

REPORT TO
THE CONGRESS OF THE UNITED STATES

REVIEW OF THE
RELOCATION OF RAILROAD FACILITIES
WALTER F. GEORGE LOCK AND DAM
FORT GAINES, GEORGIA

CORPS OF ENGINEERS (CIVIL FUNCTIONS)
DEPARTMENT OF THE ARMY



BY
THE COMPTROLLER GENERAL
OF THE UNITED STATES

MARCH 1966

747541/087856



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

MAR 11 1966

B-156516

To the President of the Senate and the
Speaker of the House of Representatives

Herewith is our report on our review of the relocation of railroad facilities, necessitated by the construction of the Walter F. George Lock and Dam near Fort Gaines, Georgia, by the Corps of Engineers (Civil Functions), Department of the Army.

Our review of the railroad's general ledger accounts indicated that the Corps paid about \$770,000 more than it cost the railroad to have the relocation work performed. The railroad was able to perform the relocation work for less than the contract price, primarily because of favorable terms received in subcontracting certain work and because of a Government allowance for additional operation and maintenance costs, which the Corps should have known would not be incurred because of a change in the type of bridge to be constructed. Also included in the relocation costs recorded by the railroad were the costs of certain facility betterments valued at about \$21,000. This amount should be considered an added payment to the railroad because the Government generally is reimbursed for the cost of betterments.

Although it is the general policy of the Corps to use cost-reimbursable-type contracts for major relocations, the Corps entered into a firm fixed-price relocation contract with the railroad because it believed that the use of the fixed-price contract would result in savings to the Government. A more complete evaluation of the cost estimates, which we believe reasonably should have been made in the circumstances, would have indicated that the proposed amount of the fixed-price contract would not have resulted in the savings anticipated by the Corps and, therefore, that there was no need to deviate from the general policy which prescribes the use of cost-reimbursable contracts.

The railroad does not agree that it was paid \$770,000 more than the cost of the relocation, because certain costs for supervision

and other overhead expenses were not allocated and recorded in its records as part of the contract costs and because considerations other than construction costs were involved in the contract. When we requested that the railroad make available to us the subsidiary accounting records or work orders, so that we might examine the nature of the charges to the contract or provide us with a reasonable estimate of the unallocated costs, we were advised that the work orders could not be located and that the railroad was not in a position to make an estimate of the amount of unallocated costs without exhaustive accounting work.

While it is possible that some costs may not have been allocated to the relocation and that these costs would have reduced the \$770,000 difference between the contract amount and the railroad's costs, on the basis of data included in the cost estimates of the Corps and the railroad, it is unlikely that these costs would have resulted in a substantial reduction. Our reasons for this conclusion and the considerations referred to by the railroad are discussed in the report.

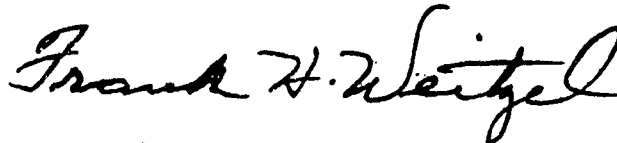
To minimize the possibility of the occurrence of similar situations in the future, we proposed that existing regulations be amended to require that requests by division or district engineers to enter into fixed-price contracts for major relocations be fully supported by detailed cost analyses or other justifications to enable the Chief of Engineers to adequately evaluate the circumstances requiring a deviation from the prescribed procedures. The Corps agreed to give further consideration to extending the requirements for the approval of the use of fixed-price contracts for major relocations and advised us that the Chief of Engineers had emphasized to division and district engineers the need to minimize the use of such contracts. Subsequently, however, we were informed that the existing regulations were considered adequate and that no revision was contemplated.

In view of the importance of adequate administrative review and determination of the need to deviate from prescribed contracting procedures, we are recommending that the Secretary of the Army direct

the Chief of Engineers to formally amend the existing regulations to require that field requests for permission to enter into fixed-price contracts for major relocations be supported by detailed cost analyses or other justifications to enable the headquarters office to properly evaluate the circumstances requiring a deviation from the prescribed procedures.

This report is being issued to advise the Congress of the need for the Corps of Engineers to strengthen existing regulations so as to provide for a more careful review and analysis of the cost estimates used by the Corps in determining the need to negotiate fixed-price contracts for major relocations.

Copies of this report are being sent to the President of the United States, the Secretary of Defense, the Secretary of the Army, and the Chief of Engineers.

