

118/29

Kretzsch
21525

DECISION



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

FILE: B-206926

DATE: April 19, 1982

MATTER OF: RHK Services, Inc.

DIGEST:

Use of a fixed-price contract is not subject to GAO review since statute mandates the use of this type of contract absent a determination by the head of the contracting agency that a cost contract should be used.

RHK Services, Inc. protests the prospective award of a contract under invitation for bids N62472-81-B-0310 issued by the Department of the Navy for fire protection services at the Naval Education and Training Center, Newport, Rhode Island. The solicitation requests a fixed price to provide the fire protection services. RHK contends that a cost-type contract would be more appropriate.

We will not consider the protest on the merits. The law provides that:

"No cost contract, cost-plus-a-fixed-fee contract, or incentive contract may be made * * * unless the head of the agency determines that such a contract is likely to be less costly to the United States than any other kind of contract or that it is impracticable to obtain property or services of the kind or quality required except under such a contract."
10 U.S.C. § 2306(c) (1976).

We view that provision as creating a statutory requirement for the use of a fixed-price contract except where the agency head in his discretion finds that the circumstances described in the statute exist so that a cost contract should be used. The agency head is not required to determine that the use of a fixed-price contract is inappropriate in a given situation merely because a third party believes cost-type contracting would be more appropriate. National Veterans Law Center, 60 Comp. Gen. 223

(1981), 81-1 CPD 58. Therefore, there is no legal basis to sustain a challenge to the use of a fixed-price contract. Consequently, no useful purpose would be served by our review of this matter.

The protest is dismissed.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel