



GAO

Accountability * Integrity * Reliability

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. This redacted version has been approved for public release.

Decision

Matter of: NANA Services, LLC

File: B-297177.3; B-297177.4

Date: January 3, 2006

Steven W. Silver, Esq., and Carl Winner, Esq., Robertson, Monagle & Eastaugh, and Richard B. Oliver, Esq., McKenna Long & Aldridge, for the protester.

Carl Walker, Esq., and Elizabeth Rivera, Esq., Department of the Navy, and Laura Mann Eyester, Esq., and John W. Klein, Esq., Small Business Administration, for the agencies.

John L. Formica, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

The award of noncompetitive bridge contract under the Small Business Administration's section 8(a) program is unobjectionable where the acceptance of the requirement into the 8(a) program does not violate any statute or regulation.

DECISION

NANA Services, LLC protests the award of a contract for morale, welfare, and recreation (MWR) services for Department of Defense (DOD) personnel on Guam, made by the Department of the Navy under the Small Business Administration's (SBA) section 8(a) program on a noncompetitive basis for performance by Global Food Services (GFS).

We deny the protest.

The agency explains that the "MWR services on Guam are indispensable due to the 'remote' location and the needs of the U.S. personnel and their families on the island of Guam." Agency Report (AR) at 2. The MWR services to be provided include "child development/child care and youth services, recreation, physical fitness and library services to multiple [DOD] commands, activities, detachments, and Federal activities." *Id.* The agency points out that the "child development and child care facilities on Guam care for approximately 200 children during core work hours," and that the "lack of these services would have an extremely deleterious effect on the service members and civilian workforce who rely on these services while on duty." AR at 3.

The MWR services had been provided since 2000 by Raytheon Technical Services under a large base operations support (BOS) contract, with that contract having an end date of September 30, 2005. AR at 3. In preparation for the expiration of Raytheon's contract, the agency issued request for proposals (RFP) No. N00604-05-R-0003 (RFP -0003) as a small business set-aside for the MWR services only. The agency received proposals from NANA and GFS, and selected GFS's proposal for award. NANA filed protests with our Office on September 8 and 13, 2005, challenging the agency's selection of GFS for award, and in response, the agency informed our Office and the parties that it would reevaluate the proposals of NANA and GFS, and make a new source selection. Because the agency's actions rendered NANA's protests academic, our Office dismissed the protests on September 15.

The record reflects that the agency considered a number of options to ensure the uninterrupted provision of the MWR services while the proposals of NANA and GFS were being reevaluated, including the extension of the MWR services portion of Raytheon's contract past September 30, and the provision of the services through SBA's section 8(a) program. AR, Tab 3, Memorandum for the Record Concerning Raytheon's BOS Contract (Sept. 22, 2005); Tab 4, Memorandum for the Record Concerning Raytheon's BOS Contract (Sept. 23, 2005). Based upon its understanding that Raytheon was either not interested or unable to provide the MWR services past September 30, and because the agency's requirement for a bridge contract to acquire the MWR services while the proposals were being reevaluated was accepted by SBA into its section 8(a) program, a contract for the MWR services with a base period of 3 months and one 3-month option period at a total price of \$2,711,097 was awarded to GFS, a section 8(a) firm, through the 8(a) program on a noncompetitive basis. AR, Tab 25, Post-Negotiation Memorandum (Sept. 26, 2005), at 3-4. This protest followed.

NANA argues that the Navy and SBA violated regulations governing the placement of work under SBA's 8(a) program, as well as the regulations governing the award of a contract under the 8(a) program on a noncompetitive basis.

Section 8(a) of the Small Business Act authorizes 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); C. Martin Co., Inc., B-292662, Nov. 6, 2003, 2003 CPD ¶ 207 at 3. 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 SBA. See C. Martin Co., Inc., *supra*; United Enter. & Assocs., B-295742, Apr. 4, 2005, 2005 CPD ¶ 67 at 3.

