

QUOTED LABOR CATEGORIES NOT IN SCOPE OF SCHEDULE CONTRACT

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Although the General Services Administration (“GSA”) Federal Supply Schedule (“FSS”) program provides a simplified process for buying common-used commercial supplies and services, agencies must purchase goods or services that are on the vendor’s schedule contract, or the goods will be deemed outside the scope of the offeror’s schedule contract. In *Spatial Front, Inc.*, B-420921, Dec. 21, 2022, the Government Accountability Office (GAO”) sustained a protest where the positions in the offeror’s quote were not reasonably included in the offeror’s FSS contract.

Spatial Front protested the issuance of an order to Technology Solutions Provider, Inc. (“Technology Solutions”), issued by the Department of Agriculture for conservation software support services. Essentially, Spatial alleged that the agency improperly determined that the services (labor categories) in Technology Solutions’ quote were within the scope of the awardee’s FSS contract.

GAO noted that the FSS program satisfies the requirement for full and open competition, when properly used. Non-FSS products and services (which are often referred to as “open market items”) generally cannot be purchased using FSS procedures, but must be bought using compliance with applicable statutes and regulations, including those requiring the use of competitive procedures. When an agency orders from an FSS, all goods or services must be on the vendor’s schedule contract prior to the actual order. Just because an offeror is willing to provide open market items (as explained above, those *not* on its schedule contract) this does not make the award to that contractor proper.

The labor categories in an underlying Blanket Purchase Agreement (“BPA”) awarded to Technology Solutions contained no function descriptions—just labor category names. Although Technology Solutions asserted it had “mapped” these labor categories when the BPA was awarded, the GAO found no documentation showing that the Agency had previously reviewed the labor categories to determine if they were within the scope of the protested categories.

When examining the basis for the award to Technology Solutions, GAO found that the proposed labor categories were not within the scope of its FSS contract as indicated by the mapped-to FSS labor categories. Further, the agency failed to adequately document the evaluation it performed on these categories. Some problems cited by the GAO were:

- (1) Technology Solutions quoted a “Developer” labor category to develop software, however the FSS labor category was “Quality Assurance Engineer” which only discussed testing of software to ensure proper operation.
- (2) Technology Solutions quoted a “Junior Tester” labor category, which had duties of a person who conducted functional test of the requirements and focused on agile planning design and implementation. However, the labor category to which this position was

mapped was required to provide support to users and serve as the initial point of contact for troubleshooting.

- (3) Technology Solutions quoted “SAFeCoach/Agile Delivery Lead”, “Release Train Engineer” and GIS/Geospatial Architect” labor categories. It then mapped these positions to “Systems Engineer, Sr.” which was described as performing equipment selection, installation and support of operating systems for networks.

The GAO concluded that it was unreasonable for the agency to have found Technology Solutions’ quotation eligible for the task order because it provided labor categories which the agency had failed to reasonably determine were within the scope of its FSS contract. Therefore its quote was ineligible for award. GAO recommended that the task order be terminated and discussions be held or that the agency used competitive procedures that does not preclude submission of non-FSS items.

Takeaway. Offerors should be careful *not* to include “open market” items in any FSS quote. Be sure you can directly track from your quote to your FSS contract—especially in the area of labor categories.

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