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**Comptroller General
of the United States**

**United States Government Accountability Office
Washington, DC 20548**

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Decision

Matter of: Tarheel Specialties, Inc.

File: B-298197; B-298197.2

Date: July 17, 2006

Richard D. Lieberman, Esq., and Nicole S. Allen, Esq., McCarthy, Sweeney & Harkaway, PC, for the protester.

Aaron T. Marshall, Esq., Department of Homeland Security, and Michael D. Tully, Esq., General Services Administration, for the agencies.

Charles W. Morrow, Esq., Sharon L. Larkin, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest of issuance of a task order to a vendor for support services pursuant to its General Services Administration Federal Supply Schedule (FSS) contract is sustained where the contracting agency improperly determined that the services called for under the task order were within the scope of the vendor's FSS contract.

DECISION

Tarheel Specialties, Inc. protests the award of a task order by the Department of Homeland Security, Immigration and Customs Enforcement (DHS/ICE) to USIS under that firm's General Services Administration (GSA) Federal Supply Schedule (FSS) contract No. GS-07F-0385J. The task order was issued pursuant to request for proposals (RFP) No. HSCEOP-06-R-00004 for services to support the agency's National Firearms and Tactical Training Unit (NFTTU) Armory Operations Branch.

We sustain the protest.

The NFTTU, located in Altoona, Pennsylvania and New Brunswick, Georgia, is responsible for the acquisition of all DHS/ICE firearms, ammunition, and related equipment. These responsibilities include the testing and evaluation of new technology and maintenance of a quality control program for items purchased; the repair and modification of DHS/ICE firearms; the disposal of excess firearms; the inventory management and control of all DHS/ICE firearms and ammunition; the collection, analysis, and reporting of all DHS/ICE shooting incidents; the training of field armorers; the training of personnel involved in the "Firearms Inventory

System”; and the maintenance of several national databases critical to DHS/ICE’s firearms programs.

The RFP, issued on February 10, 2006, solicited proposals for administrative and technical support for the NFTTU under a labor-hour, task-order contract for a base period of 1 year with 4 option years. NFTTU sought support related to its day-to-day operations, including secretarial, administrative, occupational safety and health, logistics and inventory management, material management, accounting, technical project support, computer support, and course developer/instructor support for firearms and defensive tactics training. RFP Performance Work Statement (PWS) at 1.

The RFP’s PWS identified the nine labor positions required to be provided: site supervisor, course developer/instructor-firearms, course developer/instructor-defensive tactics, secretary, administrative assistant, material management specialist, ballistics engineering technician, logistics and inventory specialist, and administrative support specialist. RFP PWS at 10-15. For each labor position, the PWS detailed responsibilities and experience/education requirements. These positions and the estimated hours for each position constituted the contract line items of the RFP for which vendors were to submit rates.

The RFP explained that “[DHS/ICE] intends to acquire these services by awarding a competitive Task Order to one Offeror who has a current Federal Supply Service Schedule with the [GSA].” RFP at 20. In this regard, the RFP advised offerors that “the [offeror’s proposal] must identify each category of labor proposed for performance mapped to the applicable GSA Schedule labor category, provide the GSA Schedule price, show the proposed discounts for the rate, and the rate proposed for the particular labor category inclusive of the discount.”¹ RFP at 23.

The RFP provided for award to the vendor whose proposal was determined to be the best value based on three evaluation factors: demonstrated technical capability, past performance/experience, and price (including discount terms). The evaluation scheme assigned equal importance to demonstrated technical capability and past performance/experience and assigned greater importance to the combination of these factors than to price. RFP at 26.

DHS/ICE issued the RFP to several FSS vendors, including USIS—the incumbent vendor—and Tarheel. Both Tarheel and USIS hold schedule contracts on FSS 84, “Total Solutions for Law Enforcement, Security, Facility Management Systems, Fire

¹ The agency reports that “mapping is a term the agency uses in procurements involving GSA Schedules that describes how the agency verifies whether an offeror’s proposed rates and labor categories are derived from an applicable GSA Schedule.” DHS/ICE Report at 5.

