

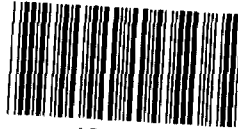
126613  
RAN



UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

NATIONAL SECURITY AND  
INTERNATIONAL AFFAIRS DIVISION

3-215159



126613

APRIL 3, 1985

The Honorable Strom Thurmond  
Chairman, Subcommittee on Military Construction  
Committee on Armed Services  
United States Senate

Dear Mr. Chairman:

Subject: The Army Was Justified in Negotiating a  
Supplemental Agreement for Part of a Barracks  
Complex at Fort Irwin, California  
(GAO/NSIAD-85-22)

On October 7, 1983, you asked us to review contracting arrangements for constructing the final 2 buildings of an 11-building complex at the National Center for Combat Training, Fort Irwin, California. You were concerned whether the Army was justified in negotiating a supplemental agreement to an existing contract rather than awarding a new contract on the basis of competitive bidding. This report confirms much of the data we previously provided your Subcommittee for use during the Senate's fiscal year 1985 Joint Military Construction hearings held by the Armed Services and Appropriations Committees.

The contract for the first nine buildings was awarded to Metric Construction Company, Inc., on March 31, 1982, at a price of about \$12.4 million. Metric was the lowest bidder among 14 contractors. The final two buildings were procured under a supplemental agreement to the existing Metric contract at a price of about \$4.5 million, and the building complex was completed in July 1984.

Shortly after the Army's decision in early 1983 to negotiate a supplemental agreement, two potential bidders on the remaining two buildings filed a formal bid protest with our office. The protest alleged that the contractors had been deprived of the right to compete for the contract and that negotiating a supplemental agreement would result in a higher cost to the government. In our decision of August 23, 1983 (B-211189.3), we denied the formal protest, citing the Army Corps of Engineers January 23, 1983, "Determinations and Findings" as justification for not procuring the final two buildings competitively. The Army's findings centered on the extra costs and construction delays that would occur if two contractors worked on the same site at the same time.

031666

(393028)

While our analysis of the bid protest was limited to an examination of the Army's "Determinations and Findings" and statements by the protesting parties, our current review included examining the planning process for the 11-building complex, visiting the construction site, and interviewing key personnel involved in the decision to procure the last 2 buildings by supplemental agreement.

In view of the potential for construction delays and increased costs caused by two contractors working simultaneously in the same area, we believe the Army was justified in negotiating a supplemental agreement with Metric. The Defense Acquisition Regulation, paragraph 3-210 (xvii), states that contracts may be negotiated

". . . when the contemplated procurement involves construction where a contractor or group of contractors is already at work on the site and it would not be practicable to allow another contractor or an additional contractor to work on the same site . . ."

The compact layout of the 11-building complex, the proximity of the final 2 buildings to those already under construction, and the lack of nearby storage areas indicated a high potential for construction congestion. In our view, such congestion could have led to conflicting contractor requirements, disputes, and construction delays, which could have extended completion of the complex and caused contractors to seek additional compensation. The Army Corps of Engineers estimated a delay of about 10 months and additional costs of about \$1 million had a separate contract been competitively awarded for the remaining two buildings.

In the absence of an actual invitation for bids, we could not determine if competitive procurement would have resulted in lower or higher contract costs for the remaining two buildings. However, had the Corps recognized, during the early phase of planning the project, the potential problems created by two on-site contractors, it could have written limits into the first contract that would have allowed the contract for the remaining two buildings to be competitively bid. The Corps has since taken action to issue specific guidance to all field offices to strengthen the planning process on multiphased contracts.

- - - -

The details of our study are included in enclosure I. We have also enclosed a copy of our August 23, 1983, bid protest decision on the Fort Irwin matter. (See enc. IV.)

As requested by your office, we did not obtain formal Department of Defense comments on this report; however, we discussed it with agency officials. Army Headquarters officials stated that the report was consistent with information provided by the Corps' district offices and given in congressional testimony. District office comments, where appropriate, are incorporated in the report.