A handwritten signature in black ink, reading "Frank H. Weitzel". The signature is written in a cursive style with a large, prominent initial "F".

Acting Comptroller General
of the United States

C o n t e n t s

	<u>Page</u>
INTRODUCTION	1
BACKGROUND	3
FINDING AND RECOMMENDATION	6
Use of a firm fixed-price contract results in railroad receiving more funds than needed to relocate facilities	6
Agency comments	15
Railroad comments	17
Conclusion	20
Recommendation to the Secretary of the Army	21
APPENDIX	
Principal officials of the Department of Defense responsible for administration of activities discussed in this report	25

REPORT ON
REVIEW OF THE
RELOCATION OF RAILROAD FACILITIES
WALTER F. GEORGE LOCK AND DAM
FORT GAINES, GEORGIA
CORPS OF ENGINEERS (CIVIL FUNCTIONS)
DEPARTMENT OF THE ARMY

INTRODUCTION

The General Accounting Office has made a review of a negotiated firm fixed-price contract awarded by the Mobile District (District), Corps of Engineers (Civil Functions) (Corps), Department of the Army, to a railroad company for the relocation of the railroad's facilities, necessitated by the construction of the Walter F. George Lock and Dam near Fort Gaines, Georgia. Our review was made pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Because Corps regulations provide for the use of cost-reimbursable contracts for major relocations, our examination was directed at the justification for the deviation from Corps regulations. We examined the Corps' policies and procedures for awarding contracts for the relocation of facilities and reviewed cost estimates, correspondence, and other pertinent records at the Office of the Chief of Engineers, Washington, D.C.; Office of the Division Engineer, Atlanta, Georgia; and Office of the District Engineer, Mobile, Alabama. We also examined the records of the railroad at Savannah, Georgia, and at Washington, D.C., to verify certain information furnished to us by railroad officials.

Although our examination was limited to the circumstances involving one contract and we are unable to state whether similar deficiencies have existed with respect to other relocation contracts, we believe that the deficiencies disclosed were of such significance that specific instructions should be issued by the Chief of Engineers to all division and district engineers in order to minimize the possibility of the occurrence of a situation similar to that described in this report.

The principal officials of the Department of Defense responsible for the administration of activities discussed in this report are listed in the appendix.

BACKGROUND

The development of a navigation and hydroelectric project known as the Fort Gaines Lock and Dam Project, subsequently redesignated the Walter F. George Lock and Dam, was authorized by the River and Harbor Act of July 24, 1946 (60 Stat. 634), in accordance with the plans and subject to the conditions recommended by the Chief of Engineers in a report dated May 13, 1946, House Document No. 300, 80th Congress, 1st Session. The Chief of Engineers' report stated that construction of the project would require, among other things, the alteration of certain bridges across the Chattahoochee River and tributary creeks and the relocation of 13,000 feet of railroad track and that the costs of these alterations were included in the estimated cost of the project. The report further stated that annual costs of operation and maintenance of the altered facilities were not included in the estimated cost of the project on the assumption that the owners would assume these costs upon completion of the alterations.

Some of the railroad facilities to be affected by construction of the project were facilities located in the vicinity of Eufaula, Alabama. Because the District planned to award contracts for the relocation of the various facilities except for the trackwork which was to be done by the railroad, the District entered into a contract with an architect-engineering firm (A-E) on April 1, 1958, for the preparation of plans and cost estimates for the relocation of the railroad's facilities, including an estimate for the construction of a low-level lift-span bridge. Subsequently, however, the District was authorized by the Chief of Engineers to enter into a fixed-price contract with the railroad, whereby the railroad would be responsible for awarding the contracts for the necessary

relocation work. Consequently, on May 16, 1960, the Corps entered into a negotiated fixed-price contract for \$3,035,385 with the railroad for the replacement of a 100-year-old bridge over the ~~Chattahoochee River~~, the replacement of a 65-year-old bridge over the Chewalla Creek, and the raising of railroad track above the design flood level of the reservoir.

Whenever a water resources project will inundate or damage property, the Corps is authorized to acquire the property or a flowage easement by purchasing the property or easement or by having the property condemned. In the case of railroads, highways, and utilities, it is often necessary to relocate their respective facilities. The relocation work generally is done at Government expense.

In connection with relocations, Corps regulations provide, in part, as follows:

"Cost-reimbursable contracts should be used on all major relocation contracts. Since the theory of relocations is that the owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken, the cost-reimbursement contract eliminates the possibility of profit or the risk of loss."