Rescue, Special Purpose Clothing, Marine Craft and Emergency/Disaster Response.” USIS has an FSS Federal Supply Classification (FSC) Group 63, Part I, Special Item No. (SIN) 246-52 contract for “security consulting services,” and Tarheel has an FSS FSC Group 63, Part I, SIN 246-54 contract for “guard services.”

Only Tarheel and USIS submitted proposals in response to the RFP. Tarheel submitted the lowest-priced proposal at [DELETED] and USIS’s price was \$7,363,949.89. After an initial evaluation, DHS/ICE entered into discussions with both vendors concerning the deficiencies and weaknesses in their proposals. DHS/ICE advised Tarheel during discussions that its proposal failed to include signed resumes for each labor category identified as key personnel and that it had not mapped its proposed labor categories to its schedule contract, as required by the price evaluation factor. USIS was advised that its price exceeded the independent government cost estimate for this work.

Both vendors submitted revised proposals. The “Business Evaluation Committee” (BEC) found that Tarheel’s low-priced proposal was unacceptable because none of the labor categories in the PWS were mapped to the positions listed in Tarheel’s schedule contract. On the other hand, the BEC found that USIS’s proposal at \$6,591,012.36 properly mapped all the labor categories to categories reflected in USIS’s schedule contract. Supplemental Agency Report, Tab C, BEC Report, at 7-8. Consequently, USIS was awarded the task order. This protest followed.

Tarheel contends that its proposal should not have been rejected because it had been led to believe that it did not need to show that the positions were currently in its GSA contract.² In a supplemental protest filed after receipt of the agency report, Tarheel argues that the vendors were not treated equally because USIS’s schedule contract also did not reflect all of the labor categories required by the RFP.

The FSS program, directed and managed by GSA, gives federal agencies a simplified process for obtaining commonly used commercial supplies and services. Federal Acquisition Regulation (FAR) § 8.401(a). The procedures established for the FSS program satisfy the requirement for full and open competition. 41 U.S.C. § 259(b)(3) (2000); FAR § 6.102(d)(3); Sales Res. Consultants, Inc., B-284943, B-284943.2, June 9, 2000, 2000 CPD ¶ 102 at 3-4. Where an agency announces its intention to order from an existing GSA FSS contractor, it means that the agency intends to order all items using GSA FSS procedures and that all items are required to be within the scope of

² GSA denies advising Tarheel that it could add new categories to the FSS contract after award. GSA instead explains that although a vendor may add labor categories to its FSS contract it should request a modification to its contract prior to submitting a proposal or quotation, since the goods or services are not on the contract until GSA has approved the request and modified the contract. Letter from GSA to GAO (June 20, 2006) at 1-2.

the vendor's FSS contract. See Armed Forces Merchandise Outlet, Inc., B-294281, Oct. 12, 2004, 2004 CPD ¶ 218 at 4. Non-FSS products and services may not be purchased using FSS procedures; instead, their purchase requires compliance with the applicable procurement laws and regulations, including those requiring the use of competitive procedures. OMNIPLEX World Servs. Corp., B-291105, Nov. 6, 2002, 2002 CPD ¶ 199 at 4-5.

As indicated above, Tarheel's FSS contract is for guard services and the labor categories that it proposed in response to this RFP were not listed in or mapped to the labor categories listed in Tarheel's FSS contract. Thus, the agency properly determined that Tarheel's proposal was unacceptable under this RFP, since the RFP required the labor categories to be on an applicable FSS contract. See American Sys. Consulting, Inc., B-294644, Dec. 13, 2004, 2004 CPD ¶ 247 at 4-5. However, as discussed below, the record indicates that USIS's proposal should have been regarded as unacceptable as well because USIS's FSS contract also did not contain all of the labor categories that were required to perform the RFP requirements.

As noted above, USIS holds an FSS contract under SIN 246-52. This contract was limited to providing "Security Consulting Services at hourly labor rates."³ See Agency Report, Tab F, USIS's SIN 246-52 FSS Contract, at 1 and 9-10. USIS's FSS contract lists six personnel positions--program manager, security consultant, security specialist, functional analyst, administrative specialist and computer forensic analyst--at various experience levels for a total of 21 labor categories. The contract specifies the "minimum/general experience," "functional responsibility," and "minimum education" for each labor category as well as the applicable labor rate. Id. at 11-22.