We are sending copies of this report to the Chairmen, House and Senate Committees on Appropriations and on Armed Services; the Chairmen, House Committee on Government Operations and Senate Committee on Governmental Affairs; the Director, Office of Management and Budget; and the Secretaries of Defense and the Army.

Sincerely yours,



Frank C. Conahan  
Director

Enclosures - 3

THE ARMY WAS JUSTIFIED IN NEGOTIATING A  
SUPPLEMENTAL AGREEMENT FOR PART OF A  
BARRACKS COMPLEX AT FORT IRWIN, CALIFORNIA

BACKGROUND

Fort Irwin, located about 175 miles northeast of Los Angeles, was deactivated in 1971. In early 1981, the Army reactivated the installation as the National Training Center for combat training. As part of the reactivation, the Army developed a renovation and construction plan because many existing facilities needed to be renovated and new ones were to be constructed.

In 1980, the Army began planning for a new 11-building complex consisting of 4 barracks, 2 buildings each containing classrooms and a battalion headquarters, 3 administration and supply buildings to be occupied by a total of 13 companies, a dining facility, and a central energy plant to service the entire complex. The complex will provide working and dining facilities for 2 battalions of about 1,500 soldiers; about 700 soldiers will live in the new barracks. These battalions are part of the 3,500 soldiers permanently stationed at Fort Irwin and are the opponent force for visiting troops receiving combat training.

This complex was programmed by the Army and approved by the Congress in two separate fiscal year military construction programs. In fiscal year 1982, nine buildings were approved and in fiscal year 1983, the remaining two buildings (a company administration building and a dining facility) were approved. The fiscal year 1982 construction was to be accomplished in 24 months, while the fiscal year 1983 construction was to be accomplished in 12 months. The two segments were originally programmed to be completed by May 1984; however, delays caused by design changes by the Corps and inclement weather extended the construction period to July 16, 1984.

On January 12, 1982, the Sacramento District Office of the Corps of Engineers issued an invitation for bids (IFB) for 9 of the 11 buildings. Fourteen companies responded and the contract was awarded to the low bidder, the Metric Construction Company, Inc., on March 31, 1982, for \$12,425,000. The contract provided for Metric to construct 4 barracks; 2 battalion headquarters buildings; 2 company administration buildings; a central energy plant; and the utilities, guttering, curbing, driveways, and sidewalks for the entire 11-building complex.

Shortly after the award of the basic contract in March 1982, the Corps' Los Angeles District Office became concerned that if the contract for the remaining two buildings was awarded to a different contractor, congestion caused by a second contractor on-site could adversely affect the cost and/or timely completion of the work. Unaware of this concern, on December 15, 1982, the Corps' Sacramento District Office published an advance notice to bidders stating that an IFB would be issued for constructing the last two buildings. After considering the potential adverse effects of having a second contractor on site, the Army decided to negotiate a supplemental agreement with the on-site contractor--Metric--rather than competitively bid the work. On December 21, 1982, the Corps' Sacramento Office advised potential bidders that the IFB had been postponed.

#### OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine whether the Army was justified in using a supplemental agreement to negotiate the procurement of the remaining buildings--the dining facility and one of the administration buildings. Our fieldwork, carried out between December 1983 and February 1984, was performed in accordance with generally accepted government auditing standards.

We interviewed (1) U.S. Army officials responsible for major construction projects, (2) Army officials at Fort Irwin, and (3) officials of the Army Corps of Engineers in Washington, D.C.; Sacramento; Los Angeles; and Fort Irwin, and (4) the president of the Metric Construction Company. We also reviewed the contract and related documents for these projects and visited the Fort Irwin construction site.

As requested by your office, we did not obtain formal agency comments; however, we discussed our observations with the Army officials responsible for the project.

