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**Comptroller General  
of the United States**

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

# Decision

**Matter of:** Outdoor Venture Corporation

**File:** B-401628

**Date:** October 2, 2009

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David J. Taylor, Esq., Katherine A. Allen, Esq., Rachel W. McGuane, Esq., and Kathryn V. Flood, Esq., Buchanan Ingersoll & Rooney PC, for the protester. David T. Ralston Jr., Esq., Foley & Lardner LLP, for the intervenor. Susan H. Harbort, Esq., and Wade L. Brown, Esq., U.S. Army Materiel Command, for the agency. Kenneth Kilgour, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## **DIGEST**

Protest that agency improperly obtained items outside the scope of a multiple-award indefinite-delivery/indefinite-quantity contract is denied where the item is reasonably encompassed by the contract at issue.

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## **DECISION**

Outdoor Venture Corporation, of Stearns, Kentucky, protests the decision of the Department of the Army to obtain Ultra Lightweight Camouflage Net Systems (ULCANS) under a multiple award, indefinite-delivery/indefinite-quantity (ID/IQ) delivery order contract. Outdoor Venture asserts that the products being procured, full concealment covers, are outside the scope of the ID/IQ contract.

We deny the protest.

## **BACKGROUND**

The agency awarded two ID/IQ contracts on June 7, 2006, with a duration of 5 years and a combined ceiling of \$1.7 billion dollars. The two awardees, GMA Cover Corporation (GMA) and Saab Barracuda, LLC, are also the only two sources for the specialized fabric required to produce ULCANS.

The statement of work defined the scope of the contract as follows:

This Statement of Work (SOW) specifies the tasks and efforts the contractor shall perform for the manufacture and testing of General Purpose, Radar Transparent (Type III) and Radar Scattering (Type IV); Class 1 (Woodland) and Class 2 (Desert) ULCANS variants, and all associated spare parts/components that comprise these systems. The Government may require the development and testing of other versions of ULCANS under this contract. Versions of ULCANS to be developed may include but may not be limited to Arctic, Aviation, Urban and special applications.

Agency Report (AR), Tab 4, Statement of Work ¶ 1.0.

The items at issue here, full concealment covers (FCC), are for use with military four-wheel drive motor vehicles called High Mobility Multipurpose Wheeled Vehicles (HMMWV). The Army procured a limited number of FCCs from the protester before deciding to issue a delivery order under the ID/IQ contract for the needed quantities. The ULCANS project leader for development of new systems found that the FCC for the HMMWV is within the scope of the existing ID/IQ contract, concluding that it “is an improved version of our current HMMWV net. . . . This version is clearly within scope effort for our contract and falls under the Counter Sniper Initiatives. Eventually this version will completely replace our current HMMWV net.” AR, Tab 7, Within-Scope Determination, Apr. 28, 2009 at 1. The Army issued GMA a delivery order for over 11,000 HMMWV FCCs, and this protest followed.

## DISCUSSION

Outdoor Venture argues that the FCC is outside the scope of the ID/IQ contract. The protester alleges that the FCC, a type III ULCANS, is a “build to print” item that should have been newly competed rather than procured through the issuance of a task order under a contract contemplated and executed for the purpose of procuring significantly more complicated work.<sup>1</sup>

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<sup>1</sup> Citing Scope ¶ 1.1 of the contract, the protester asserts, without elaboration, that because the FCC is a type III “general purpose” cover, it is outside the scope of the underlying contract, notwithstanding the fact that the performance/design specifications contemplated that type III, general purpose ULCANS would be procured under the contract. As noted above, the statement of work identified type III ULCANS as included within the contract. Moreover, Scope ¶ 1.1.2 discussed the uses for type III ULCANS, describing it as a “general purpose camouflage.” AR,  
(continued...)

Our Office is authorized to review a protest of the issuance or proposed issuance of a task or delivery order which is valued below \$10 million where, as here, the protester argues that the order is beyond the scope of the contract originally awarded. 10 U.S.C.A. § 2304c(e)(1)(A) (West 2009). The fundamental issue in such a protest is whether issuance of the task or delivery order in effect circumvents the general statutory requirement under the Competition in Contracting Act of 1984 (CICA) that agencies obtain full and open competition through the use of competitive procedures when procuring their requirements. See 10 U.S.C. § 2304(a)(1)(A) (2006); Anteon Corp., B-293523, B-293523.2, Mar. 29, 2004, 2004 CPD ¶ 51 at 4.

