

MULTI-YEAR PROCUREMENT

JAMES E. WHITAKER
Air Warfare (Land Support)
and Research Contract Department
Procurement Services Office
Naval Training Device Center

Multi-Year Procurement is simply a method for fulfilling the Government's multi-year needs for supplies at the best obtainable price. Contractors entering into an MY contract enjoy the advantage of assured production continuity which enhances opportunities for work force stabilization and generally improved operational efficiency, with consequent reduction of costs. The Government, in turn, expects to realize a savings since repetitive costs that are usually experienced under the one-year method of contracting are eliminated under the multi-year method.

From its title, one might think that MYP is another expression for a multi-year contract. If this were the case the procedures would be greatly simplified. The fact is, MYP is a method that may or may not result in a MY contract. Considering that conditions warrant the use of this method, an MY contract will be awarded if the MY buy is more favorable to the Government from an overall cost point of view; however, if -- after applying the MYP procedure -- it should develop that a single-year contract is more favorable from an overall cost point of view, then a single year contract will be awarded.

I will briefly review the description, policy, objective, limitations on use, and consideration for MYP application.

DESCRIPTION

First, what is the MYP method? MYP is a method for competitive contracting for known requirements for military supplies, in quantities and total cost not in excess of planned requirements set forth in, or in support of, the Department of Defense Five Year Defense Program, even though the total funds ultimately to be obligated by the contract are not available to the Contracting Officer at the time of entering into the contract. Under this method, contract quantities are budgeted for and financed in accordance with the program year for which each quantity is authorized. This procedure provides for solicitation of prices for supplies based either on award of the current one-year program quantity only, or, in the alternative, on total quantities representing the first and one or more succeeding program year quantities. Award is made to whichever of these two alternative bases reflect the lowest unit prices to the Government. If award is made on the multi-year basis, funds are obligated only for the first year's quantity, with succeeding years' contract quantities funded annually thereafter.

POLICY AND OBJECTIVES

What is the Government's policy and what are the objectives of the MYP method? Why is this method used? The Government's policy is to use MYP to the maximum extent when its use may reasonably be expected to attain the objectives of reduced costs and realistic competition. These two objectives, "reduced costs" and "competition," are not new -- the Government has been and continues to strive for their attainment. MYP is simply another procedural

instrument developed as a means to effect these ends -- perhaps better stated as "reduced costs by competition" for multi-year requirements.

It appears obvious that a multi-year contract is the way to buy known multi-year requirements. So, why does the MYP method provide for bids or proposals on the first program year requirements only? The answer is simply that there may be contractors who prefer, for their own reasons, to perform each year's requirements under a fully-funded annual contract. These contractors are entitled to an opportunity to compete for the award if future competition for the remaining requirements has not been formally determined to be impractical and thereby precluded. A principal objective of this method is to broaden competition to include any qualified firm that may be able to satisfy the requirements at a lower total cost -- even if it is not under a multi-year contract.

CONDITIONS AND LIMITATIONS

What are the conditions for application and the limitations in use of the MYP method? When the Government's requirements are known, the design and specifications are reasonably stable, competition is expected and reduced prices can be anticipated -- we have the basic prerequisites for application of the MYP method.

The reduced prices are anticipated as a result of continuity of production and/or elimination of repetitive substantial start-up and other nonrecurring costs. There are two limitations imposed upon its use. These are; (1) the requirements must be within the limits set forth in (or in support of) the DOD Five Year Defense Program; and (2) the funds covering the procurement must not be limited by statute for obligation during the fiscal year in which the contract is executed. In a situation where the conditions are appropriate, the use of MYP is encouraged.

Before leaving the matter of conditions for use of MYP, it should be pointed out that we are not rigidly boxed-in by a set of rules. The use of MYP may appear logical and justified in a particular situation in which certain aspects of the criteria established for its application are missing. In such a case, if the use of MYP can be adequately justified as in the interest of the Government, a deviation may be requested -- and its use probably will be authorized. Provided successful experience is gained from these "exception" applications of MYP, I suspect that we will see some broadened guidelines for its use. Bear in mind that the MYP concept in use today wasn't applied at all until a few years ago. We've had considerable success with the method when, by the exercise of caution, we have managed to avoid pitfalls. Rather than review the pitfalls, let's review what is involved to avoid them.

PRE-SOLICITATION CONSIDERATIONS

When the Government has determined that MYP procedures are appropriate in a particular instance, the Government must then carefully consider the various facets of the procurement situation in order to draft a practical and meaningful solicitation. The graphic outlines some details to be considered before we go "on the street" with a solicitation. The procurement method to be used must be selected -- whether straight formal advertising, 2-step formal advertising, or negotiation. Formal advertising, including 2-step, is the preferred method.

All MY contracts must contain cancellation ceiling provisions that set forth the percentages to be applied against the total MY price in event of cancellation of succeeding program year(s) requirements after contract.