#### A SUPPLEMENTAL AGREEMENT WAS JUSTIFIED

Shortly after the Army's decision to negotiate a supplemental agreement, two potential bidders on the two remaining buildings filed formal protests with us. The protests alleged that the contractors had been deprived of the right to compete for the contract and that negotiating a supplemental agreement would result in a higher cost to the government.

On August 23, 1983, after examining the Army's "Determinations and Findings" (see p. 7) and statements by the protesting parties, we issued our decision, B-211189.3, denying the formal protest to the negotiation of the supplemental agreement.

We cited the Army January 3, 1983, "Determinations and Findings" as reasonable justification for not issuing an IFB to procure the buildings competitively.

We believe that on the basis of the circumstances at the time, the Army was justified in procuring the last two buildings in the complex by supplemental agreement. However, as discussed on page 9, we believe that improved planning could have enabled the Army to procure them competitively.

Army reasons for negotiating  
a supplemental agreement

The Corps' Los Angeles District Office--the construction office--believed that a second on-site contractor would create considerable construction congestion problems. The problems would result because the dining hall was only 10 feet from one of the structures already under construction--the central energy plant. (See enc. II.) To avoid this congestion, the resident engineer recommended that the Army negotiate a supplemental agreement with the on-site contractor--Metric--for these two buildings.

The Corps' Los Angeles District Office also estimated that if two contractors worked at the site at the same time, problems might increase the overall cost of construction by about \$1 million. The Corps' analysis showed that there would be a 6-month delay and an estimated cost impact of about \$700,000 on the first contract for nine buildings, as follows:

- \$108,000 would be spent because supplies would have to be stored further from the main construction site to accommodate two contractors. This would require additional time and expense to make numerous trips to and from the supply area.
- \$50,000 would be spent because with two contractors working in such close quarters, it was expected that the use of heavy equipment would damage curbs, gutters, and other site work in place and would require repairs.
- \$175,000 would be spent because with a space of only 10 feet between the energy plant and the dining facility and the remainder of the complex being tightly clustered, the Corps, on the basis of its past experiences, anticipated claims asserting interference by one contractor with the other contractor's ability to work.

--\$360,000 would be spent because of work delays on the first nine buildings causing the contractor to incur additional on-site overhead expenses for that period.

A similar analysis by the Corps on the contract for the remaining two buildings estimated a 4-month delay and a cost impact of \$300,000. Metric, which had located its storage area for materials and supplies on the future site of the dining facility--one of the remaining two buildings (see enc. III), informed the Corps' Fort Irwin Area Office that Metric would require about \$300,000 in additional compensation for impact claims if another contractor came into its work area.

The Los Angeles District office presented its estimate of four possible alternatives to Fort Irwin officials. These alternatives were (1) issue an IFB as originally planned, with a possible 10-month delay and an estimated \$1 million cost increase, (2) issue an IFB for the dining facility and negotiate a supplemental agreement for the second company administration building, which would also involve a potential delay and cost impact, (3) delay the construction start of the last two buildings until the first nine were completed with an estimated delay of 13 months, and (4) negotiate a supplemental agreement to the existing contract for both remaining structures, eliminating any delay. Fort Irwin officials stated that any action resulting in a delay in completing the complex was unacceptable. The Commanding General of Fort Irwin on December 23, 1982, stated that inadequate facilities were lowering troop morale and that timely completion of the entire complex was therefore critical to help improve morale. He requested that the construction of the dining facility and administration building be done by supplemental agreement.

The Corps' Los Angeles District Office issued a "Determinations and Findings" analysis on January 3, 1983, that determined a negotiated supplement was justified. The analysis stated the following:

- The dining facility and administration building construction sites were within the construction work area presently allocated to Metric.
- Construction congestion would result from having two contractors working in such a limited area.
- The central energy plant, which was a part of the first contract, and the dining facility, which was a part of the second contract, were only a few feet apart. Work by a

second contractor so close to the energy plant, which needed to be completed before the other facilities and would provide the energy needs for the complex, could delay its completion.

