



**Update May 22, 2017**

**By:** Christine V. Williams

**SUBJECT:** Awarding a Sole Source Contract to an Alaska Native Corporation Deemed a New Requirement under Certain Circumstances

*GOV Services, Inc. B-414374 May 2017*

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A bridge contract was awarded to Akima Support Operations (“ASO”), a subsidiary of an Alaska Native Corporation (“ANC”), in February 2017 pursuant to the SBA’s 8(a) Program. The bridge contract was awarded on a sole-source basis. The first contract, awarded to ASO in 2016 was awarded pursuant to FAR Sec. 6.203-2, referred to the agency as the 48P sole-source contract. The 2017 bridge contract was awarded in response to earlier protests and correction active that needed to be taken by the agency.

The heart of the protest was that GOV services contended that because the agency allegedly offered the requirement to the SBA for competition within the 8(a) Program, the agency cannot subsequently remove the requirement from competition and award the requirement on a sole-source basis to the ANC company.

The GAO found that Section 8(a) of the Small Business Act authorizes the SBA to contract with other government agencies and to arrange for the performance of those contracts via subcontracts awarded to socially and economically disadvantaged small businesses. GAO decisively stated: “*our Office will NOT* consider a protest challenging a decision to procure under the Section 8(a) program absent a showing of possible bad faith on the part of government officials or that regulations may have been violated.” (emphasis added). The agency invited the SBA, lead counsel on the matter Laura M. Foster, to respond and it provided its views on the protest as the SBA is afforded great weight in interpreting its own regulations.

The key, the SBA explained, is whether the contract was previously offered as a competitive award. If so, then it cannot be converted to a sole-source award. In reviewing the requirement in this case, the SBA found that “generally a bridge contract does not encompass the total requirement that was previously fulfilled through the 8(a) Program.” For that reason, it explained “SBA would usually consider a bridge contract to be a new requirement.” When

evaluating new requirements under 13 CFR 124.504(c)(1)(ii)(C), the SBA employs the following analysis:

The expansion or modification of an existing requirement will be considered a new requirement where the magnitude of change is significant enough to cause a price adjustment of at least 25 percent (adjusted for inflation) or to requirement significant additional or different types of capabilities or work.

According to the GAO, the SBA test is straightforward: “[i]f the price of the bridge contract is at least 25 percent less than the price of the underlying full requirement, the bridge contract would constitute a new contract.” Furthermore, “any previous acquisition history for the same services with a larger scope would be irrelevant as to whether” an agency could properly sole source a bridge contract to an ANC.

The GAO found the SBA’s analysis persuasive and a reasonable interpretation of its regulations. The GAO went on to find that the sole-source contract awarded to ASO was more than 25 percent less than the estimated value of the contract offered in March of 2016, even though that reflection of change did not occur until the agency corrected its record. Until the agency had supplemented its record to reflect the correct time period and percentage of change, it was not considered a new requirement. *GOV Services, Inc.*, B-414374 May 2017.