



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: UpSlope Advisors, Inc.

File: B-419036; B-419036.2

Date: November 25, 2020

James Y. Boland, Esq., Caleb E. McCallum, Esq., and Chelsea B. Knudson, Esq., Venable LLP, for the protester.

Colonel Patricia S. Weigman-Lenz, Major Laura Bauza, Captain Seiji Ohashi, Kenneth M. Roth, Esq., and Alexis J. Bernstein, Esq., Department of the Air Force; and Mark Hagedorn, Esq., Small Business Administration, for the agencies.

Christopher Alwood, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest alleging that the agency failed to comply with the Small Business Administration's (SBA's) regulations when it announced its intention to award a sole-source contract to a tribally owned concern is sustained where the record reflects that the contract is for the same requirement as one previously competed within the SBA's section 8(a) program.

DECISION

UpSlope Advisors, Inc. (UpSlope), a small business of Denver, Colorado, protests the decision of the United States Transportation Command (USTRANSCOM) to award a sole-source contract for enterprise information technology (IT) services to Eagle TG, LLC (Eagle), a tribally-owned concern of New Braunfels, Texas, under the Small Business Administration's (SBA) section 8(a) program. UpSlope asserts that the award of the contract on a sole-source basis is improper because it violates the SBA's regulations.

We sustain the protest.

BACKGROUND

This protest is the latest challenge to a series of actions taken by USTRANSCOM related to USTRANSCOM's requirement to provide enterprise IT services support for the military surface deployment and distribution command (SDDC), a requirement the

agency refers to as the Surface Deployment and Distribution Command Enterprise Information Technology Services Support (SEITS). Memorandum of Law (MOL) at 1-3. Two USTRANSCOM SEITS procurements are relevant here: (1) the procurement that is the subject of this protest, *i.e.*, the proposed award of a sole-source contract to Eagle pursuant to the SBA's section 8(a) program (the SEITS 8(a) sole-source); and (2) the procurement conducted under request for quotations (RFQ) No. HTC711-19-Q-D005, which was a task order procurement previously offered to the SBA and accepted for competition in the section 8(a) program (the SEITS RFQ). *Id.* at 1-3, 6.

On June 14, 2019, USTRANSCOM issued the SEITS RFQ under the General Services Administration's (GSA) 8(a) Streamlined Technology Acquisition Resources for Services (STARS) II governmentwide acquisition contract (GWAC). MOL at 1. In September 2019, following the evaluation of quotations, USTRANSCOM issued a task order under the RFQ to TekSynap. Protest at 4; *CEdge Software Consultants, LLC*, B-418128.2, *et al.*, March 19, 2020, 2020 CPD ¶ 127 at 3-4. On October 7, 2019, a disappointed offeror, CEdge Software Consultants, LLC (CEdge), filed a protest with our Office challenging USTRANSCOM's evaluation and source selection decision. *CEdge Software Consultants, LLC*, B-418128.1, October 29, 2019 (unpublished decision). After USTRANSCOM notified our Office it intended to take corrective action in response to CEdge's protest, we dismissed that protest as academic. *Id.*

After the agency completed its corrective action and reissued the task order to TekSynap, CEdge filed another protest with our Office on December 11, again challenging various aspects of the agency's evaluation of quotations and source selection decision. During the course of this protest, CEdge discovered a potential violation of the Procurement Integrity Act¹ (PIA), in documents submitted by the agency as part of the agency report. Prior Protest Pleading, B-418128.6, April 29, 2020 at 2. On February 19, 2020, CEdge notified the agency of the potential PIA violation and requested an investigation as required by Federal Acquisition Regulation 3.104-7. B-418128.6, Protest, Exh. A, CEdge PIA Letter. On March 12, the agency concluded its PIA investigation, finding no violation, but did not inform CEdge until March 31. See B-418128.6, Protest, Exh. I, CEdge PIA Email at 2.

On March 19, 2020, our Office sustained CEdge's protest. *CEdge Software Consultants, LLC*, B-418128.2 *et al.*, Mar. 19, 2020, 2020 CPD ¶ 127. We sustained the protest on the basis that the agency had failed to demonstrate it had performed the qualitative assessment of the merits of the vendors' differing technical approaches to support its source selection decision, as was required by the RFQ. *Id.* at 8-10.

¹ The procurement integrity provisions of the Office of Federal Procurement Policy Act, as amended, 41 U.S.C. §§ 2101-2107, known as the Procurement Integrity Act, provides, among other things, that a federal government official "shall not knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates." 41 U.S.C. § 2102(a)(1).

On April 6, the agency received notice that GSA would begin restricting the use of the 8(a) STARS II GWAC due to the limited remaining value under the contract ceiling. AR, Tab 3, SEITS RFQ Cancellation Memorandum at 3. On April 10, CEdge filed a protest with our Office challenging the adequacy of the agency's investigation of the alleged PIA violation and the agency's failure to disqualify TekSynap from the procurement. *CEdge Software Consultants, LLC*, B-418128.6, June 2, 2020 (unpublished decision). On April 27, the agency notified our Office that it had cancelled the RFQ. B-418128.6, Req. for Dismissal, at 1. In deciding to cancel, the agency noted that the 8(a) STARS II GWAC requires all performance to be completed by August 2024, and that, given the delay in commencing performance due to the multiple protests, this GWAC could no longer meet the agency's requirement for a 5-year period of performance. Agency Report (AR), Tab 3, SEITS RFQ Cancellation Memorandum at 2. Due to the cancelled solicitation, our Office dismissed the protest of the agency's actions with regard to the potential PIA violation as academic. *CEdge Software Consultants, LLC*, B-418128.6, June 2, 2020 (unpublished decision).

On April 29, CEdge filed a protest challenging USTRANSCOM's decision to cancel the SEITS RFQ, arguing that it was a pretext to avoid following our Office's recommendation to reevaluate the quotations and to avoid resolution of CEdge's PIA protest. *CEdge Software Consultants, LLC*, B-418128.7, August 4, 2020, 2020 CPD ¶ 262 at 4. On August 4, our Office denied the protest, finding USTRANSCOM's basis for canceling the RFQ to be reasonable because the new restrictions associated with the 8(a) STARS II GWAC meant the vehicle no longer met USTRANSCOM's needs, specifically the agency's desire for a 5-year period of performance. *Id.* at 5.

On August 14, USTRANSCOM published special notice No. HTC711-20-R-D006, titled "SDDC Enterprise Information Technology (IT) Services and Support for the Military Surface Deployment & Distribution Command (SDDC)". AR, Tab 8, Notice of Intent to Sole-Source at 1. The notice stated that it was USTRANSCOM's intent to solicit the stated requirement as an 8(a) sole-source procurement. *Id.* at 2. On August 24, UpSlope filed the instant protest with our Office.

On September 1, USTRANSCOM submitted an offering letter to the SBA, formally offering the SEITS requirement as an 8(a) sole-source procurement to be awarded to Eagle, a tribally-owned concern. MOL at 4; AR, Tab 9, SBA Offering Letter. In its offer letter to the SBA, USTRANSCOM estimated the value of the intended sole-source contract to Eagle to be \$[DELETED]. AR, Tab 9, SBA Offering Letter at 1.

As relevant here, the offering letter stated:

This acquisition is the consolidation of the SDDC Enterprise Information Technology Services Support (SEITS) requirement, SDDC Desktop Office Information Systems Support (SDOISS) requirement, and Cybersecurity Support requirement. This consolidation was previously solicited and awarded to TekSynap Corporation on 8(a) [STARS] II; however, due to

GAO ruling[,] the task order was [t]erminated for [c]onvenience and the solicitation was canceled.

AR, Tab 9, SBA Offering Letter at 1.

DISCUSSION

UpSlope argues that the agency's decision to award the contract to Eagle on a sole-source basis was improper because, instead, the agency is required to conduct the procurement as a competition among eligible 8(a) program participants. Protest at 8-9; Supp. Protest at 7-9. The protester contends that such a sole-source award violates the SBA's regulations, specifically 13 C.F.R. § 124.506(b). *Id.* In this regard, UpSlope argues that, because USTRANSCOM previously offered the SEITS requirement to the SBA within the SBA's section 8(a) program, it cannot subsequently remove the requirement from competition and award the requirement on a sole-source basis to a tribally-owned concern.² *Id.* For the reasons set forth below, we agree with the protester.

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). The Act affords the SBA and contracting agencies broad discretion in selecting procurements for the section 8(a) program; 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. 4 C.F.R. § 21.5(b)(3); *B&D Consulting, Inc.*, B-413310 *et al.*, Sept. 30, 2016, 2016 CPD ¶ 280 at 4. Here, however, UpSlope alleges that the agency's decision to award a contract to Eagle on a sole-source basis violates the SBA's regulations. Accordingly, we have the authority to review UpSlope's challenge.³

The section 8(a) program has both competitive and noncompetitive (that is, sole-source) components. Generally, where a procurement for services exceeds a certain threshold (currently \$4 million for non-manufacturing contracts), the requirement must be competed among qualified 8(a) program participants. 13 C.F.R. § 124.506(a)(2)(ii).