The purpose of this ceiling is to provide reimbursement of unrecovered non-recurring costs -- thus protecting the contractor against loss. The maximum reimbursement is represented by the applicable percentage that covers the succeeding years that are cancelled. These "percentages" are determined on the basis of estimates of pre-production and other non-recurring costs that are applicable to and that have not been amortized through the program year prior to the cancelled year(s). Each percentage is derived from the ratio of unamortized amount to the estimated total MY contract amount. The premise is that non-recurring costs will be experienced during the first contract year and will be amortized equally over the multi-year contract duration.

Establishment of an adequate cancellation ceiling is a recognized problem area when we use MYP. The Contracting Officer must establish the ceiling based on estimates of what reasonable preproduction and other non-recurring costs are likely to be. It may be that all contractors will not be happy with the Contracting Officer's ceiling decision -- and therein lies the problem.

If the Contracting Officer has established a cancellation ceiling that is considered by an individual contractor to be too low, this contractor is faced with the problem of (1), assuming a greater risk, or (2) increasing his price. To reduce this problem the "guess work" has to be replaced with rationale. And this rationale is developed from information already available to the Government and from information that contractors will furnish during discussions and conferences. There are other problem areas with MYP. Industry, for instance, has the problem of estimating costs per unit across extended periods of production.

The Government, for instance, has the problem of determining which requirements are suitable for multi-year procurement and the problem of timely establishment of accurate requirements. Industry and the Government both have the problem of the other's problems.

One of the best ways to minimize the problems is to recognize them and begin work on them at the earliest possible point in the procurement cycle. There certainly will be fewer problems if we start off on the right track.

SOLICITATION PROVISION

After appropriately defining the procurement situation the solicitation in the form of an IFB, RTP or RFP, will be issued by the Government. A solicitation issued for an MY quantity requirement must distinguish the specific requirements for each program year. In addition, the peculiar features of a multi-year type contract must be clearly set forth.

These "peculiar" features are the specific clauses and schedule provisions for "Cancellation of Items" and for "Limitation of Price and Contractor Obligations." We have already covered the "Cancellation of Items" provisions. Regarding the "Limitation of Price and Contractor Obligations" provisions, the contract schedule will specify the dollar amount of the funds obligated for performance through conclusion of a specified program year. Normally, funds are obligated for one program year at a time, and the schedule will provide the date by which the contractor must be notified that funds are available for the succeeding program year. Each successive contract program year is commenced in this manner, and the total monetary obligation of the Government at any point in time is the cumulative obligated funds set forth in the contract. The solicitation document must also contain the criteria that will be used in comparing the lowest evaluated bid on the first-year requirement with the lowest evaluated bid on the total MY requirement. And finally, the solicitation must give the contractor clear instructions for submission of prices. These instructions should clearly describe how unit and total prices are to be set forth in the bid or proposal. Regardless of the procurement method -- straight formal

advertising, two-step, or negotiation -- the unit price of each item in the multi-year requirement must be the same for all program years during which the particular item is required. By requiring that each participating contractor bid or propose the same unit price (i.e., level pricing) for like items for all years included in the multi-year period, we have an equitable basis for application of the MYP method. The required level pricing is what makes the MYP method workable. As a consequence of this requirement the cancellation ceiling provision serves its purpose -- and the Government's multi-year requirement will be fulfilled at the best obtainable price.

There may be instances when line item requirements exist that are not "like repetitive items" over the multi-year time span -- and the "level pricing" principle doesn't apply. The most likely example of this is the requirement for software, which may not be a like requirement each year and thus may necessitate a separate pricing provision. In such an event, the solicitation will include appropriate instructions for pricing of the "non-level-price" items.

With adequate descriptions and instructions incorporated in the solicitation, we have avoided many of the time-consuming problems of definition of terms and clarifications of intent. If we've done a good job the next action is yours. Respond to the solicitation with the best price you can offer.

CONCLUSION

In this review, we have defined the MYP method and have covered a number of considerations bearing on its selection for use. There are three understandings about use of the method that I hope you take away with you. First, the solicitation document you receive sets forth the considered determination of how a particular MYP can most equitably attain the Government's objectives; Second, the distinction between the MYP method and a multi-year contract; and Third, when a multi-year contract is awarded it includes the features of level-pricing (same unit prices), contractor protection in event of a cancellation, and annual funding.

I hope any experience each of you may have with the MYP method is a success. Thank you.

MULTI-YEAR PROCUREMENT

R. L. LOWRY
Marketing Manager, Avionics
Goodyear Aerospace Corporation

Multi-Year Procurement is a method for competitive contracting which has been used by the Government on an increasing scale for the past five years. From a rather humble position, it has grown in flexibility and sophistication to the point where it is utilized for procurements far more complex than those contemplated at time of introduction and - for that matter - is applied on a far broader scale than provided for in the Armed Forces Procurement Regulations guidelines. It would seem, from past experience with Government procedures or approval cycles, that the transition from original intent to present practice would have been difficult and time consuming. However, such was not the case. All that was required was a pragmatic approach