Although the Corps of Engineers is a decentralized organization which does not maintain complete records on relocation contracts at the headquarters office, we were able to obtain some pertinent information from the headquarters office and from certain of the division offices which showed that during the period July 1, 1964, through September 30, 1965, the Corps entered into 38 railroad relocation contracts having an estimated value of about \$86.8 million. In those cases where the railroads were to perform the relocation work, most of the contracts were cost reimbursable.

Under this type of arrangement, the railroad enters into subcontracts for certain features of the relocation and often performs some of the work with its own work force. The Corps then reimburses the railroad for its costs, without profit or loss to the railroad.

FINDING AND RECOMMENDATION

USE OF A FIRM FIXED-PRICE CONTRACT RESULTS IN RAILROAD RECEIVING MORE FUNDS THAN NEEDED TO RELOCATE FACILITIES

Although it is the policy of the Corps of Engineers (Corps) to use cost-reimbursable-type contracts for major relocations, the Corps entered into a firm fixed-price relocation contract with the railroad because it believed that such an arrangement would result in savings to the Government. A more complete evaluation of the cost estimates, which we believe reasonably should have been made in the circumstances, would have indicated that the proposed amount of the fixed-price contract would not have resulted in the savings anticipated by the Corps and, therefore, that there was no need to deviate from the general policy which prescribes the use of cost-reimbursable contracts.

As a result of the use of the fixed-price type of contract, the Corps paid the railroad substantially more than it cost the railroad to have the relocation work performed. Our review of the railroad's general ledger accounts, which were the only accounting records made available to us by the railroad, indicated that the Corps paid about \$770,000 more than it cost the railroad to have the relocation work performed. In addition, the railroad obtained certain facility betterments valued at about \$21,000. The railroad was able to perform the relocation work for less than the contract price primarily because of favorable terms received in subcontracting certain work and because of a Government allowance for operation and maintenance.

Since the Corps' policy prescribing the use of cost-reimbursable-type contracts for major relocations is predicted upon

the theory that the owner of property being relocated should neither suffer a loss nor make a profit, and since betterments generally are paid for by the owner of the property being relocated, the Government incurred a substantial amount of additional cost which might have been prevented, in whole or in part, if the Corps had made a more complete evaluation of the cost estimates prior to entering into the fixed-price contract.

During negotiations, the railroad objected to a plan proposed by the Corps to construct a low-level bridge with a lift span over the Chattahoochee River because the lift-span bridge would have required additional operation and maintenance costs that were not required in connection with the existing fixed-span bridge. The railroad estimated that the additional operation and maintenance costs would be about \$10,500 annually. In a letter dated May 28, 1959, the Division Engineer requested that the Chief of Engineers approve a lump-sum payment of \$235,300 to the railroad for additional operating costs. The \$235,300 was determined by capitalizing the \$10,500 annual operation and maintenance costs for 50 years at 4 percent interest. The request by the Division Engineer was made on the basis that such payment represented a savings to the Government of \$252,700 because it was believed that construction of a high-level bridge not requiring a lift span would cost about \$488,000 more than the low-level bridge with a lift span.

The Corps' General Counsel reviewed the Division Engineer's request and expressed the opinion that there was no legal justification for the proposed payment of operation and maintenance costs because the document which formulated the basis for congressional approval of the project provided for the owners to pay the operation and maintenance costs of the relocated facilities and did not

authorize the Corps to pay such costs. Consequently, on September 1, 1959, the Chief of Engineers authorized the negotiation of a fixed-price contract with the railroad in an amount sufficient to compensate for the construction of a low-level bridge, giving consideration to the fact that the proposed bridge would have a vertical clearance lower than that of the existing bridge. We were advised that the Corps recognized that the Government's obligation could extend to the full cost of the high-level bridge and therefore, in the interests of savings to the Government, the Mobile District (District) was authorized to negotiate any lump-sum settlement with the railroad, which would be less than the cost of constructing a high-level bridge.

Our review showed that, when the use of a fixed-price type of contract was authorized because of the reported \$488,000 difference in the costs of the two types of bridges, the District had no detailed support for this amount. District records indicate that an architect-engineering firm (A-E) had been asked to make a "quick study" of the estimated cost of constructing a high-level bridge and that the amount of \$488,000 had been reported on the telephone as the added cost of the high-level bridge. Previously, in April 1958, the Corps had entered into a contract with the same A-E for the preparation of plans and cost estimates for the relocation of the railroad's facilities, including construction of a low-level bridge.