The section 8(a) program has both competitive and noncompetitive components, depending on the dollar value of the requirement. See 13 C.F.R. § 124.506(a) (2005); United Enter. & Assocs., supra. Generally, where the acquisition value exceeds \$3 million, a section 8(a) contract must be competed among section 8(a) firms; section 8(a) acquisitions with values less than \$3 million generally are awarded on a noncompetitive basis. United Enter. & Assocs., supra. In order to obtain the information necessary for SBA to determine that an offered requirement is eligible and appropriate for award under the 8(a) program (whether on a competitive or noncompetitive basis), SBA's regulations require that contracting agencies furnish detailed information about a procurement when offering it for inclusion in the program. 13 C.F.R. § 124.502; C. Martin Co., Inc., supra, at 4. In this regard, 13 C.F.R. § 124.502(c) sets forth 17 enumerated items which must be identified in a contracting agency's letter offering work for inclusion in SBA's 8(a) program. See also FAR § 19.804-2(a). As a general matter, SBA is entitled to rely on a contracting agency's representations regarding offered requirements for the 8(a) program. C. Martin Co., Inc., supra, at 7.

The record reflects that the Navy submitted an offering letter to SBA on September 22, and then submitted a second, amended offering letter to SBA on September 23. AR, Tab 11, Navy Offering Letter (Sept. 22, 2005); Tab 13, Navy Offering Letter (Sept. 23, 2005). In its initial offering letter of September 22, the Navy provided the "acquisition history" of the requirement as "currently provided by Raytheon Corporation, a large business." AR, Tab 11, Navy Offering Letter (Sept. 22, 2005), at 2; see 13 C.F.R. § 124.502(c)(9); FAR § 19.804-2(a)(8) (offering letters shall include "[t]he acquisition history, if any, of the requirement"). The acquisition history continued by stating that "Raytheon does not want a follow-on contract," and that "GFS is a sub-contractor to the MWR portion of the current Raytheon contract." The offering letter added that a solicitation for the requirement (i.e., RFP -0003) had been issued "as a small business set-aside," and that a "contract was awarded to GFS" for the MWR services under that solicitation. The offering letter noted that a protest had been filed with our Office by NANA challenging the award to GFS, and that because of the agency's corrective action in response to the protest, "a bridge contract is necessary to avoid interruption of services." AR, Tab 11, Navy Offering Letter (Sept. 22, 2005), at 2.

In its September 22 offering letter, the Navy also identified GFS as the 8(a) concern nominated for performance of the requirement through the 8(a) program, and justified its nomination of GFS for performance of the services by stating that "[t]he acquisition is a follow-on contract and GFS is one of the current sub-contractors." AR, Tab 11, Navy Offering Letter (Sept. 22, 2005), at 2; see 13 C.F.R. § 124.502(12) (offering letters shall include "[i]dentification of any specific Participant that the procuring activity contracting officer nominates for award of a sole source 8(a) contract, if appropriate, including a brief justification for the nomination."); see also FAR § 19.804-2(a)(10). This section of the offering letter further stated that "GFS is currently performing 50% of the requirement," and that because GFS had begun

transitioning for the performance of the requirement under RFP -0003, “[a]warding a bridge contract to GFS would ensure a seamless transition.” AR, Tab 11, Navy Offering Letter (Sept. 22, 2005) at 2. In accordance with applicable regulations, the offering letter also identified NANA as a “known 8(a) concern . . . that [had] expressed an interest in being considered for the specific requirement.” FAR § 19.804-2(a)(12); 13 C.F.R. § 124.502(c)(14) (offering letters “must” identify “all Participants which have expressed an interest in being considered for the acquisition”).

The record reflects that on September 23 the cognizant Navy contracting specialist was informed by an SBA representative that “according to the offering letter, it appeared that the requirement was previously solicited as a small business set aside,” and that “[a]lthough the offering letter stated that the contract offered to the 8(a) . . . program was a ‘bridge’ contract, the letter did not discuss in detail the differences between this bridge contract and the previously solicited small business set aside.” The SBA representative further informed the Navy contracting specialist that “SBA could not accept the procurement for award as an 8(a) contract, unless and until [the Navy] made further distinctions regarding the offered requirement.” SBA Supplemental Report, attach. 1, Declaration of SBA Business Development Specialist (Dec. 6, 2005), at 1.