--Because Metric was responsible for utilities, sidewalks, curbs, and gutters, a second contractor on-site would result in further disruption.

On the basis of this determination and subsequent meetings, the Army, in June 1983, approved the award of a supplemental agreement with Metric. Procurement by negotiation is authorized by 10 U.S.C. 2304 (a) as implemented by paragraph 3-210.2 (xvii) of the Defense Acquisition Regulation, which states that purchases and contracts may be negotiated:

". . . when the contemplated procurement involves construction where a contractor or group of contractors is already at work on the site, and it would not be practicable to allow another contractor or an additional contractor to work on the same site . . ."

The supplemental agreement for \$4,532,000 was signed by Metric on July 5, 1983. At that time, Metric had completed about 60 percent of the construction on the first nine buildings.

Our current review at the request of the Chairman, which included a detailed examination of the planning process, site visit, and interviews with key personnel, further confirms the reasonableness of the Army's decision to have only one contractor on-site at a time. The physical dimensions of the work site for the nine buildings awarded to Metric were contractually defined by the Corps' Sacramento District Office to include the entire construction area. This gave Metric the right to occupy and use the entire area during the course of construction to include locating its storage area on the future site of the dining facility. Having a second contractor on-site would require another area for the office trailers, storage, and mobilization of work crews. Because the Army was using areas immediately surrounding the barracks complex, most potential sites for storage were from several hundred feet to up to one quarter of a mile away from the work site.

We believe that such congestion could have led to conflicting requirements, disputes, and delays, which would have extended the completion of the project and caused the contractors to seek additional compensation.



