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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robertson and Penn, Inc.

File: B-226992.2

Date: July 13, 1987

DIGEST

Requirements contracts constitute valid contractual arrangements even though there is no maximum and/or minimum limitation on the estimated requirements of such a contract.

DECISION

Robertson and Penn, Inc. (RPI), protests any award under invitation for bids (IFB) No. DABT31-87-B-0022, a small business set-aside issued by the U.S. Army, Fort Leonard Wood, Missouri, for the rental and maintenance of commercial washers and dryers. RPI contends that the requirements-type contract being solicited under the IFB is improper since it subjects bidders to a high risk of financial loss by requiring a fixed-unit price while permitting the agency to vary its needs without restriction. RPI requests that the IFB be canceled and that the procurement be resolicited using maximum and minimum ordering limitations.

We deny the protest.

The IFB required the submission of prices for a 12-month base period and for two 12-month option periods. For each of these periods, bidders were required to submit fixed monthly unit prices for each of an estimated 760 washers and dryers as well as a price for the possible relocation of seven washers/dryers should that be required. Bidders were advised in the IFB that "The quantities shown . . . are estimated quantities and may vary during the contract period. The Contractor will only be paid for the quantities actually ordered at the unit price(s) [bid]. . ."

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RPI's argument is basically that using a requirements-type contract with no restraints on how many machines the agency will use is improper since the agency can significantly increase or decrease its needs at any time under such a contract, thereby causing the contractor to suffer a significant loss due to the fact that its monthly unit prices are fixed no matter the number of machines actually used.^{1/} RPI states that the IFB should have limited the agency's right to vary the number of machines used each month by setting forth a minimum and maximum number of machines that could be ordered.

The agency states that the use of a requirements-type contract here was determined to be in the government's best interest since the actual number of machines that will be needed cannot be determined. The exact number of machines required is not ascertainable because Fort Leonard Wood is a training installation with a large transient trainee population, whose exact number at any one time cannot be determined with precision since it varies due to numerous factors outside of Fort Leonard Wood's control. Further, under the agency's present rental and maintenance contract with RPI, the agency has received a number of complaints from users about the inadequate numbers of washers available. Notwithstanding this uncertainty as to its needs, the agency states that the estimates are based on the best available information and do accurately reflect the agency's future needs.

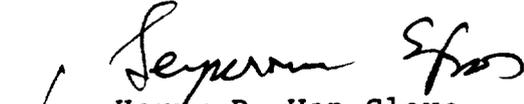
Requirements contracts are valid contractual arrangements and may be awarded pursuant to a government solicitation. Federal Acquisition Regulation, 48 C.F.R. § 16.503 (1986); U.S. Financial Services, Inc., B-195945.4, et al., July 15, 1981, 81-2 CPD ¶ 32. While it may reduce a contractor's risk and be appropriate in the proper circumstances, it is not necessary that a requirements contract place a maximum and minimum limitation upon the estimated requirements. See Michael O'Connor, Inc., B-185502, Apr. 5, 1976, 76-1 CPD ¶ 224.

Further, although it is true as the protester argues that the risk that the agency will order more machines than the contractor expects and at different times than anticipated during the contract period is on the contractor, there is nothing improper in the agency determining that its needs

^{1/} RPI also filed an earlier protest under the same IFB. That protest, which concerned the specifications for the machines, was denied in Robertson and Penn, Inc., B-226992, June 6, 1987, 87-1 CPD ¶ _____.

dictate that it offer competitors a proposed contract imposing maximum risk on the contractor. See Duroyd Manufacturing Co., B-213046, Dec. 27, 1983, 84-1 CPD ¶ 28. Here, the protester has made no showing that the agency's judgment in this regard was unreasonable. Further, in this connection, we note that seven bids were received under the IFB, consequently, it appears that the agency obtained full and open competition under the solicitation.

The protest is denied.


Harry R. Van Cleve
General Counsel