

## ATTEMPTS TO REGAIN THE AIR FORCE CONTRACT FOLLOWING A SUCCESSFUL SIZE PROTEST AND CORROBORATION OF 'UNFAIR END-USER JUSTIFICATION'

**From:** Raul Espinosa [mailto:info@fitnet.net]

**Sent:** Saturday, July 18, 2009 8:03 PM

**To:** Eric Thaxton (eric.Thaxton@langley.af.mil)

**Cc:** 'steven.gustaff@ellsworth.af.mil'; 'john.caporal@pentagon.af.mil'; 'jack.boccarossa@us.army.mil'; Daniel O'Rourke (daniel.o'rourke@sba.gov); Mona Gayle Aquino (monaGayle.Aquino@ellsworth.af.mil); 'kuntzg@gao.gov'; 'shearw@gao.gov'

**Subject:** FW: Requesting contract on Successful Size protest declaring Unisen, Inc, ineligible for Set-aside award FA4690-09-P-S051 (Sol # FA4690-09-T-0031)

Mr. Thaxton,

Thank you for the opportunity to brief you, as the Air Force Ombudsman for Ellsworth AFB, regarding the solicitation and contract addressed by this communication. As you can confirm from the email thread below, I had requested – following my SBA size protest victory - that the contract in question be awarded to FitNet. I am respectfully requesting your formal involvement and the involvement of the Competition Advocate to make sure the award is indeed granted to FitNet in an expeditious manner in order to settle this dispute. I reserve my rights, however, to appeal this dispute, if I cannot reach a satisfactory settlement.

As I told you on the phone, I have verified, through a FOIA – which I was forced to request (no one would respond to my request as to why the obvious FitNet better offer was overlooked) - the suspicion, that an **'unfair end-user justification'** had been used to unfairly discriminate against FitNet and prevent the company from lawfully receiving the award that it had earned. The Office of Federal Procurement Policy (OFPP), for your information, has attempted to eradicate this abusive practice through four (4) separate directives summarized by the FPA Procurement Advisory on the link below.

<http://www.prweb.com/prfiles/2008/08/31/162468/FPAAdvisoryUnfairJustifications.pdf>

For the record, the FOIA has confirmed that the end user – to eliminate our better and lowest offer from the competition - had made a false statement, **“Matrix Tomahawk E is found as non conformant. It does not have safety features,”** which eventually led to the Contracting Officer to declare that, **“this product is found not to be an equal product to the requirement.”**

This communication will offer proof – in the form of a communication from Tomahawk accompanying a certificate of safety compliance –confirming that the end-user had allegedly lied to disqualify the FitNet offer, which should have been selected as the lowest cost meeting the specifications.

I wish to, therefore, request your support – as Ombudsman – so that FitNet is granted the award and . . . nor at the price it had offered, but at the HIGHEST price Ellsworth had received in response to the solicitation. Frankly, FitNet deserves to be compensated for the costs of its efforts to uncover fraud and abuse at the Air Force. Fighting this battle has cost me well over my expected profit plus the total cost of our offer COMBINED. . . several times over!

The attached communication from Gary Warren, Product Brand Director for Tomahawk, whose key statements I have summarized below, will verify that Tomahawk did have a safety feature and was, therefore, conformant.

***“the Tomahawk E-series Indoor Cycling bike indeed has a “one motion emergency stop” - as required - which works by pressing down on the ‘red’ resistance knob. This Tomahawk safety feature conforms unconditionally with the DIN EN 957 safety protocols. The Tomahawk Indoor Cycling bikes are required to come to a full stop within 1 rotation of the flywheel using a ‘one motion emergency stop movement’ as per EN 957 standards. The Tomahawk E-series has passed all of the EN 957 test methods, which are the most rigorous of all safety standards for Indoor Cycling (often referred to as Spinning® in the industry) internationally.”***

By way of a copy of this communication, I am advising the Contracting Officer, the USAF Small Business Office, the SBA OIG, and the GAO Forensic & Special Investigation Unit of my actions. Contracting abusive practices against small and disadvantaged businesses must be eradicated at all costs. For the record, a Congressional has also been requested from Senator Bill Nelson as well.

I've taken the liberty of providing, for the record, a link to a press release which describes 10 separate cases – exactly like the one at Ellsworth – worthy of a major investigation.

<http://www.prweb.com/releases/2008/09/prweb1113164.htm>

Please do acknowledge this communication and advise me how you intend to proceed.

Thank you for your consideration,

Raul Espinosa,  
FitNet

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**From:** Raul Espinosa [mailto:info@fitnet.net]  
**Sent:** Wednesday, July 08, 2009 7:22 PM  
**To:** 'steven.gustaff@ellsworth.af.mil'  
**Cc:** 'john.caporal@pentagon.af.mil'; 'jack.boccarossa@us.army.mil'; Daniel O'Rourke (daniel.o'rourke@sba.gov); Mona Gayle Aquino (monaGayle.Aquino@ellsworth.af.mil)  
**Subject:** Requesting contract on Successful Size protest declaring Unisen, Inc, inelegible for Set-aside award FA4690-09-P-S051 (Sol # FA4690-09-T-0031)

Mr. Gustaff,

By now, you should have received a copy of the SBA Size Protest decision declaring Unisen other than SMALL for the purpose of bidding and/or receiving contracts reserved for small businesses. In other words, **Unisen's proposal was ineligible for the award Ellsworth had granted them.** Unisen's action, by the way, to have alleged misrepresented their size, is currently under review by the SBA OIG, by the Air Force OSDBU and by other government officials.