IMPROVED PLANNING COULD HAVE  
PERMITTED COMPETITIVE PROCUREMENT

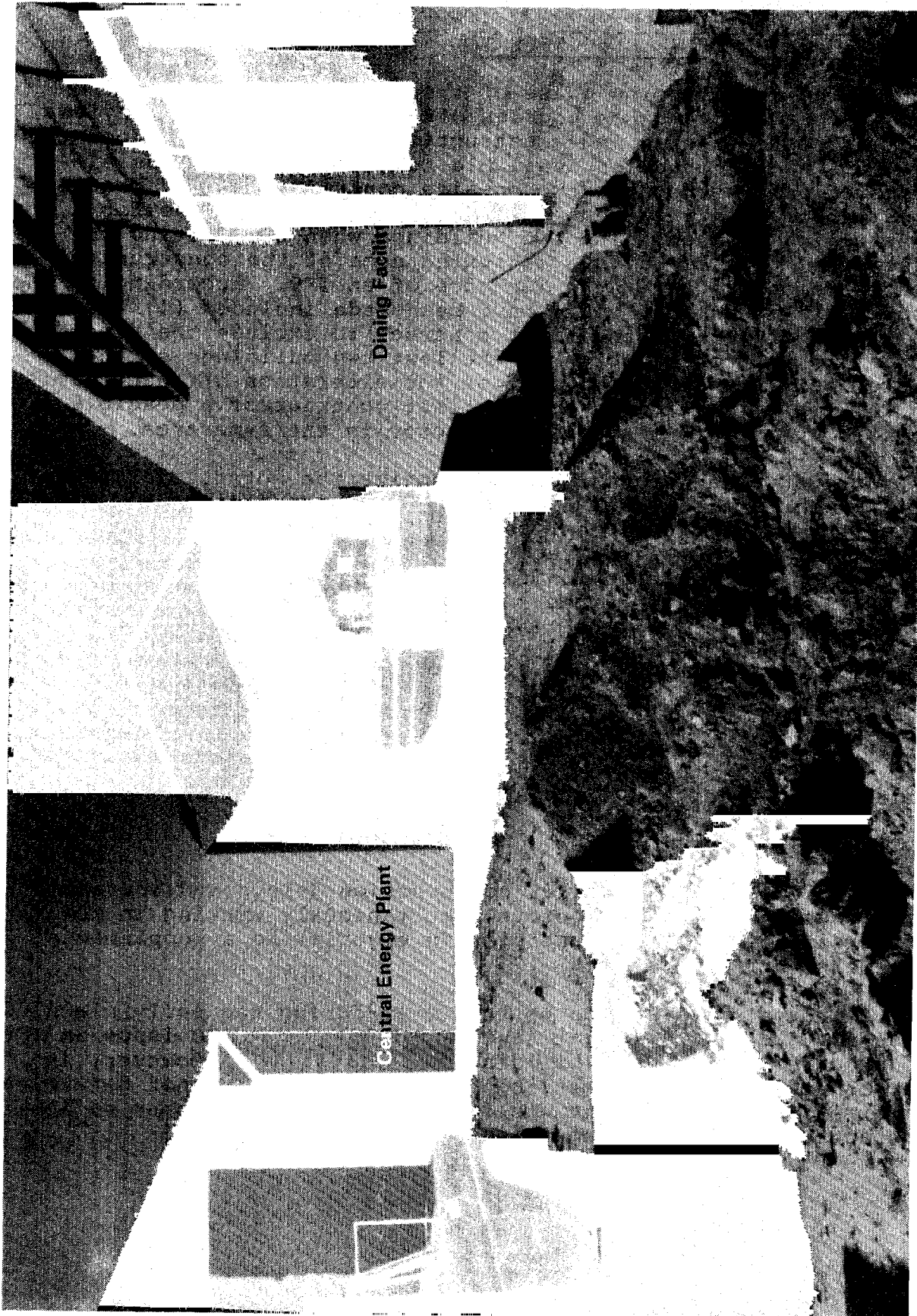
During the planning phase of the Fort Irwin complex, the Corps' Sacramento and Los Angeles offices held separate reviews, which addressed design and construction issues. At this point, the Corps had information available to recognize the possible construction consequences two on-site contractors could create. Corps officials stated that if allowances had been made for constructing the remaining two buildings when contracting for the first nine, this could have mitigated some of the construction impacts which prevented the issuance of an IFB. According to the Corps, allowances that could have been made included (1) writing the limits of work on the first contract to exclude the areas designated for construction of the last two buildings so that Metric could not seek compensation for alteration of these limits and (2) notifying bidders on the first contract of a possible second contract and a second contractor in the same area.

However, the Corps did not recognize the potential impacts until 6 months after work for the first nine buildings had begun. During congressional hearings in April 1984, the Corps stated that this delay in recognizing potential difficulties was due to a breakdown in communications between the Sacramento and Los Angeles District Offices. The Corps has since taken action to issue specific guidance to all field offices to strengthen the planning process. These instructions implement recommendations of a blue ribbon panel to improve engineering and construction interaction. These recommendations emphasized participation of the engineering division at periodic resident engineer meetings, utilization of cross-training between engineering and construction personnel, and periodic meetings between the engineering and construction chiefs to discuss mutual areas of concern.

CONCLUSIONS

In view of the potential construction delays and increased costs caused by two contractors simultaneously working in the same area, the Army was justified in negotiating a supplemental agreement.

Improved coordination by the Corps during the early planning phase for the complex might have enabled the Army to issue an IFB and procure the last two buildings competitively. However, in the absence of an IFB revealing bid value, we could not determine if competitive procurement would have resulted in higher or lower contract costs for the remaining two buildings.