Even though the Chief of Engineers had been furnished with the District's design memorandum for the relocation, which contained detailed estimates for the construction of a low-level bridge, there is no indication that a similar estimate for the construction of a high-level bridge was requested. We believe that the Chief of

Engineers should not have authorized the use of a fixed-price contract, deviating from the prescribed contracting policy of the Corps, without the headquarters office making a review and comparison of detailed cost estimates for the construction of both types of bridges.

After the Chief of Engineers authorized the use of a fixed-price contract, the District, on September 28, 1959, entered into a contract with the A-E for the preparation of the estimated cost of constructing the most economical type of high-level bridge. The A-E submitted the detailed cost estimate to the District in October 1959. On October 19, 1959, the District requested that the A-E submit an itemized estimate of the cost of constructing a low-level bridge which would correspond item-by-item with the high-level bridge estimate previously received from the A-E. The A-E submitted this estimate to the Corps on the same day it was requested. (See p. 12 for a summary of both estimates.) The A-E was not requested to make a detailed comparison and evaluation of the estimates for both types of bridges and, consequently, made no comments as to the relative costs of either bridge.

In a letter dated October 15, 1959, the District advised the railroad that the Chief of Engineers had disapproved the proposal that the Corps pay for the operation and maintenance costs of the proposed low-level bridge and that, if the railroad would withdraw the request for such payment, the relocation could proceed as proposed. The letter continued as follows:

"However, if the proposal for the Corps of Engineers to do the work but excluding any payment for operation and maintenance is not satisfactory, it is requested that you consider the construction by the Railroad of the relocation upon a lump-sum basis. The mechanics of this

proposal were explained in detail at the meeting with you *** in Mobile on 25 September 1959."

By letter dated November 2, 1959, the railroad advised the District Engineer of its willingness to negotiate a fixed-price contract on the basis of the railroad's performing all of the relocation work.

At a meeting on January 14, 1960, the railroad agreed to accept a \$3,035,385 fixed-price contract to perform all of the work necessary to relocate two bridges and to raise sections of the railroad track. The railroad also advised the Corps of its intent to design and construct a high-level bridge. This information, along with a revised cost estimate prepared by the District for the relocation, including the estimated cost of constructing a low-level bridge, was submitted to the Chief of Engineers for approval on January 15, 1960. Approval was given on February 9, 1960, and the contract with the railroad was entered into on May 16, 1960.

Because the District's estimate justifying the contract price was prepared on a basis different from that of earlier estimates prepared by the District and the A-E and because the estimate contained increases in quantities and prices for certain items, we were unable to make a detailed comparison of the estimates, and therefore we were unable to determine the amount actually allowed by the District for operation and maintenance. However, a memorandum in the District's records indicated that the District's estimate of \$2,987,730, used during final negotiations with the railroad, allowed for operation and maintenance in the form of what was referred to as "a generous original estimate."

Our review of the cost estimates prepared by the railroad and used during final negotiations disclosed that its estimate of \$3,083,040 specifically included \$235,300 for operation and

maintenance. Since the contract price of \$3,035,385 is the mean between the railroad's estimate of \$3,083,040 and the District's estimate of \$2,987,730, it appears that the contract price included a substantial allowance for operation and maintenance.

We informed the Corps that, on the basis of the cost estimates furnished by the A-E, the estimated cost of the high-level bridge appeared to be less than the estimated cost of the low-level bridge, including the allowance for operation and maintenance and, therefore, the Corps should have entered into a cost-reimbursable type of contract for the relocation of the railroad's facilities. The Corps advised us that, on the basis of the formal estimate for the high-level bridge furnished by the A-E in October 1959, the high-level bridge was estimated to cost about \$329,400 more than the low-level bridge.

We examined the estimates used by the Corps in determining the \$329,400 difference and other data available to the District prior to final negotiations with the railroad. Our examination showed that, because of the omission of certain items in the low-level bridge estimate, which it would have been reasonable for the Corps to observe, the estimated cost of the high-level bridge was only about \$120,000 greater than the estimated cost of the low-level bridge, excluding any part of the proposed allowance of \$235,300 for operation and maintenance. The following schedule shows, in summary form, how the Corps arrived at the \$329,400 difference and the basis for our adjustments to this amount:

