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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Anteon Corporation

File: B-293523; B-293523.2

Date: March 29, 2004

John R. Tolle, Esq., and William T. Welch, Esq., Barton, Baker, McMahon, Hildebrant & Tolle, for the protester.

Maria Bellizzi, Esq., General Services Administration, and Jennifer R. Seifert, Esq., Government Printing Office, for the agencies.

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DIGEST

Protest that task order request for electronic passport covers is outside the scope of General Services Administration's (GSA) indefinite delivery/indefinite quantity, multiple-award contract for "Smart Identification Cards" (Smart Card) is sustained, where GSA's Smart Card contract contemplates the purchase of credit card-sized plastic cards, while the task order here contemplates the purchase of cloth cover sheets for electronic passports with embedded integrated circuit chip inlays that are significantly larger in size than a Smart Card and are manufactured using different materials; task order requirements for adhesive and travel are also not included in GSA's Smart Card contract.

DECISION

Anteon Corporation protests the issuance of task order request (TOR) No. BA24076GPS by the General Services Administration (GSA) for electronic passport covers under the agency's "Smart Identification Card" (Smart Card) contract. Anteon contends that electronic passport covers are outside the scope of the Smart Card contract.

We sustain the protest.

BACKGROUND

The Smart Card contract is an indefinite-delivery/indefinite-quantity (ID/IQ) contract, issued by GSA, for the “supplies and services necessary to support a common, interoperable, multi-application Smart Card program.” Smart Card Solicitation § C.3. The Smart Card program is a cooperative effort under the leadership of GSA and a steering committee comprised of federal civilian, defense, and intelligence communities. The program is described as a “first step” in addressing a “growing concern related to the security and safety of government personnel, buildings, systems, and other facilities,” and in addressing the “need for the Federal government to provide the necessary tools and safeguards to support the burgeoning growth in electronic commerce.” Id. § C.1(a). The Smart Card program is available for use by “all authorized activities that have received written delegated ordering authority from [GSA].” These activities, “[a]t a minimum,” may use the Smart Card as a “Federal employee, Armed Services, military dependent or federal beneficiary identification card.” Id. § C.3.

The Smart Card contract provides for award of task or delivery orders for Smart Card solutions that, among other things, “support visual identification, physical access control and logical access control functions on a single card.” Id. § C.5(b). The Smart Card is defined to be a “Credit Size Card with an integrated chip” that is 3.370 inches wide, 2.125 inches high, and 0.030 inches thick. Id. §§ C.2(d), J.7.¹

The Smart Card contract contemplates that the Smart Card will “encompass a broad range of applications.” Id. § C.4(a). The actual configuration of the Smart Card system is expected to vary from organization to organization depending on agency needs and other factors, but certain “generic components” are to be part of every Smart Card platform: an integrated circuit (IC) chip card that “may utilize multiple technologies and have varying capabilities,” a central card management system, card issuing equipment including computers and peripherals, a certificate/attribute authority system, a card acceptance device, applications, and interfaces to legacy databases. Id. § C.5(a); see also id. § C.4(a) (“Conceptually,” the services shall consist of cards, card readers, and driver software). In addition, the contract provides for a “customized selection” of various Smart Card functions, services, and applications “[t]o meet the specific circumstances and to enhance an organization’s Smart Card Program.” Id. § C.5. These services include providing such things as a

¹ Section J.7 of the Smart Card contract identifies International Organization for Standardization (ISO) 14443 as a “required standard.” This standard specifies that the physical characteristics of the card are governed by ISO 7810, which identifies the dimensions listed above. See ISO 7810 ¶ 4.5 and Figure 1. ISO is a non-governmental network of the national standards institutes of 148 countries that establishes a system of technical standards for various products and services. See www.iso.ch/iso/en/aoutiso/introduction/index.html.

card security and inventory control system, program integration and management, standard reporting, and card holder services. Id. § C.5(e)(3)(5), (7), (8).

The TOR, issued on November 21, 2003 to four Smart Card contractors, seeks delivery of embedded IC chips into electronic passport covers. These items will be used by the Department of State, in cooperation with the Government Printing Office (GPO) and the Department of Homeland Security, for a “new version of the United States passport,” envisioned as part of an electronic passport program.² As stated in the TOR, the “new technology is expected to enhance the security of the passport and facilitate the movement of travelers at ports of entry.” The contactless IC chip and antenna inlay in passports will incorporate both digital facial images and biographic data of the bearer. TOR § C1.1.