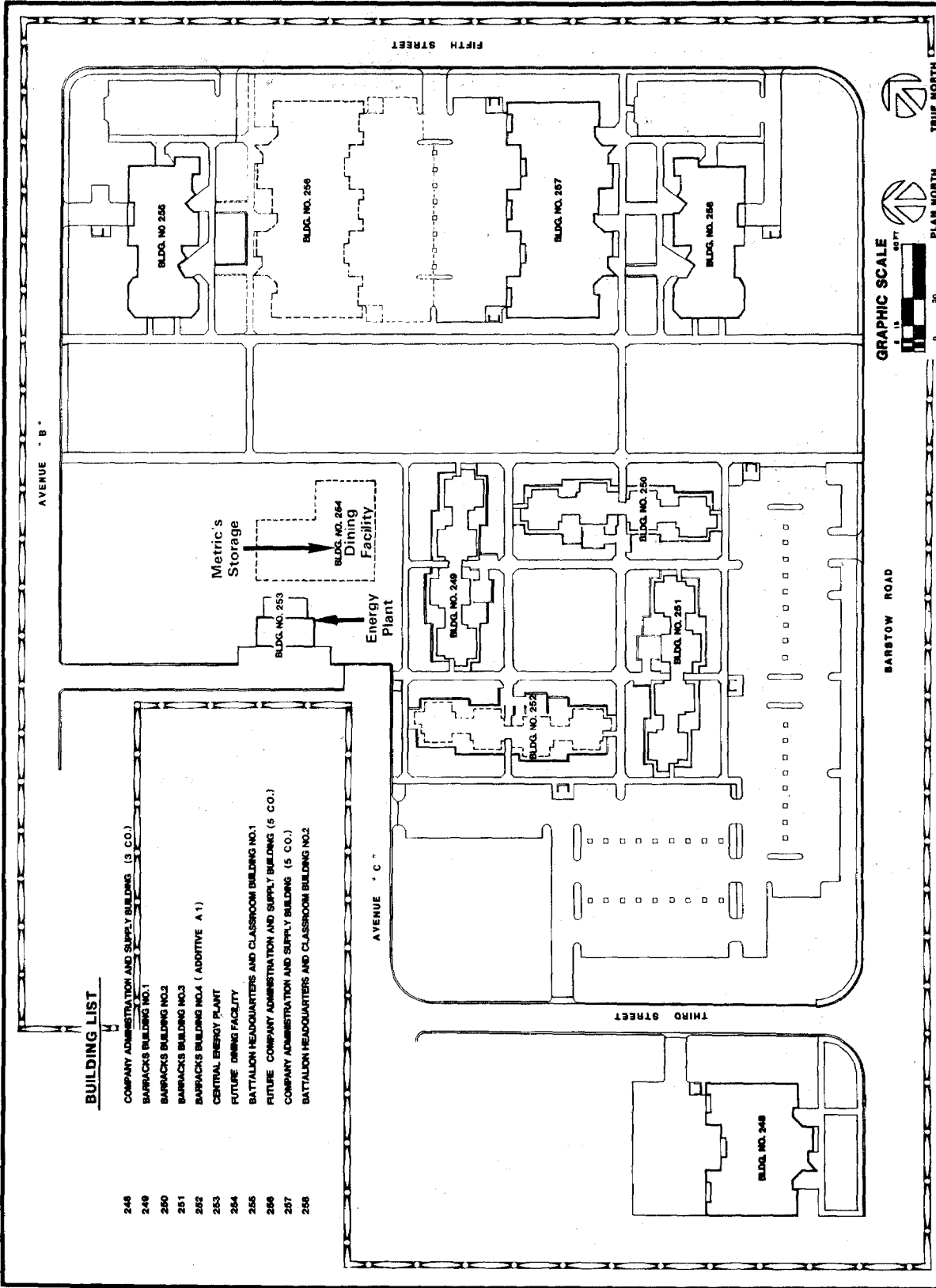


Dining Facility

Central Energy Plant

Barracks Complex, Fort Irwin, California

Outlines work area assigned to Metric on first contract



Barracks Complex, Fort Irwin, California

**DECISION**

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

**FILE:** B-211189.3

**DATE:** August 23, 1983

**MATTER OF:** Tilden-Coil Constructors, Inc.

**DIGEST:**

GAO will not object to cancellation of advertised solicitation for the construction of two buildings and incorporation of the requirement for the buildings into an ongoing construction contract through negotiated modification of the current contract where notwithstanding fact that the contract as modified exceeds the scope of the original competition, and is tantamount to a sole-source award, the record shows that adequate justification existed to authorize a sole-source award.