² The protester makes other arguments challenging the agency's decision to award the contract to Eagle on a sole-source basis. With the exception of the allegations discussed in this decision, we have considered all of UpSlope's allegations and find none provides a basis to sustain a protest.

³ For this reason, we decline to dismiss the protest as legally and factually insufficient as requested by the agency. See Req. for Dismissal at 4-5. Because the protest turns upon a question of fact--whether the sole-source contract the agency intends to award to Eagle is for the same requirement previously offered to the SBA for competition within the 8(a) program--the protest is appropriate for resolution on the merits. See *GOV Services Inc.*, B-414374, May 11, 2017, 2017 CPD ¶ 143 at 5, n.7.

Under certain circumstances, however, the competitive threshold dollar value does not apply when awarding a sole-source 8(a) contract to a tribally-owned entity, an Alaska Native Corporation (ANC), or a Native-Hawaiian Organization (NHO). *Id.* at § 124.506(b).

UpSlope argues that the agency's actions violate 13 C.F.R. § 124.506(b), which provides in relevant part:

(b) Exemption from competitive thresholds for Participants owned by Indian Tribes, ANCs and NHOs.

(1) A Participant concern owned and controlled by an Indian Tribe or an ANC may be awarded a sole source 8(a) contract where the anticipated value of the procurement exceeds the applicable competitive threshold if SBA has not accepted the requirement into the 8(a) [business development] program as a competitive procurement.

* * *

(3) There is no requirement that a procurement must be competed whenever possible before it can be accepted on a sole source basis for a Tribally-owned or ANC-owned concern, or a concern owned by an NHO for [Department of Defense] contracts, but a procurement may not be removed from competition to award it to a Tribally-owned, ANC-owned or NHO-owned concern on a sole source basis.

13 C.F.R. § 124.506(b).

Upslope contends that the requirement here was submitted previously to the SBA for competition within the 8(a) program and, therefore, subsection 124.506(b) precludes the agency from awarding the contract to Eagle on a sole-source basis. Protest at 8-9; Supp. Protest at 7-9. USTRANSCOM responds that its reasonable cancellation of the SEITS solicitation under the 8(a) STARS II GWAC has rendered the current sole-source solicitation a "new" requirement which was not already accepted by the SBA for competition among 8(a) concerns. MOL at 4-6.

At our Office's invitation, SBA provided its views on this protest. As a general matter, we accord SBA's interpretations of regulations it promulgates, such as those regarding the 8(a) program, great weight. *GOV Services*, B-414374, May 11, 2017, 2017 CPD ¶ 143 at 6; *Agency Mgmt. Concepts, Inc.*, B-411206, B-411206.2, Apr. 21, 2015, 2015 CPD ¶ 133 at 4.

Here, SBA takes the position USTRANSCOM has done nothing improper. SBA Comments at 3-7. With regard to the regulation at issue, the SBA states that, generally, "a procuring agency may not remove an 8(a) procurement from competition to award it to a tribally-owned 8(a) [p]articipant on a sole[-]source basis once such competition has been announced or initiated." *Id.* at 3. However, the SBA first argues that its

regulations contain an exception to this general rule. According to the SBA, if an agency reasonably determines that award under a particular competitive 8(a) solicitation is either “no longer feasible or would no longer meet the agency’s needs” then the agency may cancel that particular 8(a) competitive solicitation and re-offer that requirement on a sole-source basis to a tribally-owned 8(a) participant without violating 13 C.F.R. § 124.506(b). *Id.*

In support of its proffered exception, the SBA points to the following text from the preamble to the final rule that implemented the regulation at issue:

A number of commenters recommended that SBA add a provision to this paragraph specifying that it will not consider a request to award a contract above the threshold amounts to an Indian tribe where the requirement has already been accepted for competition. The commenters reasoned that removal of a requirement from competition would prejudice prospective bidders who have expended valuable resources in preparing bids or proposals. SBA agrees with this view and has amended this paragraph to preclude SBA from awarding a requirement above the threshold amounts on a sole source basis to a tribally-owned 8(a) concern once it has been accepted for competition and prospective offerors have been notified. However, if a requirement is offered to the 8(a) program again (after the concern which was awarded such contract pursuant to competition has completed performance), the requirement must then be separately accepted for the 8(a) program and could be offered to a tribally-owned concern.