The TOR contemplates delivery under various contract line item numbers (CLINs) of 650 “testing inlays” (containing an ISO 14443 Type A and B compliant³ contactless chip and antenna assembly), and up to approximately 54 million electronic passport cover sheets, 1,000 electronic passport readers, 250 55-gallon drums of adhesive, and 4,000 hours of technical support, an inventory control system, and travel⁴ as necessary to meet the government’s requirements. Id. §§ B.3; C.5. The passport cover sheets are made of cloth and are 7 1/16 inches wide, 15 7/8 inches high, and 0.35 inches thick. Each cover sheet will be cut to create three book covers containing an inlay.⁵ Id. app. C. The inlay is to consist of a pre-laminate material (such as Durasoft/P®) containing the IC chip/antenna assembly and will span the

² The electronic passport program is to be implemented in three phases, associated with the base performance requirements, and two options. The first phase provides for delivery to GPO of embedded inlays, associated testing materials, and readers, for system development and testing. The second and third phases provide for a pilot program and full-scale distribution of the electronic passport covers with the embedded inlays, with the goal of issuing all new electronic passports by the end of 2005. TOR §§ C1.2, C.5.1-C.5.3; Electronic Passport Program Overview at C-6.

³ The TOR specifies that the IC chip and antenna assembly are to meet the tolerance limits for exposure to the various electromagnetic, physical, mechanical affects, and similar requirements described in ISO 14443. TOR § C.8.2.3. The dimensions set forth in ISO 14443 and 7810 (discussed above in connection with the Smart Card contract) are not applicable to the TOR, because the size of the electronic passport cover is specified elsewhere in the TOR.

⁴ The TOR contemplates award of a fixed-price delivery order for all CLINs except for technical support (which is to be priced on a time-and-materials basis) and travel (which is cost reimbursable). TOR § B1.2.

⁵ Thus, the approximately 54 million cover sheets will result in 162 million book covers.

entire book cover (front and back), with the IC chip/antenna assembly positioned so that it will be located in the back cover of the completed book. Id. § C8.2.3.

Anteon timely protested the terms of the TOR, contending that the supplies to be provided under the TOR are outside the scope of the Smart Card contract.⁶

DISCUSSION

The Competition in Contracting Act (CICA) generally requires “full and open competition” in government procurements as obtained through the use of competitive procedures. 41 U.S.C. § 253(a)(1)(A) (2000). With respect to single-award, stand-alone contracts, our Office generally will not review modifications to those contracts, because such matters are related to contract administration and are beyond the scope of GAO’s bid protest function. 4 C.F.R. § 21.5(a); MCI Telecomms. Corp., B-276659.2, Sept. 29, 1997, 97-2 CPD ¶ 90 at 7. With respect to multiple-award contracts, task or delivery orders placed against those contracts also are generally outside our bid protest jurisdiction—but for a different reason. In this area, Congress has decided that the issuance of task or delivery orders against multiple-award contracts will not be subject to bid protest review. 41 U.S.C. § 253j(d) (2000); see also, Corel Corp., B-283862, Nov. 18, 1999, 99-2 CPD ¶ 90 at 1.

An exception to our rule about reviewing modifications to a contract—and to the statutory bar to our review of task or delivery orders placed against multiple-award contracts—is where it is alleged that the modification—or the task or delivery order—is beyond the scope of the contract originally awarded. MCI Telecomms. Corp., supra. (modifications to single-award contracts); 41 U.S.C. § 253j(d) (task and delivery orders under multiple-award contracts). This is because the work covered by the modification (or task or delivery order) would otherwise be subject to the statutory requirement for competition (absent a valid determination that the work is appropriate for procurement on a sole source basis). MCI Telecomms. Corp., supra. (contract modifications); Erwin & Assocs., Inc., B-278850, Mar. 23, 1998, 98-1 CPD ¶ 89 at 7 (task or delivery orders).

⁶ After receipt of the agency report, Anteon supplemented its initial protest with more specific examples of how the supplies to be provided under the TOR are outside the scope of the Smart Card contract. GSA contends that these “new” grounds are untimely, as the information upon which they were based, namely the Smart Card contract, was available on the internet and should have been known to Anteon in advance of its initial protest. However, Anteon asserts it was not privy to the contract until it was provided in the agency report, and the Internet cites indicated by GSA do not, in fact, provide the actual language of the Smart Card contracts. Thus, we find that Anteon’s supplemental protest, which was filed within 10 days of receipt of the agency report, is timely. See 4 C.F.R. § 21.2(a)(2) (2003).

In determining whether either of these actions (a modification, or the issuance of a task or delivery order) is beyond the scope of the original contract, the same analysis applies--i.e., GAO looks to whether there is a material difference between the modification (or task or delivery order) and the original contract. See, e.g., MCI Telecomms. Corp., supra. (modifications); Erwin & Assocs., Inc., supra (task or delivery orders). Evidence of such a material difference is found by reviewing the circumstances attending the procurement that was conducted; any changes in the type of work, performance period, and costs between the contract as awarded and the modification (or task or delivery order); and the potential for the type of modification (or task or delivery order) issued. Floro & Assocs., B-285451.3, B-285451.4, Oct. 25, 2000, 2000 CPD ¶ 172 at 6; Data Transformation Corp., B-274629, Dec. 19, 1996, 97-1 CPD ¶ 10 at 6. The overall inquiry is whether the modification (or task or delivery order) is of a nature which potential offerors would reasonably have anticipated. Floro & Assocs., supra.