	High-level bridge	Low-level bridge	<u>Difference</u>
A-E estimates used by Corps:			
Bridge	\$ 751,400	\$1,011,900 ^a	
10 percent contingency	<u>75,200</u>	<u> </u>	
Bridge total	826,600	1,011,900	
Fill approaches	1,043,800	611,400	
10 percent contingency	<u>104,400</u>	<u>61,100</u>	
Fill approaches total	1,148,200	672,500	
Removing existing structure	36,000	36,000	
Trackwork by railway	<u>93,900</u>	<u>84,900</u>	
Subtotal	2,104,700	1,805,300	
Engineering 10 percent (note b)	<u>210,500</u>	<u>180,500</u>	
Total	2,315,200	<u>1,985,800</u>	\$329,400
Adjustments to low-level bridge estimate:			
10 percent contingency for bridge		101,200	
Signal system required for bridge (note c)		58,700	
Revised estimate for bridge furnished by A-E on Dec. 31, 1959		22,400	
10 percent contingency for signal system and revised estimate for bridge		<u>8,100</u>	
Subtotal		190,400	
Engineering 10 percent		<u>19,000</u>	
Total adjustments	<u> </u>	<u>209,400</u>	<u>209,400</u>
Adjusted total	<u>\$2,315,200</u>	<u>\$2,195,200</u>	<u>\$120,000</u>

^aThe A-E did not furnish a breakdown of this amount because an itemized estimate previously had been furnished to the Corps on July 7, 1959. A 10 percent factor for contingencies was not included in either estimate.

^bThe 10 percent factor for engineering costs was added to the A-E estimates by the Corps.

^cThe signal system estimate was prepared by the railroad in August 1959 and included in the final price justification prepared by the Corps. The signal system would have been used to warn approaching trains that the lift span was in an open position.

We discussed the aforementioned adjustments with officials at the headquarters office of the Corps, who generally concurred as to their propriety. These officials advised us of their belief that,

if the Washington office had known that the difference in the estimated costs of the two types of bridges was substantially less than the reported \$488,000, the use of the fixed-price contract would not have been authorized.

At the commencement of our review we were informed by a railroad official that the railroad performed the relocation work for \$770,000 less than the price of its contract with the Corps. Our review of the railroad's general ledger accounts, which were the only accounting records made available to us, confirmed this amount, although the railroad later advised us that some of the costs of the relocation had not been allocated to the cost of the contract. (See p. 17.)

We were advised by another official of the railroad that the railroad was able to have the relocation work performed for less than the contract price because (1) the railroad's estimate included a \$235,300 allowance for operation and maintenance and (2) favorable prices were received from contractors whose work forces were involved in a large highway relocation in the area at the time of the railroad relocation. Our review of the railroad's records confirmed that certain of the railroad's subcontract costs were substantially below the estimates that had been made by the A-E, the Corps, and the railroad. For example, actual subcontract costs for excavating and supplying riprap were about \$518,000 less than the costs previously estimated by the railroad.

As a result of the allowance for operation and maintenance and the favorable subcontract prices, the railroad was able to have the relocation work performed for substantially less than the amount of its firm fixed-price contract with the Corps and to obtain certain

railroad facility betterments which the railroad valued at about \$21,000. These betterments consisted of increased carrying capacity for the Chattahoochee River bridge, an inner guard rail for the Chewalla Creek bridge, and heavier rails and accessories for certain sections of the track that were relocated.

Agency comments

The Corps advised us that it did not agree with our conclusion that a cost-reimbursable type of contract should have been used for the relocation of the railroad's facilities because (1) the cost estimates furnished by the A-E indicated that a low-level bridge would be less costly than a high-level bridge, (2) the District Engineer was not authorized to provide an allowance for operation and maintenance, and (3) the owner of property being relocated could not be forced to accept a cost-reimbursable type of contract.

Although the estimates furnished by the A-E in October 1959 may have indicated, at first glance, that a low-level bridge would cost less than a high-level bridge, the District also had data available on the low-level bridge estimate, which, if reviewed more carefully, would have disclosed that the cost differential between the high-level bridge and the low-level bridge was less than the proposed allowance for operation and maintenance. Notwithstanding the Corps' statement that the District Engineer was not authorized to pay for the added operation and maintenance costs of a lift-span bridge, railroad and District records of the contract negotiations indicate that the final contract price included an allowance for operation and maintenance.