54 Fed. Reg. 34,692, 34,704-05 (Aug. 21, 1989). The SBA states that the above language demonstrates that the purpose of the relevant sole-source contracting restriction is to prevent agencies from imposing undue costs on small disadvantaged businesses “by disingenuously competing an 8(a) requirement with the intent to award it” on a sole-source basis.⁴ SBA Comments at 5. The SBA argues that this underlying concern is not present “where an agency has an unrelated, legitimate reason for not making award under the prior competitive solicitation.” *Id.* In reviewing the requirement here, the SBA explains that because award of the requirement under the 8(a) STARS II GWAC could no longer meet USTRANSCOM’s needs, the relevant sole-source

⁴ The SBA does not explain why the stated cost-savings purpose of the sole-source contracting restriction is affected by whether an agency competed an initial 8(a) solicitation disingenuously or with mal-intent. The SBA does note, without citation, that during the drafting of these regulations SBA and external stakeholders were concerned that agencies might “compete 8(a) requirements for the purpose of obtaining industry information to negotiate a more favorable sole source award to a tribally-owned 8(a) [p]articipant.” SBA Comments at 4-5. However, the SBA does not point to any language in the regulations, or the cited preamble, which limits the intent of the restriction’s protection beyond any small disadvantaged businesses which had expended funds on a competitive 8(a) procurement.

contracting limitation “would not further the intended purpose of protecting an 8(a) offeror’s investment.” *Id.* at 5.

We do not find the SBA’s interpretation of 13 C.F.R. § 124.506(b) to be reasonable. The plain language of the regulatory provisions at issue does not discuss any consideration to be given to the basis on which a requirement has been removed from a competitive procurement. See 13 C.F.R. § 124.506(b). Accordingly, the legitimacy of the agency’s rationale for canceling a competitive 8(a) procurement is irrelevant to whether an agency may award a sole-source contract to a tribally-owned 8(a) participant under 13 C.F.R. § 124.506(b). Rather, as the SBA commented in a recent protest before our Office interpreting 13 C.F.R. § 124.506(b), “[t]he only relevant inquiry is whether the specific requirement was previously offered to and accepted by the SBA as a competitive 8(a) procurement. If so, that solicitation cannot be converted to a sole[-]source award.”⁵ B-414374, SBA Comments, April 14, 2017 at 4; see *GOV Services, supra*, at 7.

The SBA also argues that where an agency’s needs have sufficiently changed, the agency may offer a sole-source procurement to a tribally-owned 8(a) participant after SBA’s initial acceptance of an 8(a) competitive procurement without violating 13 C.F.R. § 124.506(b). SBA Comments at 6. According to the SBA, an agency’s needs have sufficiently changed where the requirement would be considered “new” relative to the requirement initially offered to the 8(a) program. *Id.* (citing *JXM, Inc.*, B-402643, June 25, 2010, 2010 CPD ¶ 158; *HRCI-MPSC PASS, LLC*, B-408919, B-408919.2, Jan. 8, 2014, 2014 CPD ¶ 25; *GOV Services, Inc.*, B-414374, May 11, 2017, 2017 CPD ¶ 143).

On this point, we find the SBA’s interpretation of its regulations to be reasonable. As noted above, our Office has previously recognized that the relevant inquiry under 13 C.F.R. § 124.506(b) is “whether the specific requirement was previously offered to and accepted by the SBA as a competitive 8(a) procurement.” *GOV Services, supra*, at 7 (citing SBA Comments, B-414374, April 14, 2017 at 4). If so, then we agree that the “solicitation cannot be converted to a sole-source award.” *Id.* Thus, the central question posed by the instant protest is whether the requirement in the SEITS RFQ is the same as the SEITS 8(a) sole-source requirement offered to the SBA. For the

⁵ Further, we disagree with the SBA’s argument that an agency’s reasonable cancellation of a competitive 8(a) solicitation would remove the underlying concern about imposing costs on 8(a) concerns in the above cited preamble. The final rule’s stated concern was “removal of a requirement from competition would prejudice prospective bidders who have expended valuable resources in preparing bids or proposals.” 54 Fed. Reg. 34,692, 34,704-05 (Aug. 21, 1989). The SBA has not explained how, regardless of the reasonableness of the agency’s decision to cancel a solicitation, an 8(a) concern that expended resources to compete under a cancelled competitive procurement is not prejudiced by being unable to compete for the resolicited requirement.

reasons below, we conclude the requirements are the same, and therefore, USTRANSCOM's actions violate 13 C.F.R. § 124.506(b).