Later that day, the Navy “determined that although the requirement is a result of a previously protested award, the bridge contract is considered a new acquisition,” and amended the offering letter by deleting the acquisition history that had been set forth in the September 22 letter and any reference to GFS as having previously performed any MWR services. AR, Tab 15, Contracting Specialist’s Memorandum for the Record (Sept. 23, 2005), at 2. That is, the Navy’s September 23 offering letter described the acquisition history as “None,” and while nominating GFS for the performance of the services, provided no explanation or justification for the nomination. AR, Tab 13, Navy Offering Letter (Sept. 23, 2005).

The protester argues that the Navy’s letters offering this procurement to SBA lacked certain information required by the applicable regulations or were misleading with regard to the information that was provided, such that the offering letters could not properly provide the basis for SBA to accept the procurement into the 8(a) program or to allow for the award of a contract for the MWR services to GFS on a noncompetitive basis.

Specifically, the protester contends that the offering letter of September 22 was inaccurate with regard to the identification and justification of GFS for the performance of the bridge contract, in that it incorrectly stated that GFS was “currently performing 50% of the requirement,” where, as conceded by the agency and confirmed by the record, GFS was actually performing only 6.2 percent of the MWR requirement. Protester’s Comments at 11; see AR, Tab 6, Acquisition Strategy Approval for Services Memorandum, at 4; Tab 11, Navy Offering Letter (Sept. 22,

2005). The protester argues in the alternative that the Navy's September 23 offering letter was deficient in that the Navy, by deleting the acquisition history and its justification for its nomination of GFS for the performance of the contract, failed to provide any basis on which SBA could reasonably conclude that the noncompetitive award of the bridge contract to GFS was appropriate. Protester's Comments at 15.

NANA also argues that the Navy's offering letters failed to adequately identify NANA as a "known 8(a) concern . . . that [had] expressed an interest in being considered for the specific requirement," as was assertedly required by FAR § 19.804-2(a)(12). Protest at 3. The protester contends here that the agency, in addition to identifying NANA as an interested 8(a) concern, was also required to provide additional information regarding NANA's interest in performing the requirement in the offering letter. The protester argues that the Navy's offering letter should have explained, for example, that NANA's proposal submitted in response RFP -0003 had [DELETED], and that NANA had repeatedly expressed its interest in performing the MWR services and was "eager to compete for any such contract." Protester's Comments at 10-11. In sum, the protester argues that the Navy's offering letter was required to "reveal" to SBA that NANA was interested in the contract and "had at least equal experience and ability to undertake the contract" as GFS. Protester's Comments at 11. In support of its argument that the Navy was required by regulation to do more than identify NANA as an interested 8(a) concern, the protester points to FAR § 19.804-2(a)(16), which provides that an agency's offering letter must contain "[a]ny other pertinent and reasonably available data." See also 13 C.F.R. § 124.502(c)(17) (offering letters "must" include "[a]ny other information that the procuring activity deems relevant or which SBA requests"). The protester concludes that the "omission" of information regarding NANA's interest and ability to perform the bridge contract "rendered the offer letters misleading and did not permit the SBA to make an informed decision." Protester's Comments at 11.

SBA responds that in accordance with applicable regulations, "[g]enerally, the SBA will accept a contracting activity's recommended source" for a noncompetitive award under the 8(a) program. SBA Supplemental Report at 4; FAR § 19.804-3(b); see also 13 C.F.R. § 124.503(c)(1) ("Once SBA determines that a procurement is suitable to be accepted as an 8(a) sole source contract, SBA will normally accept it on behalf of the Participant recommended by the procuring activity"). That is, according to SBA, the regulation subsections pertaining to the identification and justification of the nominated concern "do[] not require a justification as to [the nominated source's] responsibility," but rather are intended to "ensure that a Participant that caused the requirement to be offered to the 8(a) program (i.e., self-marketed the requirement) was not ignored." SBA Supplemental Report at 3. SBA explains that in reviewing an agency's request regarding the nominated concern, it determines, as it did here, whether the nominated concern meets the necessary 8(a) program requirements. Id. SBA also explains that while, as stated above, it "deferred to [the Navy's] selection of GFS and its determination that GFS could perform the requirement," it was aware of GFS's qualifications to perform the work