Although DHS/ICE found that USIS properly mapped its proposal to its FSS contract, the agency has not adequately explained why the labor categories under the RFP were within the scope of USIS's FSS contract, particularly since USIS's contract specifically states that the labor categories are limited to performing security consulting services at hourly labor rates. In this regard, it is not clear that the

³ SIN 246-52 groups vendors that have FSS contracts to provide "professional security/facility management services," which according to GSA "includes labor categories such as security consulting, program management, training and facility management services, etc." E-mail from GSA to GAO (July 13, 2006). According to GSA, the services covered by this RFP "can be within the scope" of this SIN. Id. As indicated above, USIS's SIN 246-52 contract by its terms is limited to providing security consulting services. GSA has expressed no view regarding this limitation. In our view, the question is not whether an FSS contractor could have included particular items in its contract under a specific SIN, but whether, in fact, those items are included within the scope of the contract. That is, the scope of GSA's SIN could be broader than the scope of a specific contract under that SIN.

services to be provided under this RFP are security consulting services as covered by the labor categories included in USIS's FSS contract. The RFP here instead called for support for the day-to-day operations of the NFFTU.⁴

More specifically, the protester notes, and the record confirms, that USIS mapped the site supervisor, material management specialist, and ballistics engineering technician positions to the "Administrative Specialist-Level II" labor category and labor rate in USIS's FSS contract. Tarheel contends that the described attributes of these RFP-required positions do not correspond to the description of the Administrative Specialist-Level II labor category in USIS's FSS contract, and that these positions should therefore not have been considered within the scope of that contract.

DHS/ICE maintains that the description of the Administrative Specialist-Level II labor category in USIS's FSS contract was sufficiently similar to the site supervisor, material management specialist, and ballistics engineering technician positions required by the RFP and offered in USIS's proposal. It contends that the RFP's labor categories "were substantially administrative in nature" so that that these positions could be filled with personnel meeting the qualifications of the Administrative Specialist-Level II position identified in USIS's FSS contract.

When a concern arises that a vendor is offering services outside the scope of its FSS contract, the relevant inquiry is not whether the vendor is willing to provide the services that the agency is seeking, but whether the services or positions offered are actually included on the vendor's FSS contract, as reasonably interpreted. See American Sys. Consulting, Inc., *supra*, at 5.

The Administrative Specialist-Level II labor category on USIS's FSS contract for security consulting services is described as having the following attributes:

Minimum/General Experience: This position requires six years of directly related experience performing administrative support functions. Must be highly organized and have excellent oral and written communication skills. Must possess experience using word processing, project management and desktop publishing application software and hardware.

Functional Responsibility: Functions as administrative support specialist for an office or program. Performs all administrative support

⁴ This same problem exists with regard to Tarheel's SIN 246-54 FSS contract for guard services. Indeed, GSA has expressed the view that these services cannot be ordered under SIN 246-54 and Tarheel should not have been allowed to submit a proposal. E-mail from GSA to GAO (July 13, 2006).

functions required by the activity. Prepares final correspondence, reports and other published material; prepares briefing material; establishes and maintains program files; performs budget and finance functions; and develops, analyzes and maintains administrative operating processes and procedures.

Minimum Education: Associate's Degree. Eight years of directly related experience, combined with completion of training courses relevant to duties and functions of the requirement, may be substituted for the degree requirement.

Agency Report, Tab F, USIS's SIN 246-52 FSS Contract, at 19.

However, the responsibilities and requirements for the site supervisor, material management specialist, and ballistics engineering technician positions required by the RFP do not appear consistent with the FSS contract's Administrative Specialist-Level II labor category description. The RFP described the site supervisor position as follows:

One Material Management Specialist assigned to the NFFTU -- Armory Operations facility will occupy the position of Site Supervisor for all contractor employees assigned to the NFFTU facilities. This person will also hold the position of "team leader" for the Material Management Specialist support. Supervisory duties include, but are not limited to coordinating (with the appropriate Government team leader or supervisor receiving contractor personnel support) all contractor administrative matters such as scheduling of contractor personnel for vacation, sick leave, meeting workload surge requirements, impending requirements and contract employee performance issues, and serving as the first level of management for any contract employee discipline issues.