In determining whether a requirement constitutes a new requirement under subsection 124.506(b), our Office has, at the SBA's suggestion, applied the analysis set forth in 13 C.F.R. §124.504(c)(1)(ii)(C)⁶, which is as follows:

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); *GOV Services, supra*, at 7, n.11 (citing *JXM, Inc.*, B-402643, June 25, 2010, 2010 CPD ¶ 158 at 4-5).

First, we do not find that the magnitude of change between the two procurements here is significant enough to cause a price adjustment of at least 25 percent. As noted above, the SEITS RFQ resulted in a later-terminated award in the amount of \$43,855,910. *CEdge Software Consultants, B-418128.2 et al., supra*, at 4. The record reflects that Eagle's capability statement estimated the price to perform the full requirement to be between \$[DELETED] and \$[DELETED]. AR Tab 14, Market Research Report at 27-28. In its offering letter to the SBA, USTRANSCOM estimated the value of the sole-source contract to be awarded to Eagle to be \$[DELETED]. AR, Tab 9, SBA Offering Letter at 1. None of these estimates represents a 25 percent magnitude of change from the awarded price resulting from the SEITS RFQ.

Next, the record does not demonstrate that the proposed sole-source contract requires significant additional or different types of capabilities or work. In its pleadings, USTRANSCOM provides a list of changes made to the performance work statement (PWS) between when it was originally issued in the SEITS RFQ and August 5, 2020,⁷ the date of its last revision. Contracting Officer's Statement (COS) at 2-3; MOL at 2-3. The changes described by the agency can be summarized as revised language

⁶ Although subsection 124.504(c)(1)(ii)(C) addresses an agency's decision to move an existing requirement from another small business program to the 8(a) program, as distinguished from the decision here to move a requirement between two parts of the 8(a) program, our Office has applied the analysis in subsection 124.504(c)(1)(ii)(C) in the context presented. See *GOV Services, supra*, at 8, n.11 (citing *JXM, Inc., supra*; *eAlliant, LLC*, B-407332.4, B-407332.7, Dec 23, 2014, 2015 CPD ¶ 58 at 8-9).

⁷ The current PWS provided by the agency is dated August 5, 2020. AR, Tab 7, PWS at 1. Notably this is one day after we issued our decision denying a protest challenging USTRANSCOM's decision to cancel the SEITS RFQ. *CEdge Software Consultants, LLC*, B-418128.7, August 4, 2020, 2020 CPD ¶ 262.

identifying mission essential and/or emergency essential requirements, the clarification of ambiguous language from one task, the removal of one subtask, and the addition of one subtask, and the addition of one required cyber-security professional.⁸ See *Id.*

However, the agency does not meaningfully argue that these changes to the PWS constitute significant modifications of the type or scope of work to be performed under the contract. On this record, we see no basis to find that these changes to the PWS constitute significant, additional, or different types of capabilities or work. In short, we do not find that the requirement at issue here is “new” under either prong of the analysis set forth in 13 C.F.R. § 124.504(c)(1)(ii)(C).

Despite the above analysis, using the standards in the SBA’s regulations that have been previously applied by our Office to resolve similar protests, both the SBA and USTRANSCOM contend that the sole-source requirement here is “new” and therefore not the same as the requirement in the cancelled SEITS RFQ. SBA Comments at 6; MOL at 4-6. In this regard, the SBA argues that the current requirement is “new” simply because the prior solicitation “and any subsequent 8(a) STARS II solicitation would not reflect” USTRANSCOM’s current needs. SBA Comments at 6; see *also* MOL at 5 (agreeing with the SBA’s reasoning on this point without further explanation).

In support of these contentions, the agencies argue that the instant protest “implicates analogous policy considerations” to our decisions in *GOV Services, supra, JXM, Inc., supra*, and *HRCI-MPSC PASS, LLC, supra. Id.* However, the facts of those protests are distinguishable from the facts here. In each of those cases, unlike here, we found it reasonable for the respective agencies to consider the sole-source requirement at issue to be a “new” requirement under the analysis set forth in 13 C.F.R. § 124.504(c)(1)(ii)(C) when compared to the competitive 8(a) requirement initially offered to the SBA. For example, in *GOV Services*, the price of the requirement changed by more than 25 percent, from an initial competitive 8(a) procurement valued at \$20,001,714 to a sole-source short-term contract under 13 C.F.R. § 124.506(b) valued at \$10,921,838.⁹ *GOV Services, supra*, at 8, 9, n.14 (also finding that the later sole-source contract had a “significantly shorter period of performance”).