(presumably through the September 22 offering letter), including the fact that GFS “had been performing some of the work as a subcontractor to Raytheon and had 8 days of mobilization.” SBA Supplemental Report, at 4 n.1. SBA adds that because it as a general matter relies on the contracting activity to determine whether the nominated concern is capable of performing the offered requirement, “it did not matter to SBA whether GFS performed 50% or 6% of the work on the previous, larger MWR contract as a subcontractor to Raytheon.” SBA Supplemental Report at 4. As to the contentions regarding whether further information should have been provided in the offering letters regarding NANA, SBA explains that because it had “determined that the requirement was suitable for the 8(a) . . . program and the nominated concern complied with the [applicable] requirements, the SBA accepted the requirement on behalf of GFS,” and that because of this, there was simply no need for any other information or data regarding NANA, nor did SBA feel a need to request any additional information. SBA concludes that in its view “the offering letter complied with the regulations.” SBA Supplemental Report at 5.

As the agency responsible for promulgating the regulations setting forth the required contents of an agency’s letter offering a procurement requirement as an 8(a) contract, SBA’s interpretation of the regulations, including the requirements posed by the regulation subsections pertaining to the identification and justification of the nominated concern, deserves great weight. See The Urban Group, Inc.; McSwain and Assoc., Inc. B-281352; B-281353, Jan. 28, 1999, 99-1 CPD ¶ 25 at 6.

Here, the record reflects that the Navy’s offering letter identified GFS as the nominated concern, thus allowing SBA to determine whether GFS met applicable 8(a) program requirements. Additionally, with regard to the justification of GFS for award, we note that as pointed out by SBA, regardless of whether the agency’s September 23 offering letter complied with the regulations pertaining to the “justification” of the nomination, as asserted by the agencies, or failed to, as asserted by the protester, the record reflects that SBA was aware of the reasoning behind the Navy’s nomination of GFS, that is, that GFS had performed the requirement under the incumbent contract and had begun transitioning for the performance of the requirement under RFP -0003. Accordingly, even if we were to agree with the protester that the September 23 letter failed to provide an adequate written “justification” for the Navy’s nomination of GFS for the award, the protester was not prejudiced by this alleged error. See United Enter. & Assocs., supra, at 5 (SBA’s failure to follow applicable regulations did not prejudice the protester where the record reflects that had SBA followed its regulations, it would have reached the same conclusions).

With regard to the protester’s contention that the Navy’s offering letter should have included information regarding NANA’s capability to perform the required MWR services, as opposed to only identifying NANA as a firm interested in the requirement, we note that the regulations specifically require only the identification of the 8(a) “[p]articipants which have expressed an interest is being considered for

the acquisition,” which is what the Navy’s offering letter accomplished. We cannot find unreasonable SBA’s view that any further information or data regarding NANA’s capabilities was neither needed nor relevant given the fact that, as mentioned above, SBA will generally accept a contracting activity’s recommended source for the noncompetitive award under the 8(a) program, and GFS was found by SBA to meet the applicable 8(a) program requirements. Simply put, under the regulatory scheme here, nothing precluded the Navy from nominating GFS, rather than NANA, for the performance of the MWR services on a noncompetitive basis, and the Navy’s offering letter was not required to do more than identify NANA as an 8(a) concern interested in performing the services.¹

¹ The protester also argues that if the agency had provided it with the solicitation for the bridge contract as the protester argues is required by FAR § 19.202-4(c), the protester “could have prepared a proposal and demonstrated to [the Navy] and SBA that NANA should have been considered for award of the bridge contract.” Protest at 2; Protester’s Comments at 10. The section of the FAR to which NANA refers is not applicable to noncompetitive awards under the 8(a) program. In fact, “[f]ormal technical evaluations for sole source 8(a) requirements” are not authorized under applicable SBA regulations. 13 C.F.R. § 124.503(e). Thus, an agency, in determining whether to offer the procurement to SBA for the 8(a) program, or in nominating a specific contractor for the award of a section 8(a) contract on a noncompetitive basis, is not required to provide all interested 8(a) concerns with the underlying solicitation.

