

"New" Procurement Pulls Work out of 8(a) Program



As Don Draper [famously said](#), the most important idea in advertising is "new." It creates an itch.

It's also an important word for 8(a) contracting. Follow-on procurements for 8(a) work usually must remain set-aside for 8(a) participation, but there is an exception for "new" work. As one contractor was disappointed to discover, new work can be an awfully familiar itch.

By way of background, the Census Bureau maintains a campus in Suitland, Maryland with four buildings. Since roughly 2011, GSA has procured basic operation, management, and repair services for the campus buildings. Services at the campus were split between two contracts. Both were set-aside for 8(a) participation.

GSA had grown dissatisfied with the basic operations and repair services it was receiving at the Census Bureau's campus. The existing contracts relied on standardized contract templates. GSA incentivized performance through "robust inspections and aggressive monetary deductions." According to GSA, this arrangement strained contractor relationships and was inefficient.

In summer 2021, GSA began developing a different procurement approach for the Census Bureau campus. Rather than continue with template contracts, GSA looked to issue a BPA for more comprehensive services. The objective of the BPA was "to procure a holistic and integrated complete facilities management program that will meet the current and future needs of GSA and tenant agencies over the term of the BPA."

As part of its contracting overhaul, GSA combined the requirements of the two incumbent contracts. The new procurement would seek a single contractor to provide facilities engineering, operations, and maintenance services for all four Census Bureau buildings. The revised procurement would also no longer be set-aside for 8(a) participation—it would be issued as an unrestricted procurement.

In accordance with SBA regulation, GSA notified the SBA of its intention to combine the two 8(a) contracts for the follow-on procurement. Hearing no objection from the SBA, it moved forward with the procurement.

An incumbent contractor protested GSA's contracting approach. In [TeamGOV, Inc., B-419865.2 et al. \(Comp. Gen. Nov. 10, 2021\)](#), the incumbent contractor alleged that GSA's new procurement impermissibly removed work from the 8(a) program because it was not "new."

The [8\(a\) regulations](#) explain that a requirement may be "new" if there is 1) a significant revision to the scope of work; 2) the value of the requirement changes by more than 25 percent; or 3) the requirements of the end user have changed. Only one of these grounds needs to be present for a procurement to be considered "new."

TeamGOV was adamant that the revised work was not new. As GAO paraphrased, TeamGOV alleged the follow-on procurement "is 'basically an operations and maintenance procurement of the Suitland Census Building Complex North/South' providing substantially the same services

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that have been provided to GSA since at least 2011 that 'has [been] dressed . . . up a bit with bells and whistles.'" According to TeamGov, no 8(a) contractor could successfully perform the new effort.

In response, GSA maintained its procurement was new. GSA argued the procurement required more sophisticated oversight, management, and asset planning than the existing contracts. Additionally, the value of the new procurement was higher than either incumbent contract, though GAO's decision did not disclose by how much.

GAO also invited the SBA to weigh in on the question of whether the requirements were "new." In response, "the SBA found that the RFQ describes an effort that will require the contractor to leverage technical, managerial, and decision-making expertise not presently required under the current . . . contracts." Thus, the SBA agreed the work was "new."

GAO concluded the procurement was "new." The solicitation identified different and expanded capabilities for the contractor, as compared to the incumbent contracts. This was largely a consequence of moving from the template-based contracts of old to the holistic approach of the current procurement. Consequently, it was reasonable to remove the procurement from the 8(a) program.

The requirement for follow-on 8(a) contracts to remain set-aside for 8(a) participation provides significant opportunities for eligible contractors. The new procurement exception, however, provides an avenue for agencies to remove projects from continued 8(a) participation. And the requirements for a procurement to be "new" are pretty low, all things considered. As TeamGOV discovered, a new procurement can look a lot like old work.

Like a carousel ride, sometimes you wind up just where you started.

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