Since we were unable to determine the precise amount of the operation and maintenance allowance included in the contract price, we could not determine the amount by which the allowance exceeded the added cost of the high-level bridge. However, we believe that a more careful evaluation by the District, of all the available estimates, would have disclosed that the proposed amount of the fixed-price contract would not have resulted in the savings anticipated by the Corps and, therefore, there was no reason for the

Corps to deviate from its regulations which provide for the use of cost-reimbursable contracts for major relocations.

As to the Corps' statement that the property owner being relocated could not be forced to accept a cost-reimbursable type of contract, the records showed that initially the Corps intended to award the contracts for the relocation of the railroad's facilities, except for the trackwork to be performed by the railroad, because the railroad was reluctant to accept this responsibility. The Chief of Engineers authorized the use of the firm fixed-price contract on September 1, 1959, and the District suggested its use to the railroad during a meeting held on September 25, 1959.

Inasmuch as the records did not show that the Corps had offered the railroad a cost-reimbursable type of contract for construction of a high-level bridge, there was no indication that the railroad refused or would have refused such an arrangement for the type of bridge wanted. However, if the railroad had refused to accept such an agreement, the Corps could have engaged contractors to perform the work and thereby effected all or a substantial part of the savings which the railroad was able to accomplish. Although the Corps advised us that it could not be assumed that the Corps, through competitive bidding, could have obtained the same favorable prices as the railroad obtained for excavating and supplying riprap, the Corps' design memorandum for the relocation stated that performance of the relocation by the Corps "would offer the possibility of effecting substantial savings in construction costs by permitting competitive bidding."

The Corps advised us that, in view of our disclosure that the railroad had the relocation work performed for about \$770,000 less than the amount of its contract with the Corps and received betterments valued at about \$21,000, it would request that the railroad

refund the excess payment made by the Corps in connection with the relocation contract, as proposed by us. Subsequently, the Corps requested that the railroad make a refund.

Railroad comments

On July 12, 1965, the railroad advised the District Engineer that, although there was a \$770,000 difference between the contract price and the cost of performance as reported by its accounting department, the difference was not profit because the contract price had included consideration for certain other matters related to the relocation and because certain costs of an overhead nature had not been allocated to the cost of the relocation. The railroad concluded that, for these reasons and the fact that it had assumed certain risks under the fixed-price type of contract, it had no legal or moral obligation to make a refund.

In particular, the railroad cited the following four items which it contended were part of the consideration included in the contract price: (1) certain rights-of-way were relinquished that were substantially more valuable than the rights received in exchange from the Government, (2) a continuing obligation placed on the railroad by the "hold harmless" or release clause of the contract, (3) possible costs for stabilizing the rearranged facilities that might not be covered by the "deferred construction" clause of the contract, and (4) certain indirect and overhead costs related to work performed by the railroad's work forces and supervision, principally by supervisory engineering personnel, accounting, and law department costs that were not charged as part of the costs of performing the contract.

With respect to items 1, 2, and 3, these same conditions would have been applicable even if the Corps had entered into a

cost-reimbursable contract with the railroad because the railroad would have been paid only for the actual relocation costs incurred. Corps regulations do not provide for payment for speculative costs or consequential damages except in unusual situations. This would appear to eliminate the three items from consideration for added compensation.

In connection with the exchange of property rights with the railroad, the Corps estimated that, exclusive of improvements, the rights-of-way or easements obtained from the railroad were worth about \$17,500. An estimate of the value of the easements granted to the railroad was not available, but, presumably, the railroad accepted them as satisfactory replacement, inasmuch as the negotiation records make no mention of any objections by the railroad.

The "hold harmless" or release clause in the contract is for the protection of the Government in that the railroad agrees to waive any claim for damages to its property after the relocation because of flooding. The relocation was planned on the basis of the relocated facilities' being protected to the extent of the maximum flood of record. That does not mean that a greater flood could not occur and possibly damage the relocated facilities of the railroad. However, if the project were not constructed and there were no necessity for the relocation, it also is possible that a flood greater than the maximum flood of record could occur and cause extensive damage to the railroad's existing facilities.

The deferred construction clause of the relocation contract provides that the Government, for a period of five years, shall reimburse the railroad for the actual costs incurred, over and above ordinary maintenance, that are necessary to stabilize the relocated facilities of the railroad. This clause appears to be reasonable,

and, while it is possible that the railroad might have to do some remedial work not covered by the contract, consideration for such costs are not included in the contract price, apparently because they are of a speculative nature.

Although the railroad may have suffered a loss or may incur some costs in connection with the three aforementioned items, we believe that any losses or costs are more than offset by the fact that the railroad has received two new bridges with extended service lives as replacements for two bridges, 65 and 100 years old.

