

**DECISION**



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

[Protest of IFB Cancellation]

10,840  
10,845

FILE: B-193929

DATE: July 24, 1979

MATTER OF: Somers Construction Company, Inc. -- *DL6700089*  
Reconsideration

**DIGEST:**

In response to request for reconsideration of prior decision upholding cancellation of IFB caused by lack of agency funds, GAO clarifies decision. Decision was based solely on agency's unquestioned legal right to cancel solicitation in this circumstance irrespective of other questions concerning validity of Government cost estimate for IFB work, reasonableness of protester's bid, and genuineness of agency intention to revise IFB specifications for future bidding. Consequently, prior decision is affirmed.

*AGC 00305*

By letter of June 20, 1979, Somers Construction Company, Inc. (Somers), requested reconsideration of our decision in Somers Construction Company, Inc., B-193929, April 24, 1979, 79-1 CPD 217. Our decision denied Somers' protest against the cancellation of invitation for bids (IFB) DACA31-79-B-0009 issued by the Department of the Army, Corps of Engineers, for a corrosion control facility at Dover Air Force Base, Delaware.

Background

Somers submitted the low bid of \$10,451,266 under the IFB; Somers' bid, however, was substantially higher than both the Government estimate (\$8,139,100) and the funds authorized (\$8,481,000) for the work. Because of these facts the Army canceled the IFB.

Somers' protest against the cancellation essentially complained that the Army was remiss in failing to secure additional funds after bid opening to support an award to Somers; moreover, Somers insisted that if Government funding for the project was not increased or if significant changes in the scope of the work were not made, any future IFB for the work would also have to be canceled.

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We concluded that the Army's decision to cancel the IFB was not subject to legal question. This was so because the internal management of an agency's funds generally depends on judgment concerning which projects and activities should receive greater (or lesser) amounts of funds. Additionally, we could not question the Army's stated position that the "project is being redesigned in an attempt to insure that responsive competitive bids within the funds available are received upon resolicitation."

#### Request for Reconsideration

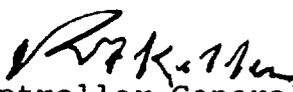
Somers says that the project in question was recently rebid and that the "low bid was again approximately \$2,000,000 above the Government estimate, a virtually identical repeat of the situation that existed upon receipt of bids the first time." Somers further says that the results of the rebidding show that "there was little of consequence in the way of redesign which had a bearing on the cost of the facility." Finally, Somers argues that the results of the rebidding show that the Army was incorrect in its insistence on the validity of the Army estimate for the original IFB and in its related judgment that Somers' low bid on IFB-0009 was unreasonably high. (Both of these Army positions were questioned by Somers in its original protest; however, we found it unnecessary to consider the validity of these positions in view of our conclusion that the lack of funds to support an award to Somers, in itself, justified canceling the IFB.)

#### Analysis

To the extent that Somers believes our original decision upholding the IFB cancellation was based on assumptions about the Army's redesign of specifications for future bidding, we clarify our prior decision by rejecting Somers' notion. Actually, the decision was based solely on the Army's unquestioned legal right to cancel the solicitation because of lack of funds irrespective of the disputes over the validity of the Government's estimate and the reasonableness of Somers' bid. There is nothing in Somers' present

request which changes this fundamental conclusion. Our remark concerning the Army's intent to revise its specifications for future bidding was meant only to convey our reasoning for not recommending corrective action.

Prior decision affirmed.

  
Deputy Comptroller General  
of the United States