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**Comptroller General
of the United States**

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

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. No party requested redactions; we are therefore releasing the decision in its entirety.

Decision

Matter of: OMNI Government Services, LP

File: B-297240.2; B-297240.3; B-297240.4

Date: March 22, 2006

Alexander J. Brittin, Esq., Brittin Law Group, PLLC, for the protester.
William K. Walker, Esq., Walker Reausaw, for Alutiiq Global Solutions, LLC,
an intervenor.

Jeffrey I. Kessler, Esq., and Beth Biez, Esq., Department of the Army, and
John W. Klein, Esq., and Laura Mann Eyester, Esq., U.S. Small Business
Administration, for the agencies.

Paul N. Wengert, Esq., and Michael R. Golden, Esq., Office of the General Counsel,
GAO, participated in the preparation of the decision.

DIGEST

Protest is denied where agency reasonably determined that revised requirement for multimedia and visual information services would result in a price differential exceeding 25 percent of the cost of the incumbent contract and, therefore, in accordance with the regulations implementing the Small Business Administration's (SBA) section 8(a) program, the proposed contract constituted a new requirement that could be submitted for performance under the SBA's 8(a) program, notwithstanding the incumbent small business contractor's interest in competing for the work.

DECISION

OMNI Government Services, LP, a small business concern, protests the decision by the Department of the Army, U.S. Army Aviation and Missile Command (AMCOM), and the Small Business Administration (SBA), to accept under the SBA's section 8(a) business development program a requirement for multimedia and visual information services¹ for performance by Alutiiq Global Solutions, LLC, an Alaska native corporation.

¹ Such services include digital still imaging, digital graphics, digital motion imaging, presentation support, and maintenance of multimedia equipment. Agency Report (AR), Tab E, Performance Work Statement, at 8.

We deny the protest.

OMNI is the incumbent contractor, providing certain multimedia and visual information services for AMCOM. On January 19, 2006, AMCOM notified OMNI that the SBA had accepted AMCOM's requirement for multimedia and visual information services for performance by Alutiiq, a participant in the SBA's 8(a) business development program. AR, Tab B, Letter from Contracting Officer to Protester (Jan. 19, 2006).

OMNI objects that the proposed contract does not qualify as a "new requirement" and, therefore, the proposed contract cannot be placed in the 8(a) program. 13 C.F.R. § 124.504 (2005). 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. 15 U.S.C. § 637(a) (2000). The SBA and contracting agencies have broad discretion in selecting procurements for the 8(a) program, and a contracting officer has broad discretion to let a noncompetitive contract under section 8(a) of the Small Business Act upon such terms and conditions as may be agreed upon by the procuring agency and the SBA. NANA Servs., LLC, B-297177.3, B-297177.4, Jan. 3, 2006, 2006 CPD ¶ 4 at 2.

The Army and the SBA argue that the scope of work has been changed so significantly from that in OMNI's incumbent contract that the price differential (which the regulation refers to as a "price adjustment," and in this case is a decrease in price) would exceed 25 percent, thereby making the proposed contract per se a new requirement under the applicable regulation. 13 C.F.R. § 124.504(c)(1)(ii)(C).² To reach this conclusion, the Army and the SBA calculated the differential by comparing the estimated maximum dollar value of the base year and four option years for the protested requirement--\$6,711,000³--to the value of the incumbent

² The regulation provides:

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 require significant additional or different types of capabilities or work.

13 C.F.R. § 124.504(c)(1)(ii)(C). The SBA's position is that a change of 25 percent is the key in this regard, even if (as in this case), the change is a reduction in price of 25 percent or more. See NANA Servs., LLC, supra, at 9. The protester does not challenge the SBA's position on this point.

³ The Army and the SBA have consistently utilized this figure as the estimated cost of performance of the proposed contract. E.g., AR, Tab R, Letter from Army Chief of Small and Disadvantaged Business Utilization Office to SBA (Nov. 7, 2005) 1.

contract, which they calculated as \$9,791,025, which was adjusted for inflation.⁴ Comparing the inflation-adjusted incumbent contract value and the government estimate for the 8(a) contract, the Army argues, and the record confirms, that there was a percentage differential (*i.e.*, a decrease) of 31 percent. Army Request for Summary Dismissal, attach. 1.⁵

The protester challenges the government estimate as erroneous because it allegedly does not include any labor costs for photographers, arguing that the functions described in several places in the new performance work statement necessarily encompass skills that would require performance by Photographer III, Photographer IV, and Photographer V, as defined in the occupational dictionary used by the Department of Labor. First Supplemental Protest at 2-7. The protester also objects that the government estimate does not appear to include additional fees and equipment costs.

The Army responds that at least for purposes of an estimate, the non-photographer labor categories selected could perform the reduced photography requirements specified in the new performance work statement. Supplemental Memorandum of Law at 2; Joint Program Officials' Statement at 2-6. Nevertheless, even if photographers were required, the Army points out that the Service Contract Act labor rates for photographers were generally below the labor rates of the labor categories used in the estimate and, therefore, the impact of substituting photographers would be expected to decrease the estimate, thereby further widening the differential between the cost of the new contract and the cost of the protester's inflation-adjusted incumbent contract. Joint Program Officials' Statement at 1. The protester has not meaningfully disputed the agency's position.

The protester also has not shown that the Army's estimate was otherwise unreasonable. More specifically, the protester has not shown that the agency's estimate failed to include any additional fees and equipment costs required to perform the new contract. To the contrary, the Army has shown that its estimate did

⁴ The protester objects to the agency's adjustment of its price to account for inflation. We agree with the Army and the SBA that it was reasonable, for purposes of comparison, to recalculate the price of each year of performance by the protester to reflect inflation-adjusted dollars, particularly since the applicable regulation requires the price adjustment calculation to be "adjusted for inflation." 13 C.F.R. § 124.504(c)(1)(ii)(C).

⁵ The SBA indicated that it concurred with the Army's method of calculating the differential as being a correct application of 13 C.F.R. § 124.504(c)(1)(ii)(C). Letter from SBA Counsel to GAO (Feb. 10, 2006). We give great weight to the SBA's interpretation of its regulations in this regard. *NANA Servs., LLC*, *supra*, at 6.

include estimates of direct materials and other direct costs. Supplemental Memorandum of Law at 2.

In short, the protester has failed to show that the Army and the SBA were incorrect in concluding that the proposed contract was a “new requirement” and could be submitted and accepted for performance under the 8(a) program.

The protest is denied.⁶

Anthony H. Gamboa
General Counsel

⁶ In a supplemental protest, the protester argues that the estimate of the new contract cost should have been higher because of an increase in wages to be paid under the Service Contract Act of “approximately 5%.” Second Supplemental Protest at 2. The protester’s argument relies on a rough recalculation of the value of the proposed contract, and compares that to the protester’s original contract value, without inflation adjustment. Even assuming that the supplemental protest is sufficiently specific and that the protester’s rough recalculation of the cost of the proposed contract is correct, when compared to the value of the incumbent contract as adjusted for inflation (which, as discussed above, we agree is proper), the differential would still exceed 25 percent and, thus, the protester has not shown that it suffered competitive prejudice from the alleged error in wage rates.