On September 27, 1965, we requested that the railroad make available to us the subsidiary accounting records or work orders so that we might determine the nature of the charges to the contract. In the event the work orders could not be located, we requested that the railroad provide us with a reasonable estimate of the unallocated costs mentioned in the railroad's letter of July 12, 1965, to the Corps.

The railroad advised us on December 1, 1965, that it could not locate the work orders and that it was not in a position to furnish a reasonable estimate of the unallocated costs without imposing an unjustifiably large workload upon its already burdened accounting staff. We further were advised that the railroad is not in the general contracting business and, therefore, is not ordinarily concerned with the problems of allocating costs to the performance of particular contracts in accordance with principles generally applicable to the performance of Government contracts by those customarily engaged in such work.

In the absence of the work orders, we were unable to confirm the railroad's statement concerning the omission of certain related costs. Although we are not in a position to estimate the amount of

any unallocated costs, on the basis of estimates prepared by the railroad and the Corps for the relocation work, it is unlikely that such amounts would substantially reduce the \$770,000 difference between the contract price and the costs charged to the relocation.

This conclusion is predicated on the fact that (1) only a relatively small portion of the relocation work was to be performed by the railroad's own work forces, (2) the railroad's estimate for the entire relocation did not contain any factor for accounting and general supervision which, presumably, would have been included if considered significant, and (3) the Corps' estimate for the relocation provided for design engineering, supervision, and overhead on the basis of a 9-percent factor applied to total estimated costs; design engineering performed by the A-E on a contract basis amounted to about \$90,000 or about half of the 9-percent factor when applied to actual costs charged to the relocation.

Since the Government has no legal right to collect any excess amount paid to the railroad and since the Corps has made a reasonable but unsuccessful effort to obtain a voluntary refund, we are not making any recommendation with respect to this matter.

Conclusion

Because our review indicated that the Corps paid the railroad about \$770,000 more than it cost the railroad to have the relocation work performed and because of the possibility that a similar situation might recur, we proposed that the Corps amend existing regulations to require that requests by division or district engineers to enter into fixed-price contracts for major relocations be fully supported by detailed cost analyses or other justifications to enable the Chief of Engineers to adequately evaluate the circumstances requiring a deviation from the prescribed procedures.

The Corps agreed to give further consideration to extending the requirements for the approval of the use of fixed-price contracts for major relocations and advised us that the Chief of Engineers had emphasized to division and district engineers the need to minimize the use of such contracts.

