air Force estimated that the total costs associated with additional services and the relocation of aircraft and personnel during the anticipated construction period of 150 days will range from \$1.7 million to \$5.7 million or more.

The Air Force received five bids with S. Systems submitting the apparent low bid of \$1,720,955. A pre-award survey of that firm determined that S. Systems did not possess the capability to sufficiently manage a construction project of this size and, because delays would be adverse to the agency's mission as detailed above, recommended that no award be made to the firm. The contracting officer accepted this recommendation and determined that S. Systems was not responsible.

As a small business, S. Systems requested that it be processed for a certificate of competency (COC) from the Small Business Administration (SBA). On October 21, the regional office of the SBA advised the Air Force of SBA's intent to issue a COC. The Air Force expressed its opposition to the intended action. The SBA reviewed the agency's position and, on November 14, reiterated its intent to issue a COC. On the next day, the Air Force requested referral of the matter to the SBA's central office pursuant to Federal Acquisition Regulation (FAR) § 19.602-3.

On November 18, the contracting officer met with Air Force personnel, including the airfield manager, regarding the COC appeal. During a discussion concerning mission impact, the airfield manager stated that he understood that a military construction (MILCON) project to be administered by the Army Corps of Engineers for the expansion of Runway 12/30, the crosswinds runway, had received funding. The present crosswinds runway is shorter and narrower than the main runway and thus cannot handle large aircraft.<sup>2</sup> However, the expansion of the crosswinds runway would provide Tinker AFB with the capability to handle the arrival and departure of any aircraft on that runway, as well as on the main runway.

---

<sup>1</sup>The crosswinds runway project was first proposed for appropriation of MILCON funding in late 1993, and was finally authorized for MILCON funding in Pub. L. No. 103-337, Oct. 5, 1994, 108 Stat. 2663, 3035.

<sup>2</sup>The crosswinds runway cannot currently handle the large aircraft that would have to be diverted from the main runway during the repairs on the main runway.

Following the November 18 meeting, the Air Force reviewed the mission impact of the crosswinds runway project as it related to the main runway repairs. The Air Force found that the projected construction schedules for the crosswinds project and the repairs to the main runway overlapped. During the crosswinds project that runway would be completely closed. While construction was underway on the main runway, the air traffic that could still be accommodated on that runway would have to be in the direction away from the construction crews. During anticipated wind-shifts where the main runway could only handle aircraft traffic in the direction toward the construction area, the main runway would have to be completely closed or the construction project suspended where feasible. If both runways were under construction simultaneously, Tinker AFB would be closed to all air traffic during these wind-shifts. Thus, the Air Force determined that construction could occur on only one runway at a time or else the Tinker AFB mission would be adversely impacted.

The Air Force further found that if the crosswinds project were completed first the crosswinds runway could handle all of the aircraft that the main runway could not handle while under repair. In such case, the Air Force would not have its mission disrupted by the need to divert aircraft to other bases, and the government would not incur the costs associated with these diversions. Thus, completing the crosswinds runway project before the main runway repairs would save the government millions of dollars in operations costs that would otherwise be incurred if the main runway project was performed first or simultaneously with the crosswinds project. Based on the foregoing, the base commander determined that the repairs to the main runway should be delayed until after the crosswinds project was completed.

On December 14, the contracting officer made a determination to cancel the IFB for the main runway repairs. She found that delaying the construction on the main runway until after the crosswinds project was completed would avoid

---

<sup>3</sup>The Air Force projected that it would suspend construction on the main runway during the winter and thus construction would not begin until March 1995, even if the contract were awarded immediately (i.e., December 1994). The projected commencement of construction on the crosswinds project was in May 1995. While S. Systems questions whether suspension of this project was appropriate since the winter turned out to be mild, it has not shown the agency's judgment that performance should be suspended was unreasonable or a ploy to avoid award to S. Systems.

disruption to the agency's capability to support its flying mission at Tinker AFB, and that cancellation was warranted because the services solicited were no longer currently needed. On the next day, the Air Force issued an amendment canceling the IFB. This protest followed.

S. System alleges that the Air Force did not have a compelling reason to cancel the IFB after bid opening because it still requires the replacement of the section of the main runway as solicited and that the Air Force canceled the IFB to avoid awarding a contract to S. Systems.

Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award must be made to the responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the IFB. FAR § 14.404-1(a); National Linen Serv., B-257112; B-257312, Aug. 31, 1994, 94-2 CPD ¶ 94. Cancellation of a solicitation is proper under this compelling reason standard where the supplies or services being contracted for are no longer required or where, for other reasons, cancellation is clearly in the public's interest. FAR § 14.404-1(c)(3), (10); Thorpe Bldg. Servs., Inc., B-240831, Dec. 17, 1990, 90-2 CPD ¶ 493; National Linen Serv., supra.

Here, the agency reasonably found that the canceled services are not required until the crosswinds project is completed. It is not disputed that the Air Force can only permit construction on one runway at a time without adversely affecting the mission capability of Tinker AFB. Repair of the main runway either prior to, or simultaneously with, the crosswinds project will require increased in-air refueling services, diversion of aircraft to other bases, relocation of personnel to other bases, and, in the case of simultaneous construction, closing of the airfield under certain wind conditions. The government will incur substantial costs associated with these additional services, diversions, and relocations. On the other hand, completion of the crosswinds project before repair of the main runway will not only permit Tinker AFB to remain fully mission-capable during construction on both runways, but will also save the government millions of dollars since the costs associated with reduced mission capability at Tinker AFB during the main runway repairs will not be incurred.

Achieving substantial cost savings by canceling an IFB is in the public interest and constitutes a compelling reason for the cancellation. See National Linen Serv., supra. Moreover, while the main runway is still in need of replacement, the determination that services are no longer required means only that the agency does not have an immediate need for the services so as to require award under

the existing solicitation.<sup>4</sup> See Hughes Aircraft Co.-- Recon.; Entitlement to Cost and Protest, B-253811.2; et al., Nov. 24, 1993, 93-2 CPD ¶ 306; Thorpe Bldg. Servs., Inc., supra.

The protester alleges that the real reason the IFB was canceled was to avoid making award to S. Systems. We presume that procuring officials act in good faith and, in order for our Office to conclude otherwise, the record must show that procuring officials intended to injure the protester. Cycad Corp., B-255870, Apr. 12, 1994, 94-1 CPD ¶ 253. Although the record shows that the agency opposed an award to S. Systems before it became aware of the funding for the crosswinds project, there is no evidence that the decision to cancel the IFB was simply to avoid an award to S. Systems. The crosswinds project was specifically funded by Congress and was finally signed into law after bid opening. The agency administering the solicitation for the crosswinds project is the Army Corps of Engineers, not the Air Force, and the record indicates that the contracting office was not aware of this project until well after its funding. Thus, the decision to cancel the main runway project for now to allow the crosswinds project to proceed without undue adverse effect on the Air Force appears to be reasonably based on the information that became available after bid opening rather than on any specific bad faith effort toward the protester.

The protest is denied.

\s\ Ronald Berger  
for Robert P. Murphy  
General Counsel

---

<sup>4</sup>Although the Air Force will require these services at some point in the future, the agency states that it can sufficiently maintain the main runway until the crosswinds project is completed.