Since Mr. Root had confirmed on the phone – as I had requested - that Ellsworth AFB would stop the performance and let the protest take its course, I wish to respectfully request for Ellsworth AFB to abide by the SBA Size protest decision and grant FitNet the contract it successfully protested. I have attached another copy of the Size Determination.

For the record, FitNet had submitted a timely and qualified proposal, which a) had met the specifications and b) was more cost effective (i.e., best value) than all the offers Ellsworth had received, Unisen's proposal included.

Please kindly advise me how Ellsworth AFB intends to proceed. Thank you for your consideration,

Raul Espinosa  
FitNet

PS. – By the way, I understand Anthony Root had retired. For the record, he never provided me – as I had requested - the contact information (i.e., phone and email) for the Ombudsman and the Competition Advocate at Ellsworth, which I had requested. I still would like to received it for my records. Please forward it. Thank you.

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**From:** Raul Espinosa [mailto:info@fitnet.net]

**Sent:** Monday, June 15, 2009 4:54 PM

**To:** 'Aquino, MonaGayle L A1C USAF ACC 28 CCS/PKA'; 'steve.gustaf@ellsworth.af.mil'

**Cc:** 'anthony.root@ellsworth.af.mil'; 'Boccarossa, Jack J Mr SBALO'; 'caroline.bunts@sba.gov'; 'john.caporal@pentagon.mil'

**Subject:** Size protest (Set-aside award FA4690-09-P-S051 for \$17,299.00 to Unisen, Inc.) on Sol # FA4690-09-T-0031

Mr. Gustaf,

On Wednesday June 10<sup>th</sup>, we received an email communication from Ms. Aquino regarding the award Ellsworth AFB had made to Unisen and immediately advised you and Tony Root, the Small Biz representative of our intention to file this action. At the time we requested for Ellsworth AFB to refrain from taking any action which would prevent the size protest process from taking its course.

Please accept this communication as a timely SIZE PROTEST and stop the performance. Kindly forward all documentation – including the end-user technical justification on the award - to Carol Bunts ([caroline.bunts@sba.gov](mailto:caroline.bunts@sba.gov)) at the SBA Regional Office in San Francisco where the protest will be processed.

We are herewith requesting for SBA to confirm that Unisen has misrepresented their Small Business certification on CCR and ORCA and rule that they are not entitled to the set-aside award Ellsworth AFB intended to give them and also to question ALL the set-aside awards they have also received.

[http://www.fedspending.org/fpds/fpds.php?parent\\_id=326618&detail=-1](http://www.fedspending.org/fpds/fpds.php?parent_id=326618&detail=-1)

Additionally, we are requesting SBA to forward the *'technical justification'* used on this case to the SBA IG who is currently investigating the alleged abusive procurement practice referred to as 'end-user unfair justifications.' OFPP has attempted to eliminate this endemic abusive practice through four (4) separate directives. The SBA IG has received in excess of ten (10) examples of contracts in which this practice has been used.

By their own admission on their website, Unisen, dba Star Trac (<http://www.startrac.com/us-en/about/Manufacturing-Facility.aspx>) has confirmed that they have in excess of 500 employees, in spite of claiming to have less than 250. On the ORCA database, they have also acknowledged that their gross revenues exceeds \$17 Million. Industry statistics, estimates that the Unisen worldwide sales exceed \$50 Million.

*Star Track is the fastest-growing privately-held fitness equipment company in the world. Headquartered in Irvine, Calif., **the 500-plus-employee company** maintains manufacturing offices in Irvine, Calif., Murrieta, Calif., and Taiwan with service locations in the United Kingdom, Barcelona, Munich, and Singapore.*

It's a well known fact in the fitness industry that Unisen, through its acquisition of – among others – of the Flex Equipment company, its world-wide expansion, its partnership with Madd Dog and others had become a LARGE business several years ago. These facts had been reported to both the SBA Size Standards Office and to GSA but there was no attempt at removing their S/B listing from the CCR database. We trust that this challenge will cause another purging of the CCR database where many other alleged Large companies continue to misrepresent their size status and unfairly take contracts reserved for small businesses.

Please acknowledge this communication and advice us how you intend to proceed.

Raul Espinosa  
FitNet

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**From:** Aquino, MonaGayle L A1C USAF ACC 28 CCS/PKA [mailto:MonaGayle.Aquino@ellsworth.af.mil]  
**Sent:** Tuesday, June 09, 2009 4:09 PM  
**To:** info@fitnet.net  
**Subject:** Spin Bikes - Unsuccessful letter

Mr. Espinosa:

The subject requirement was awarded to:

Unisen Inc  
14410 Myford Rd  
Irvine, CA 92606  
Award No: FA4690-09-P-S051  
Award Amount: \$17,299.00

Thank you for your proposal and though your company was not selected for this award, we appreciate your submission and looks forward to doing business with your company in the future.

If you have any questions concerning this, please contact me. Thank you!

//SIGNED//

Mona Gayle L. Aquino, A1C, USAF  
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