Experience: A minimum of 3 years experience in the performance of shipping and receiving duties. Experience in conducting physical inventories of sensitive material. Working knowledge of maintaining and entering data into a national database. Must be able to lift 35-50 pounds. Experience in the operation of a forklift.

Education: High school diploma or GED from a certified school.

RFP, PWS at 10-11. The material management specialist position was described as follows:

The contractor will provide material management specialist support. The Material Management Specialist assists in the control and accounting of sensitive, capital, and other property that includes the

entire life cycle from acquisition to disposal. The contractor coordinates and expedites the flow of material, parts and assemblies in accordance with NFFTU standard operating procedures. The contractor is responsible for the selection, packaging and loading of products onto common carrier vehicles. The contractor works under general supervision on both routine and non-routine tasks. Responsibilities include conducting physical inventories at the NFFTU facility of all sensitive, capital and other property, reconciling discrepancies in the NFFTU property inventory and preparing inventory reports, including inventory levels, updating and maintaining the national inventory database(s), reviewing schedules and determining material required or overdue, requisitioning material, parts and supplies, and establishing delivery sequences. This includes researching multiple vendors and determining the availability and source of required supplies. The contractor also coordinates shipping and receiving; verifies shipping and receiving records with bills, invoices, or other records, inspects material shipped/delivered to verify if the items received were as specified, and prepares documentation needed to support the purchase of equipment, supplies, and services. It is estimated that 80% of the contractors work will be in the warehouse area.

Experience: A minimum of 3 years experience in the performance of shipping and receiving duties. Experience in conducting physical inventories of sensitive material. Working knowledge of maintaining and entering data into a national database. Must be able to lift 35-50 pounds

Education: High school diploma or GED from a certified school.

RFP, PWS at 13. And the ballistics engineering technician's responsibilities and requirements were described as follows:

The contractor will provide ballistics engineering technician support. The Ballistics Engineering Technician's duties include performing testing and evaluation of firearms and ammunition for adherence to Sporting Arms and Ammunition Institute (SAAMI) and military specification standards. The contractor conducts market research studies on firearms, ammunition, body armor and other specialized law enforcement equipment. The contractor must possess the ability to effectively communicate both orally and in writing, as additional duties include developing and writing comprehensive test plans and test reports for firearms and/or ammunition testing and evaluation projects conducted at the NFFTU ballistics test laboratory. Additionally, the contractor must be capable of developing and presenting technical test

and evaluation results to representatives of ammunition and firearms manufacturers, and to other government agencies.

Experience: Knowledge of small caliber firearms used in law enforcement and terminal ballistics test parameters for law enforcement and/or military ammunition. Prior experience with a variety of test equipment used for measuring pressure, velocity, accuracy and physical characteristics of law enforcement ammunition.

Education: Associate degree in applied science or pre-engineering/engineering technology or successful completion of at least two years of college in a 4-year engineering program.

RFP, PWS at 14.

Based on our review, we find that the attributes and responsibilities of the Administrative Specialist-Level II position in USIS's FSS contract do not match the attributes and responsibilities of the site supervisor, material management specialist, and ballistics engineering technician positions required by the RFP.⁵ The mere fact that some of the duties of the RFP-required positions were administrative in nature is an insufficient basis to determine that these positions match up to the FSS contract Administrative Specialist-Level II position, particularly given that the FSS contract was apparently limited to providing security consulting services. In any case, from our review, it appears that many of the duties of the RFP-required positions were not merely administrative.

For example, the site supervisor position requires the individual to act as "team leader" and assume a number of supervisory duties relating to personnel and workload management. None of these duties are suggested by the Administrative Specialist-Level II labor category, which is limited to performing routine "administrative support" functions such as preparing correspondence and other written materials, maintaining program files, and maintaining administrative operating processes and procedures.