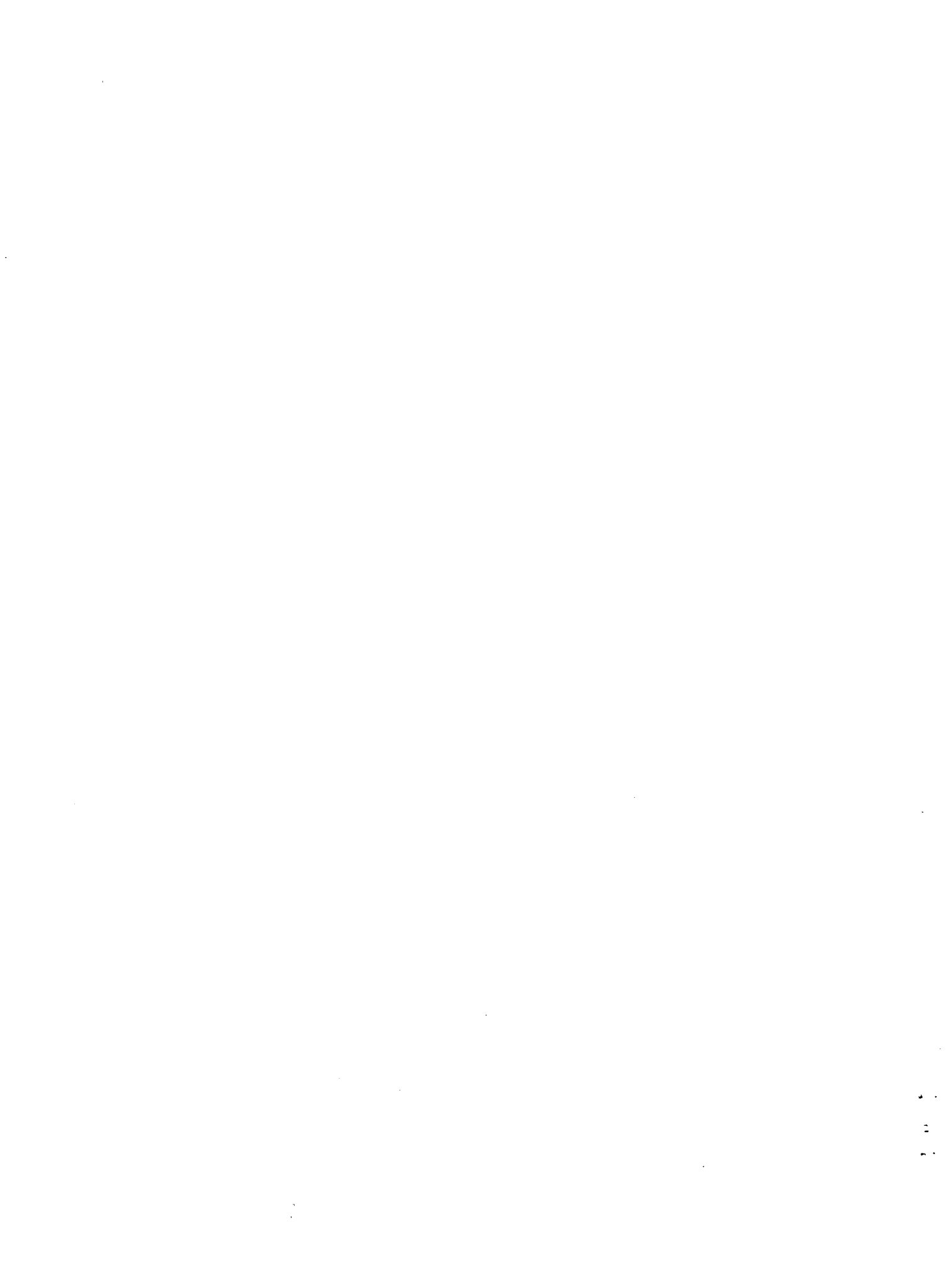
Subsequently, however, we were informed that the existing regulations were considered adequate and that no revision was contemplated.

While the Chief of Engineers has emphasized the need to minimize the use of fixed-price contracts for major relocations, because of the substantial number of complex railroad relocations being performed by the Corps, there is the possibility that some relocations may require deviation from the prescribed procedures. Because of the importance of adequate administrative review and determination of the need for such deviation, we believe that the governing regulations should formally provide for detailed cost analyses and determinations to minimize the possibility of profit or risk of loss to the owner of the property being relocated.

Recommendation to the Secretary of the Army

We recommend that the Secretary of the Army direct the Chief of Engineers to formally amend the existing regulations to require that field requests for permission to enter into fixed-price contracts for major relocations be supported by detailed cost analyses or other justifications to enable the headquarters office to properly evaluate the circumstances requiring a deviation from the prescribed procedures.

APPENDIX



PRINCIPAL OFFICIALS OF THE DEPARTMENT OF DEFENSE

RESPONSIBLE FOR

ADMINISTRATION OF ACTIVITIES

DISCUSSED IN THIS REPORT

	<u>Term of office</u>	
	<u>From</u>	<u>To</u>
SECRETARY OF DEFENSE:		
Neil H. McElroy	Oct. 1957	Dec. 1959
Thomas S. Gates, Jr.	Dec. 1959	Jan. 1961
Robert S. McNamara	Jan. 1961	Present
SECRETARY OF THE ARMY:		
Wilber M. Brucker	July 1955	Jan. 1961
Elvis J. Stahr, Jr.	Jan. 1961	June 1962
Cyrus R. Vance	July 1962	Jan. 1964
Stephen Ailes	Jan. 1964	July 1965
Stanley R. Resor	July 1965	Present
CHIEF OF ENGINEERS:		
Lt. General E. C. Itschner	Oct. 1956	May 1961
Lt. General W. K. Wilson, Jr.	May 1961	June 1965
Lt. General William F. Cassidy	July 1965	Present
DIVISION ENGINEER, SOUTH ATLANTIC DIVISION:		
Maj. General Frank M. Albrecht	July 1957	June 1960
Brig. General Howard A. Morris	June 1960	Jan. 1963
Maj. General Alvin C. Welling	Jan. 1963	Present
DISTRICT ENGINEER, MOBILE DISTRICT:		
Colonel Robert W. Love	July 1958	July 1961
Colonel Daniel A. Raymond	July 1961	Present