The protester also asserts, apparently in the alternative, that the Navy decided to nominate GFS for the performance of the MWR requirements after “conduct[ing] an illegal and unreasonable competition between GFS and NANA.” Protester’s Comments at 18. The protester claims that the Navy, in determining to nominate GFS, referred to “information it had gained from the discredited evaluation” of proposals under RFP -0003. *Id.* The protester continues by pointing out what, in its views, were the flaws in the agency’s alleged evaluation of GFS and NANA and selection of GFS for the nomination. *Id.* at 18-21. The protester’s argument here is, in our view, inconsistent with the record. That is, the record does not reflect that the Navy conducted any competition with regard to the award of the bridge contract, and the selection of GFS for the bridge contract was not dependent on the competition conducted under RFP -0003. Rather, the record indicates that the Navy concluded, based upon the fact that GFS had been performing the MWR services under the predecessor contract and had begun transitioning for performance under the contract awarded under RFP -0003, that GFS could meet its needs for the continued provision of the MWR services. The protester’s contention again reflects its misunderstanding of SBA’s 8(a) program and the discretion afforded to agencies in the nomination of contractors for the awards of contracts under the 8(a) program on a noncompetitive basis.

NANA next argues that GFS's price for the bridge contract exceeded the fair market price for the services, and that because of this, GFS should not have been awarded the contract. Protester's Comments at 16.

The FAR defines "fair market price" with regard to the small business programs as a "price based on reasonable costs under normal competitive conditions and not on [the] lowest possible cost." FAR § 19.001. The FAR also provides that "an 8(a) contract, sole source or competitive, may not be awarded if the price of the contract results in a cost to the contracting agency which exceeds a fair market price." FAR § 19.806(b). In order to ensure that awards made to 8(a) participants do not exceed the fair market price of the items or services, the FAR requires that contracting officers "estimate the fair market price of the work to be performed by the 8(a) contractor," and that "[i]n estimating the fair market price . . . the contracting officer shall use cost or price analysis and consider commercial prices for similar products and services, available in-house cost estimates, data (including cost or pricing data) submitted by the SBA or the 8(a) contractor, and data obtained from any other Government agency." FAR §§ 19.807(a), (b). Our Office will not question an agency's fair market price determination unless it is not reasonably based or there is a showing of fraud or bad faith. Techno-Sciences, Inc., B-277260, Sept. 22, 1997, 97-2 CPD ¶ 115 at 5.

The record reflects that the Navy developed an estimated cost to the government for the bridge contract "based upon the original government estimate for [RFP -0003] for MWR services." The record includes a detailed explanation of the methodology and assumptions used by the agency in developing this estimate, including the agency's consideration of the workload presented by the performance work statement for the bridge contract and the number of personnel performing the MWR services under the predecessor contract, as well as the estimated fully burdened labor rates for key personnel, skilled labor, and unskilled labor. The agency ultimately estimated the bridge contract's cost to the government for the base and option periods at \$2,511,255. AR, Tab 25, Post-Negotiation Memorandum (Sept. 26, 2005), at 2.

Although the protester is correct that GFS's price of \$2,719,928 for the base and option periods of the bridge contract was roughly 8 percent more than the government's estimate, we do not find objectionable the agency's ultimate conclusion that GFS's price did not exceed the fair market value of the services. In this regard, the record reflects that agency found GFS's price for the bridge contract

reasonable based upon the higher level of risk due to the shorter performance period; the shorter period available for the contractor to recover costs when compared to a 60-month contract, greater costs associated with the phase-in and phase-out periods which would require hiring, training, transitioning, relocating new employees under stringent time constraints which would also be limited to recovery under a shorter period of performance.

Id. at 3. In considering GFS's price, the Navy noted that the above-quoted "items were not considered in the development of the [government estimate]," and thus concluded that although GFS's price exceeded the Navy's initial estimate by 8 percent, its "proposed price for the base and option period [was] . . . reasonable." Id.