Similarly, the material management specialist position requires a number of non-administrative functions relating to material and inventory management. Such activities include conducting physical inventories; coordinating the flow of material, parts, and assemblies; requisitioning materials and researching vendors to determine the availability of supplies; coordinating shipping and receiving; and the ability to

⁵ We also note that because USIS's FSS contract was for security consulting services, other positions required by the RFP, such as course developer/instructor and logistics/inventory specialist, also did not directly correspond to the labor categories included in USIS's FSS contract.

operate a forklift. Again, these functions are unrelated to the general administrative-type functions listed under the Administrative Special-Level II labor category.

The ballistics engineering technician functions are also dissimilar to that of the Administrative Special-Level II labor category. Unlike the general administrative functions in the FSS labor category, the ballistics engineering technician duties include testing and evaluating firearms and ammunition, writing test plans and reports for firearms and/or ammunition testing, and conducting market research studies on firearms and other specialized law enforcement equipment. The ballistics engineering technician is also required to possess specialized knowledge of firearms and firearm test equipment.

In response to our request for comments, GSA stated its belief that the Administrative Specialist-Level II position in USIS's FSS contract may be used to fill the three positions discussed above because, in GSA's opinion, there is some overlap in educational requirements.⁶ GSA states

For example, the minimum education requirement for an Administrative Specialist II in the USIS labor category description was an "Associates Degree or eight years of directly related experience, combined with the completion of training courses relevant to the duties and functions of the requirement." In the RF[P], the requirement for a Ballistics Engineering Technician was an "Associates Degree in applied science or pre-engineering/engineering technology . . ." as it was specifically tailored to the job required. Directly related experience, in this case, appears to be the knowledge of firearms, test parameters, and the ability to write test plans, organize, communicate and present results to others, which comprises a combination of technical and administrative functions.

E-mail from GSA to GAO (July 13, 2006).

We think GSA's argument here misses the point. We believe that the relevant inquiry is not solely whether the minimum education required for the FSS contract position satisfies the minimum education level required for the RFP-required positions, but whether there is a match in job function as well. Here, the job description for the Administrative Specialist-Level II position is different from the RFP-required position descriptions. As stated above, the Administrative Specialist-Level II position is limited to administrative functions and experience, while, as discussed above, the

⁶ GSA states that ensuring that the FSS contract labor categories are properly mapped to those required by the RFP is the responsibility of the agency purchasing contracting officer based on his or her knowledge of the procurement. E-mail from GSA to GAO (July 13, 2006).

site manager, material management specialist, and ballistics engineering technical positions require the performance of non-incidental duties and functions that cannot reasonably be deemed administrative.⁷

Thus, USIS's proposal, like Tarheel's, should not have been viewed as having met the RFP requirement to possess a FSS contract with the requisite labor categories. Consequently, it was not proper for the agency to place the order against USIS's FSS contract. See American Sys. Consulting, Inc., supra, at 4-5.

We recommend that DHS/ICE terminate the task order to USIS, assess its requirements, and determine whether it is appropriate to obtain these services under the FSS program, and then either resolicit under the FSS program or by full and open competition.⁸ We also recommend that Tarheel be reimbursed its costs of filing and pursuing its supplemental protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8(d)(1) (2006). Tarheel should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after the receipt of this decision. 4 C.F.R. § 21.8 (f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel

⁷ Although the educational level of the Administrative Specialist-Level II position does refer to "directly related experience," which GSA suggests may be extrapolated to apply to the RFP-required positions, we think that the only reasonable interpretation of this phrase is that it is limited to administrative experience based on the responsibilities and experience description of the Administrative Specialist-Level II position.

⁸ On April 19, the head of the agency determined that proceeding with the procurement was in the best interest of the government, notwithstanding the stay of performance required by the Competition in Contracting Act of 1984, 31 U.S.C. § 3553 (d)(3)(A) (2000). Where an agency has authorized performance of a contract based upon a determination that the best interest of the United States would not permit awaiting our decision, we are required to make our recommendation without regard to any cost or disruption from terminating, recompeting, or reawarding the contract. 31 U.S.C. § 3554(b)(2).