Tilden-Coil Constructors, Inc. (TCC), protests the United States Army Corps of Engineers (Army) decision to cancel an advertised solicitation for the construction of two buildings (a mess hall and an administrative building) and instead negotiate the modification of a current ongoing contract (No. DACA09-83-C-0034) for the construction of eight buildings and a central energy plant at Fort Irwin, California. Under the negotiated modification, the two additional buildings are valued at \$4,532,000 while the current contract is valued at \$12,452,000. TCC urges that the two additional buildings should have been acquired through competitive bidding.

We deny the protest.

We generally do not review protests concerning contract modifications as they involve contract administration which is primarily the responsibility of the contracting agency. Sierra Pacific Airlines, B-205439, July 19, 1982, 82-2 CPD 54. However, we make an exception where the basis of the protest is that the contract, as modified, exceeds the scope of the original contract since such a modification, in

B-211189.3

2

lieu of a competitive procurement, may be tantamount to an inadequately justified sole-source procurement. See National Data Corporation, B-207340, September 13, 1982, 82-2 CPD 222. The propriety of the modification is determined by ascertaining whether the modification materially altered the contract to such an extent that the competition for the contract as modified would be significantly different from the competition originally obtained. American Air Filter Co.--DLA Request for Reconsideration, 57 Comp. Gen. 567 (1978), 78-1 CPD 443. A modification falls within the scope of the original competition if potential offerors could reasonably have anticipated it under the changes clause of the original contract. American Air Filter Co.--DLA Request for Reconsideration, supra. If it is determined that the modification exceeds that standard, the modification is tantamount to a sole-source award under a new procurement. The issue then becomes whether a sole-source award was appropriate.

The record shows that the modification calls for two additional buildings over the eight currently under construction at an additional cost of approximately \$4.5 million. The magnitude of the modification is, in our view, clearly beyond that which would reasonably be anticipated under the changes clause. It is, therefore, tantamount to a sole-source award under a new procurement.

Under the facts and circumstances outlined in the record now before us, we find that a sole-source award is appropriate. A sole-source award is authorized when it is required by the legitimate needs of the Government. See International Business Machines Corporation, B-198094.3, September 29, 1981, 81-2 CPD 258.

The Army reports that the work called for in the modification:

"\* \* \* is interrelated to the work currently being performed under the aforementioned contract with respect to access to the site, installation of utilities, sidewalks, curbs and gutters, grading of the site to insure adequate drainage, and staging areas for the contractor's equipment and building materials. Physical crowding of the congested

B-211189.3

3

work site by another contractor would result in a significant loss of efficiency. Concurrent construction of the Central Energy Plant under the current contract and also of the Dining Facility under the \* \* \* [modification] will be required even though the facilities have only ten feet of clearance between them. Completion of the Central Energy Plant in a timely manner is critical since it must be completed prior to all other facilities on the site because it will provide the source and distribution of utilities to all other facilities on the site. Adverse impacts relating both to additional costs and delayed completion dates are expected to be incurred should another contractor other than the Metric Construction Company perform the work for the Dining Facility and the Administration and Supply Facility. Future construction requirements at Fort Irwin hinge on the timely completion of both the work currently being performed under the current contract and also the work scheduled to be performed under the \* \* \* [modification]. Delay experienced on either project would have a detrimental ripple effect upon operations at Fort Irwin."

TCC's response to the Army's position is to give an example of a local county project which currently has more than one general contractor and has bids outstanding for more work which could result in other general contractors being involved. We do not find that this general example shows the Army's detailed position to be unreasonable.

Accordingly, the protest is denied.

*Harry R. Van Cleave*  
for Comptroller General  
of the United States

