



Requirements Type of Contract FAR 52.216-21

Generally, a Requirements type of contract[1] requires the government to issue orders to the contractor for all its needs under the statement of work. There is no guaranteed quantity, but the orders are usually below a maximum order limitation ("MOL"). Essentially, the government promises to order all of its requirements under the contract, if any, and the contractor promises to fill all requirements. The **Requirements contract must contain the above contract clause**. If the clause is omitted, then other extrinsic evidence must be examined to determine if it is, in reality, a Requirements type of contract or if it is another type of indefinite delivery contract.

The government must provide offerors a realistic estimate of the total requirements in the solicitation and contract. The estimate can be based on any internal survey, records of past needs, personal experience, or any reasonable means, but the estimate must be obtained with due care. The estimate should be calculated using current, relevant information. If contractor proposals are based on negligent estimates, the contractor is harmed because they are not entitled to lost profits, although there may be a constructive change. If the government varies the estimates, it must be done in good faith. **Contracts for advisory and assistance services are limited to three (3) years and \$10 million.[2] In addition, there are some limitations in the contract clause.**

The Armed Service Board of Contract Appeals ("ASBCA" or the "Board") issued an opinion in the Appeal of Dixie Construction Company, Inc. ("Dixie"), ASBCA No. 56880, on April 15, 2010. Dixie had appealed a deemed denial of its claim of \$533,362 in profits from work it claimed was wrongfully diverted to another company.

Dixie was awarded a Requirements contract by the Army's Aberdeen Proving Ground ("APG") on May 18, 2007 for civil site work, paving, and drainage work at five sites within the APG.

The Requirements contract clause was included in the contract. The clause at subsection (c) states **"Except as this contract otherwise provided**, the government shall order from the contractor all the supplies or services specified in the Schedule that are required to be purchased by the government activity." (Emphasis added.) Furthermore, the clause states at subsection (d) "The **government is not required** to purchase from the contractor requirements in excess of any limit on total orders under the contract." (Emphasis added.)

The contract also contained the Ordering clause[3] which set a single or combination maximum order limit ("MOL") of \$500,000. Subsection (c) states "the government **is not required** to order a part of one requirement from the contractor if that requirement **exceeds the maximum** order limit." (Emphasis added)

Finally, the contract contained the Indefinite Quantity clause[4] that states the quantities of supplies and services are estimates only, are not purchased by the Contract, but the government will order the minimum quantity of supplies and service. The Dixie contract did not contain any minimum quantity.

At the same time, APG awarded an ID/IQ contract for Base Environmental Support ("BEST") to General Physics. The APG awarded two orders to General Physics the same day - one for \$377,929.71 and the other for \$814,945.39, both for shore stabilization work. Dixie claimed they had the qualification

to perform the work Dixie claimed was improperly given to General Physics and demanded lost profit plus interest in the amount of \$533,362. Dixie did receive, however, six orders that each equaled or exceeded \$500,000.

The Board's opinion stated that the Requirements clause at paragraph (c) provides "except as the contract otherwise provides..." The Order Limitations clause in a Requirements contract states "the government is not required to order a part of any one requirement if that requirement exceeds the maximum order limitation in paragraph (b) of \$500,000. Hence, "paragraph (c) of the Order Limitations clause relieves the government of its obligations under paragraph (c) of the Requirements clause to order all of its subject requirements from the contractor, if a requirement exceeds the maximum order limitations listed in paragraph (b) of the Order Limitations clause." However, referring to the Order Limitations clause in the contract, "nothing in paragraph (c) prevents the government, at its election, from placing orders with the contractor that exceeds paragraph (b)'s limitations because under paragraph (d), the contractor is not required to honor those orders." Hence, when the two clauses are read together, "the contractor is not obligated to honor orders over the maximum order limitations, and the government is not required to issue them to the contractor," but if it does issue an order to the contractor, then the contractor must honor it unless it timely notifies the government of rejection. There is no obligation for the government to place orders with the contractor that exceeds the maximum order limitation.

Furthermore, "paragraph (c) of the [Order Limitations] clause provides the government is not required to order a part of any one requirement from the contractor if that requirement exceeds paragraph (b)'s maximum order limits." Were the various orders part of the same requirement or were they separate?

The Board let stand the order for \$814,945.39 as it exceeded the \$500,000 maximum order limit. The second order for \$377,929.71 to General Physics was not approved as it was under the limits.

The moral of the story is a contract must be read as a whole to give a reasonable meaning to all parts.[5] The Requirements contract is not an absolute obligation for the government to place orders with the contractor. This type of contract is a good selling tool, but there are limits that the contractor should be aware of and adhere to.

The foregoing discussion is not intended to be legal advice or a legal opinion. Please see your attorney for legal support.

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[1] FAR 52.216-21

[2] 10 U.S.C. 2304 (e)(2); FAR 16.503 (d)

[3] FAR 52.216-19

[4] FAR 52.216-21

[5] Lockheed Martin IR Imaging Systems, Inc. v. West 108 F. 3d 319,322 (Fed. Cir. 1997)

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