The protester, although provided with the complete record of the agency's determination that GFS's price was reasonable and not in excess of a fair market price, does not challenge the agency's subsequent determinations that its estimate did not account for a number of factors that would lead to an increase in costs as set forth above. Given this, and the apparent reasonableness of the agency's judgments in this regard as expressed above, we find the agency's determination that GFS's proposed price did not exceed the fair market price for the MWR services to be reasonable.

The protester next argues that the Navy's determination that the MWR services to be provided under the bridge contract constituted a "new" requirement, and subsequent deletion of the acquisition history from its offering letter to SBA, were improper. Protester's Comments at 14. In this regard, the protester points out that in accordance with applicable regulations "SBA will not accept a procurement for award as an 8(a) contract if . . . [t]he procuring activity issued a solicitation for or otherwise expressed publicly a clear intent to reserve the procurement as a small business or small disadvantaged business (SDB) set-aside prior to offering the requirement to SBA for award of an 8(a) contract." 13 C.F.R. § 124.504(a). The protester concludes here that because the Navy had issued RFP -0003 for the MWR services as a small business set-aside, the acceptance of the bridge contract for award to GFS under the 8(a) program was expressly precluded by 13 C.F.R. § 124.504(a).

SBA's regulations define a new requirement as one that "has not been previously procured by the relevant procuring activity," and clarify that "[t]he 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); see SBA Supplemental Report at 5-6. Consistent with this, SBA states that it "generally finds that bridge contracts are new requirements since, as here, they are for a shorter period of time and much less money than the originally anticipated contract." SBA Report at 2 n.1; SBA Supplemental Report at 6. In this regard, SBA notes that the total value of the bridge contract awarded to GFS is less than \$3 million, in contrast to RFP -0003, which had an estimated value of more than \$25 million, and also notes that the bridge contract has a base period of 3 months with one 3-month option, as opposed to RFP -0003, which provides for a base period of 1 year with four 1-year options. SBA Supplemental Report at 6. SBA concludes that because the bridge contract is for a far shorter period of time and involves far less money than

RFP -0003, and because “[t]here is no evidence in the record that [the Navy] issued a solicitation for or otherwise expressed publicly a clear intent to reserve the particular procurement at issue in this protest - the bridge contract -- as a small business or SDB set-aside prior to offering the requirement to SBA for award as an 8(a) contract,” there was nothing that “prohibit[e]d the SBA from accepting the requirement into the 8(a) program.” Id.

Again, as the agency responsible for promulgating the applicable regulations, SBA’s interpretation of the regulations, that is, what constitutes a “new” requirement and whether that particular requirement can be accepted into the 8(a) program, deserves great weight, and we defer to its interpretation of its regulations as long as it is reasonable. The Urban Group, Inc.; McSwain and Assoc., Inc., supra.

We think that SBA’s interpretation of its regulations governing whether a requirement is “new” and can be accepted into the 8(a) program is reasonable. In this regard, SBA’s interpretation is consistent with the above-quoted relevant provision in its regulations essentially providing that a procurement will be considered “new” if the value of the work changes by at least 25 percent. See 13 C.F.R. § 124.504(c)(1)(ii)(C). Additionally, and as noted by SBA, the bridge contract at issue here, while for the same services, is not meant to replace the contract to be awarded under RFP -0003, but rather is merely the contract vehicle that enables the Navy to acquire the MWR services for a relatively short period of time while it implements its corrective action. That is, there is no dispute that the MWR services will ultimately be provided by the awardee under RFP -0003.

The protester also argues that the bridge contract’s award price will in actuality exceed \$3 million, such that it was required to be competed among eligible 8(a) firms, including NANA. Protest at 3; see 13 C.F.R. § 124.506(a) (providing that contracts with an anticipated award price of \$3 million or more be competed among eligible 8(a) firms). NANA points out in this regard that the bridge contract as awarded not only contained a base period of 3 months with a 3-month option period, upon which the agency’s estimate was based, but also included an option to extend the bridge contract for an additional 6 months. The protester also argues that the agency should have included “the estimated revenue from user fees for [the MWR] services.” Protest at 3.

