



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

GA000010

30891

B-176745

May 10, 1973

<sup>6203</sup>  
Estey Corporation  
Drawer E  
Red Bank, New Jersey 07701

Attention: Mr. F. P. Tucker, Jr.  
President

AGC00017  
DLG06203  
DLG06204

Gentlemen:

Further reference is made to your letter dated August 4, 1972, with enclosures, concerning the performance by Hillside Metal Products of contract No. GS-OCS-06246 and the contract awarded pursuant to solicitation No. 3FP-AA-II-B-24403. Both contracts, which were awarded and administered by the General Services Administration, called for various quantities of library equipment.

You contend that the preproduction samples submitted by Hillside under the first-mentioned contract were unsatisfactory; that GSA permitted changes in the specifications after award of the contract which authorized Hillside to duplicate the product offered by the second low bidder; and that changes made by amendment 3 to the contract covered Hillside's standard product as described in its literature, and increased the price to a point higher than the second low bid. In addition, you say that Hillside was given an increase in its contract price for the end panels of the bookstacks even though there was no change in the specifications. You also expressed concern that the more recent award to Hillside will result in an increase of the contract price because of modifications of the specifications.

Contract number GS-OCS-06246 resulted from a General Services Administration solicitation issued on February 13, 1971, for bids on an indefinite quantity of 150 items of library furniture, bookstacks, and end panels to be supplied for the period from October 1, 1971, through September 30, 1972. The contract was to be included in the Federal Supply Schedule (FSS) Group 71, Part XIII, Section B. Bids were received from three bidders, one of whom was determined to be nonresponsive. After bid evaluation of the remaining two bids, the lower priced bidder was awarded the contract. The value for each of the 150 items in each of 10 lots, Hillside was

① Hillside's contract  
② General Services Administration  
③ Performance of contract  
④ Bookstacks  
⑤ End panels  
⑥ Price increase  
⑦ Contract award  
⑧ Performance

Performance of Library Equipment Contract]

715607 092287

found to be the low aggregate bidder in all zones. The contract was awarded to Hillside on June 14, 1971.

In its administrative report, accompanied by appropriate documentation, the General Services Administration has furnished certain background information as to the development of the specifications for this equipment. It is reported that the first Federal Supply Schedule Contract was awarded in 1967 in response to a request from the Veterans Administration. Subsequently, other agencies adopted the FSS contract as their source for this equipment. As a result of this broader utilization, it was necessary to make changes in design and add options and components. Therefore, the subject contract included the 1967 interim specification, with certain deviations and changes. In addition to changes which were made in the specification during Hillside's performance, which will be discussed below, the specification was again changed in June 1972, to include construction changes and add various components.

Concerning the contention that Hillside's preproduction sample was unsatisfactory, the record shows that the quality control technicians had rejected Hillside's initial preproduction samples, stating the points of rejection and citing certain areas, not accepted or rejected, in which improvements could be made. Hillside subsequently resubmitted its samples with the necessary corrections. Prior to resubmittal of its sample, GSA had determined that the specification was inadequate in certain areas. Therefore, changes and improvements and a commensurate price increase were authorized by amendment 3. The changes were for the purpose of making the product more substantial and easier to erect. It is GSA's position that such changes as were made were within the scope of the "Changes" clause of the contract. GSA denies that the changes were made to conform to Hillside's samples, or that the changes were made to duplicate the product of the second low bidder. In this regard, it is pointed out that since bid samples were not submitted with the bids, the procuring activity is not aware of the specifications of the second low bidder's product. In regard to the increase in price for such changes, it appears from the documents furnished our Office that the overall increase of a complete unit will amount to about 25 percent.

The standard "Changes" clause, which was included in the contract, reserves to the contracting officer the right to make changes in the specifications so long as such changes are within the general scope of the contract, and it gives to the contractor the right to an equitable adjustment in price if such changes cause an increase in the cost of performance. Whether changes are within the general scope of the contract is not always easy to determine. If it can be determined that the changes authorized constitute "cardinal changes", then they were outside the scope of the clause and the procurement should have been

B-176745

completed. See 50 Comp. Gen. 540 (1971). In determining whether charges were within the general scope of the contract the Court of Claims has said that consideration should be given to both the magnitude and quality of the changes and to whether the original purpose of the contract had been substantially changed. See Keco Industries, Inc., v. United States, 364 F. 2d 838 (1966).

The appropriateness of contract modifications involves contract administration which is primarily the function and responsibility of the contracting agency, and is not ordinarily a matter for resolution under our bid protest procedures. See B-173916, April 20, 1972. From the record in the instant case, we believe that it could be argued that the magnitude and quality of the changes were not within the general scope of the clause. However, since it is clear that the changes did not effect a substantial change in the original purpose of the contract, and in light of the contracting agency's responsibility for contract administration, we are unable to conclude that the changes were beyond the scope of the contract.

Request for proposals No. 3FP-AA-N-B-24408, was issued by the Federal Supply Service, Region 3 on February 16, 1972, to furnish, deliver and install a definite quantity of library shelving, free-standing bracket or Cantilever type. The purchase description used in the solicitation was furnished by the Veterans Administration facility in Philadelphia and the items are not identical with those meeting Federal specifications of the contract discussed above.

With regard to your concern that the contract price will be increased by contract modifications, GSA advises that no amendments have been made; that deliveries have commenced; and that the delivered items are in conformance with the specifications.

Sincerely yours,

PAUL G. DEMELING  
Acting Comptroller General  
of the United States