In determining whether a task or delivery order is outside the scope of the underlying contract, and thus falls within CICA's competition requirement, our Office examines whether the order is materially different from the original contract. Evidence of a material difference is found by reviewing the circumstances of the original procurement; any changes in the type of work, performance period, and costs between the contract as awarded and the order as issued; and whether the original solicitation effectively advised offerors of the potential for the type of orders issued. Overall, the inquiry is whether the order is one which potential offerors would have reasonably anticipated. Specialty Marine, Inc., B-293871, B-293871.2, June 17, 2004, 2004 CPD ¶ 130 at 4.

As explained below, we think that the record shows that the FCCs are within the scope of the ID/IQ contract at issue. The statement of work listed variations of ULCANS to be procured under the contract and noted that other versions not specifically identified could also be procured. According to the ULCANS performance/design specifications,

the mission of the ULCANS is to provide concealment to tactically deployed military equipment, facilities, and troops in a Woodland or Desert environment respectively. The systems shall provide concealment from visual, thermal, near infrared, and radar sensors. The system must require only minimal training for operation and maintenance.

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(...continued)

Tab 5, Performance/Design Specifications at 3. The performance/design specifications stated that they covered "the versions of the [ULCANS] used to conceal tactical military equipment," id. at 2, and the protester does not allege that the FCC is not used for that purpose. Accordingly, we see no merit to the argument that general purpose type III ULCANS are not included in the scope of the ID/IQ contract.

AR, Tab 5, Performance/Design Specification § 3.1.1, Mission. The FCC clearly is consistent with the ULCANS mission, and it is an improved version of the current HMMWV turret cover, itself a ULCANS. The FCCs are made with the same specialized fabric that is essential to the manufacturing of ULCANS and that is available only from the two firms that hold the ID/IQ contract at issue. Given that the FCC performs the same mission for which ULCANS are intended—concealment of military equipment, is evolved from a current ULCANS, and is constructed of the material essential to ULCANS manufacturing, we think that a potential offeror would reasonably have anticipated that the agency would procure it under the existing ID/IQ contract.

The protester nevertheless argues that the ID/IQ contract’s performance/design specifications require that a ULCANS be comprised of a screen system and a support system, and because the FCC lacks a support system it cannot be an ULCANS. The Army asserts that the grommets and bolts required to attach the FCC to the vehicle fit the definition of “support system.”

The intent of the portion of the specifications from which the protester quotes—system components—is to identify the necessary components of existing systems. The tables set forth the number and type of screen system and support system components, some of which were “to be determined.” In as much as the specifications seem designed to ensure that the manufacturer delivers all the necessary components to make particular ULCANS operational, and not to dictate the particular kind of “support system” a ULCANS utilizes, the protester’s reliance on so narrow a reading of the performance/design specifications is unreasonable.

The protester argues that the FCC’s relative simplicity as a “build to print” item takes it outside the scope of items that may be procured under the ID/IQ contract. As evidence for the claim that the FCCs are less complex than other ULCANS, the protester points to the fact that the FCC has already been developed and requires no further development or testing. Similarly, the protester notes that the FCCs are built to level III drawings, which are more detailed than the level II drawings to which the other ULCANS are manufactured. We find this argument unpersuasive. As noted above, in determining whether the item being procured is outside the scope of the ID/IQ contract, the inquiry is whether the delivery order represents a material change in the type of work, performance period, or cost of a contract. This delivery order, which represents a fraction of the ID/IQ contract dollar ceiling and will be completed before the contract’s expiration, clearly does not represent a material change in either the performance period or cost of the ID/IQ contract. Further, we do not think that the fact that the FCC has already been developed and that the FCC is

“simple” to manufacture demonstrates that the item is outside the type of work contemplated under the ID/IQ contract.<sup>2</sup>

The protest is denied.

Michael R. Golden  
Managing Associate General Counsel

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<sup>2</sup> The protester also alleges that the solicitation should have been issued as a set-aside for HUBZone small businesses and that the awardee is in violation of the Berry Amendment. Under the bid protest provisions of CICA, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. Bid Protest Regulations, 4 C.F.R. § 21.0(a) (2009). Because the protester does not hold the ID/IQ contract under which the delivery order was issued, and because we conclude that the delivery order for FCCs was not outside the scope of the ID/IQ contract, the protester is not eligible to receive a delivery order and is therefore not an interested party to raise these other allegations.