Separate from the “new” requirement analysis set forth in 13 C.F.R. § 124.504(c)(1)(ii)(C), we disagree with the agencies that the current requirement is

⁸ The PWS provides for the performance of 11 tasks broken down into 79 subtasks. AR, Tab 7, PWS at 6-86.

⁹ The facts of the other cited cases are similarly distinguishable from the current protest. In *JXM, Inc.*, the scope of services required and contract value of the sole-source contract under 13 C.F.R. § 124.506(b) was almost twice that of the previously competed 8(a) procurement. *JXM, Inc., supra*, at 5-6. In *HRCI-MPSC PASS, LLC*, the sole-source short-term contract’s value and period of performance both amounted to less than 20 percent of that of the previously competed 8(a) procurement. *HRCI-MPSC PASS, LLC, supra*, at 4-5.

“new” because the SEITS RFQ and any subsequent 8(a) STARS II solicitation cannot meet USTRANSCOM’s current needs. In making this argument, the agencies unreasonably conflate two distinct situations: where an agency’s *requirements* have changed and where an agency’s current *solicitation* can no longer satisfy its unchanged requirements. Here, USTRANSCOM is clearly facing the latter situation.

As noted above, one of the key bases for USTRANSCOM cancelling the SEITS RFQ was that the SEITS requirement was for a 5-year period of performance. AR, Tab 3, SEITS RFQ Cancellation Memorandum at 2. That the 8(a) STARS II GWAC could no longer provide a 5-year period of performance (as it could when the requirement was initially offered to the SBA) was one of the principal reasons our Office found the SEITS RFQ cancellation to be reasonable. See *CEdge Software Consultants, LLC*, B-418128.7, August 4, 2020, 2020 CPD ¶ 262 at 5. Additionally, the fact that USTRANSCOM was willing to cancel the SEITS RFQ and abandon the 8(a) STARS II GWAC demonstrates that the use of the 8(a) STARS II GWAC was not actually a part of USTRANSCOM’s requirement; instead, the GWAC was simply the vehicle used to procure the requirement. Accordingly, we see no basis to conclude that USTRANSCOM has significantly changed its requirement that it previously competed in the 8(a) program simply because the 8(a) STARS II GWAC contracting vehicle no longer meets USTRANSCOM’s stated needs.

Finally, the agency’s own language demonstrates that it considers the SEITS 8(a) sole-source requirement to be the same as the requirement that was being procured under the SEITS RFQ. As noted above, in its offer letter submitting the sole-source 8(a) procurement to the SBA, USTRANSCOM stated:

This acquisition is the consolidation of the SDDC Enterprise Information Technology Services Support (SEITS) requirement, SDDC Desktop Office Information Systems Support (SDOISS) requirement, and Cybersecurity Support requirement. This consolidation was previously solicited and awarded to TekSynap Corporation on 8(a) [STARS] II; however, due to GAO ruling the task order was [t]erminated for [c]onvenience and the solicitation was canceled.

AR, Tab 9, SBA Offering Letter at 1. USTRANSCOM’s own words clearly define the current acquisition as a consolidation of three formerly separate requirements. *Id.* USTRANSCOM goes on to state that the same consolidated requirements were previously solicited under the SEITS RFQ, a competitive 8(a) program procurement. *Id.* at 1-2.

Based on this record, and as discussed above, we see no basis to conclude that the SEITS RFQ and the SEITS 8(a) sole-source procurements are different requirements. Given that the SEITS requirement was previously solicited in a competitive 8(a) program procurement, we agree with the protester that USTRANSCOM cannot award the requirement on a sole-source basis under 13 C.F.R. § 124.506(b). We therefore sustain UpSlope’s protest.

RECOMMENDATION

We recommend that USTRANSCOM not award a sole-source contract for the SEITS requirement under 13 C.F.R. § 124.506(b). We further recommend that USTRANSCOM create a new acquisition plan to procure the SEITS requirement(s) by conducting a competitive 8(a) program procurement or other procurement that does not violate SBA regulations. Finally, we recommend that the agency reimburse UpSlope the costs associated with filing and pursuing its protest, including reasonable attorneys' fees. The protester should submit its certified claim for costs, detailing the time expended and costs incurred, directly to the contracting agency within 60 days after receipt of this decision. 4 C.F.R. § 21.8(f)(1).

The protest is sustained.

Thomas H. Armstrong
General Counsel