Anteon complains that the TOR here anticipates a materially different physical form and breadth of distribution than the Smart Card contract, as well as additional items and services found nowhere in the contract. For example, Anteon argues that the cloth passport covers required under the TOR are of a different size and material than the Smart Cards under the ID/IQ contract. In addition, Anteon complains that the TOR provides for the issuance of passport covers to be incorporated into passports distributed to all passport-holding private citizens, whereas the Smart Card contract anticipates the issuance of identification cards only to government employees, military dependents and federal beneficiaries. Furthermore, Anteon argues, other ancillary requirements of the TOR, such as adhesive or travel, are not contemplated at all under the Smart Card contract.

GSA replies that its Smart Card contract is intended to be broad and flexible so as to contemplate the incorporation of Smart Card technology into an electronic passport cover. For the reasons set for the below, we disagree.

At the outset, we recognize certain functional similarities between the Smart Card contract and the TOR. As GSA explains, an electronic passport cover is essentially an identification document that is not materially different in function from a "Smart Identification Card"; both are used to electronically identify the bearer. Although it is true the Smart Card contract does not expressly identify travel and border crossings as an applicable use, it does identify physical access and control as a required function, which is also a function of the electronic passport. Despite the presence of certain functional similarities, however, we do not agree that the physical deliverables sought under the TOR here reasonably fall within the scope of GSA's Smart Card contract, nor do we agree that offerors that are able to manufacture the chip-embedded passport covers at issue here--and might have wished to compete for a contract to do that--could have reasonably foreseen the purchase of these items under GSA's Smart Card contract.

As noted above, the Smart Card contract identified an IC chip card, card readers, driver software, and support services, such as a card security and inventory control system, and program integration and management services. In contrast, the TOR seeks to procure IC chip inlays, cloth passport covers, passport readers, adhesive, an inventory control system, travel, and technical support for such things as development, testing, and operations. Of these requirements, only the readers, technical support, and inventory control system appear to be within the scope of the Smart Card contract, which identifies similar (or identical) deliverables. The remaining items—the passport covers, IC chip inlays, adhesive, and travel—are outside the scope of the contract for the reasons discussed below.

With regard to the passport covers and IC chip inlays, we note significant physical differences between the TOR and the Smart Card contract. The Smart Card contract specifies that the IC chip card (*i.e.*, Smart Card) shall be a credit card-sized plastic plate that complies with the standards for such cards. In this regard, the Smart Card’s dimensions, and the materials used for its manufacture, are considerably different from those of the cloth electronic passport cover sheet (with inlay) at issue here. Although GSA argues that the inlays are physically the same as the Smart Card because the inlay consists of a pre-laminate IC chip with antenna (as does the Smart Card), we note that the inlay itself bears no resemblance to a plastic plate, even before it is affixed to a cloth passport cover, which is also included in this purchase. Moreover, the TOR contemplates the purchase of only 650 stand-alone inlays, with the remainder embedded into as many as 162 million passport covers. Simply put, we do not think that potential contractors for the manufacture of cloth passport covers with electronic inlays could have anticipated the use of the original Smart Card contract for this purpose.⁷

In addition to the physical differences between the plastic plates envisioned by the Smart Card contract, and the inlays to be used in the passport covers here, the TOR includes peripheral goods and services, including adhesive and travel, which cannot reasonably be found to be within the scope of GSA’s Smart Card contract. In addition, these items appear to be of more than nominal value. As noted above, the TOR contemplates the purchase of sufficient adhesive to adhere approximately 162 million book covers to the end page (or 54 million book cover sheets), plus additional adhesive necessary for spoilage. This equates to more than 250 55-gallon drums of liquid adhesive. TOR at B-13. The TOR does not specify the amount of travel contemplated, but given the 3-phases of the electronic passport program

⁷ In addition, it is not clear that offerors could have anticipated the use of the Smart Card contract for a pool of users as broad as all passport-holding private citizens, since the Smart Card contract appears to limit potential recipients to “Federal employee[s], Armed Services, military dependent[s], or Federal beneficiar[ies].” Smart Card Solicitation § C.3. Thus, the TOR may reach beyond the scope of the Smart Card contract in this regard as well. *See Floro & Assocs., supra.*

(systems development, pilot program implementation, and full-scale implementation throughout the United States), which includes up to 4,000 hours of technical services, ultimately leading to the production of millions of passports, travel under this TOR does not appear to be insignificant.

For the reasons identified above, we conclude that the TOR is outside the scope of the Smart Card contract. We recommend that GSA cancel the TOR and either hold a competition for these services, or prepare the appropriate justification required by CICA for other than full and open competition. We also recommend that the protester be reimbursed the reasonable costs of filing and pursuing its protest, including attorneys' fees. 4 C.F.R. § 21.8(d)(1). In accordance with 4. C.F.R. § 21.8(f)(1), Anteon's certified claim for such costs, detailing the time expended and the costs incurred, must be submitted directly to GSA within 60 days after receipt of this decision.

The protest is sustained.

Anthony H. Gamboa
General Counsel