The Navy concedes that the bridge contract as awarded did provide for an extension of GFS’s performance for an additional 6 months, but that the inclusion of this clause was “inadvertent[],” and the contract was modified to correct this oversight by deleting the subject clause. Navy Submission (Nov. 16, 2005). The agency further explains that in estimating the total value of the bridge contract, the “[r]evenues from patrons were properly excluded since the statement of work provides that the contractor shall not retain any revenues from patrons.” AR at 7. Given the agency’s explanations here, the protester’s failure to substantively rebut them, as well as the fact that GFS’s bridge contract provides for a total price of \$2,711,097 based upon

the estimates set forth in the contract's pricing schedule, which also have not been challenged by the protester, we find this aspect of NANA's protest to be without merit.

The protester finally argues that instead of awarding this noncompetitive 8(a) contract, the Navy should have required Raytheon to provide the MWR services while the agency implemented its corrective action, regardless of whether Raytheon was "interested" in performing the MWR services. Protest at 3; Protester's Comments at 3-8. The protester argues in the alternative that even if the agency "lacked the absolute contractual right to require Raytheon to continue to perform the MWR services until the re-evaluation was completed," it could have turned to a named "third party contractor" that the protester asserts was prepared to perform the services. Protester's Comments at 7. The protester argues that by not obtaining the MWR services through either of these alternatives, the agency failed "to treat [NANA and GFS] equally," and "unfairly [gave] GFS an unwarranted incumbent's competitive advantage." Protester's Comments at 3, 17. The protester claims here that GFS, "after performing the bridge contract for three to six months," will have advantages with regard to its technical proposal, past experience, and transition costs with regard to RFP -0003. Protester's Comments at 18.

We first note that the NANA's contention that GFS will gain an unfair competitive advantage through its performance of the bridge contract is apparently premised on the agency reopening the competition after GFS's completion of the bridge contract, and requesting revised proposals. Given that the agency's stated corrective action is only to reevaluate the proposals and make a new source selection, we fail to see how GFS's performance of the bridge contract will provide it with any advantage. Moreover, as detailed above, the award of the bridge contract under the section 8(a) program to GFS on a noncompetitive basis did not, in our view, violate statute or regulation. As such, even if the agency were to reopen the competition and seek revised proposals, this aspect of NANA's protest would be without merit. The mere existence of a prior contractual relationship between a contracting agency and a firm does not create an unfair competitive advantage, nor is an agency required to compensate for every competitive advantage inherently gleaned by a potential offeror's performance of a particular requirement. Optimum Tech., Inc., B-266339.2, Apr. 16, 1996, 96-1 CPD ¶ 188 at 7. Additionally, we note that the agency has expressly stated in its agency report that, consistent with its proposed corrective action of reevaluating the offerors' proposals without seeking revised proposals, it will not consider GFS's performance of the bridge contract in assessing the firm's past performance. AR at 8.

Finally, the fact that the Navy may have been able to acquire the needed MWR services through another contract vehicle, be it an extension of Raytheon's contract, or a contract with a "third party" outside the 8(a) program, is irrelevant. Agencies, when looking to acquire goods or services, frequently have options available to them, and our Office will only object to an agency's selection of a particular option where

it violates a procurement statute or regulation. As set forth above, under the regulatory and statutory scheme applicable here, nothing precluded the Navy from offering the MWR requirement for inclusion in SBA's 8(a) program and nominating GFS, rather than NANA, for the performance of the work, nor did anything preclude SBA from accepting the work into its 8(a) program on behalf of GFS on a noncompetitive basis.²

The protest is denied.

Anthony H. Gamboa
General Counsel

² The protester asserts that as another alternative the Navy could also have requested that SBA approve "a competitive 8(a) award below the competitive thresholds" in accordance with FAR § 19.805-1(d). Protester's Comments at 9. Again, although the Navy may have had the option of making such a request, there was no requirement in statute or regulation that it do so.