



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mills Manufacturing Corporation--Reconsideration
File: B-224004.2; B-224005.2
Date: April 10, 1987

DIGEST

1. Agency properly procured its needs for parachutes under requirements type contracts with ordering periods of 2 years and 3 years, respectively, rather than under a multiyear type procurement, where the agency was uncertain as to how many units it would need over the contract period. Multiyear contracting format requires that quantity solicited remain substantially unchanged throughout contract term.
2. In a solicitation calling for a requirements contract, an agency need only state a realistic estimate of its requirements for the goods being procured based on most current information available. Although agency admits its needs are difficult to predict, precise or certain statement of quantity is not required since such a requirement would vitiate the purposes of employing a requirements contract format and protester has not shown estimate is not realistic.
3. Letters from a contractor's suppliers which indicate that those suppliers will not make long-range price commitments do not constitute clear and convincing evidence that the contracting agency acted unreasonably or arbitrarily in choosing to employ a requirement type contract to satisfy several years' needs.

DECISION

Mills Manufacturing Corporation requests that we reconsider our decision in Mills Manufacturing Corp., B-224004, B-224005, Dec. 18, 1986, 86-2 C.P.D. ¶ 679, that the Army Troop Support Command properly issued two solicitations for requirements contracts for periods of more than 1 year under Federal Acquisition Regulation (FAR), 48 C.F.R. § 16.503 (1986), for the purchase of personnel and personnel reserve parachutes. We affirm our decision.

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In the two protested solicitations, the Army requested bids upon two requirements contracts, one of which was to have a 2-year ordering schedule, the other of which was to have a 3-year ordering schedule. Mills protested on the grounds that the solicitations were inconsistent with the requirements for multiyear contracts as described in FAR, 48 C.F.R. § 17.1. We held that the procurements were not subject to the multiyear requirements of Part 17 of FAR, but rather were issued in accordance with the provisions of FAR, Part 16 dealing with requirements contracts.

In its request for reconsideration, Mills' first argument is that, even assuming that the agency properly issued the solicitations under FAR, 48 C.F.R. § 16.503, the agency failed to meet the requirements of that section relating to the contracting officer's duty to state a realistic estimate of the total quantity in the solicitation. Mills refers to the Army's acknowledgment, in its report to our Office, that it did not use the multiyear contract format since that would require a determination that the need for the items remains stable which it could not make because it is difficult to predict its recurring needs for the parachutes.

The record indicates that based on user information available to her, the contracting officer stated a realistic estimate of the total quantities under the subject solicitations. IFB No. DAAK01-86-B-C356 contained a total estimated quantity of 28,027 personnel reserve parachutes with a 3-year ordering period, and IFB No. DAAK-01-86-B-C333 contained a total estimated quantity of 9,536 personnel parachutes for a 2-year ordering period. The FAR, 48 C.F.R. § 16.503, only calls for estimates based on the most current information available. This provision further advises that the stated quantity is not a representation to an offeror that the quantity will be required or ordered or that the conditions affecting requirements will be stable or normal. The rationale for employing a requirements contract rather than a fixed quantity contract is that the demand for the goods being procured cannot be stated with absolute precision. While the agency admits that its needs may change during the contract period, a circumstance which may affect the quantities purchased under the contract, this does not preclude the agency from generating its best estimate of its needs. The protester has not shown that the agency's estimates were not made based on the most current information available. Hero, Inc., 63 Comp. Gen. 117 (1983), 83-2 C.P.D. ¶ 887. We conclude that the agency met the FAR requirement for a realistic estimate of quantity.

Mills next argues that our holding in Kings Point Mfg. Co., Inc., B-220224, Dec. 17, 1985, 85-2 C.P.D. ¶ 680, mandates that we find the contracting officer's decision with respect

to the selection of the appropriate contract format was improper. In Kings Point Mfg. Co., Inc., B-220224, supra, we held that the contracting agency has the primary responsibility for determining its minimum needs and the method of accommodating them, and our Office will not question an agency's determination concerning the best method of accommodating its minimum needs absent clear and convincing evidence that those decisions are arbitrary or unreasonable. The protester argues that letters submitted by it from its suppliers, in which those suppliers state that they will not make long-range price commitments, constitute clear and convincing evidence that the decision of the contracting officer in this case is arbitrary or clearly unreasonable.

As in Kings Point Mfg. Co., Inc., B-220224, supra, where suppliers' letters also were submitted by the protester, we are of the opinion that these letters are not clear and convincing evidence that the contracting officer's decision was arbitrary or unreasonable. As noted in our first decision in this protest, the agency carefully outlined its rationale for the contract format which it chose and, "[a] mere difference of opinion between the protester and the agency concerning the agency's needs is not sufficient to upset an agency's determination." Id. Moreover, we have recognized that an agency may use multiyear contracting in connection with requirements contract. See GSA--Multiple Award Schedule MultiYear Contracting, 63 Comp. Gen. 129 (1983), 84-1 C.P.D. ¶ 46. We therefore think the agency's use of FAR, 48 C.F.R. § 16.503(b) was proper in these circumstances, and we affirm our prior decision.

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