

CLIENT ALERT

Agency Failure to Consider Impact of Corporate Transaction Renders Award Decision Infirm

January 12, 2022

The acquisition and consolidation of government contractors has become increasingly prevalent in recent years. GAO's recently released decision in *Vertex Aerospace, LLC, B-420073, B-420073.2, Nov. 23, 2021*, serves as an important reminder to contractors that failure to properly update a procuring agency about such transactional activity can have adverse impacts on a pending proposal, even where a transaction is structured/intended to have no impact upon a contractor's proposed performance. In *Vertex*, GAO sustained a protest challenging an Air Force task order award due to the agency's failure to "meaningfully consider" the impact of the awardee's acquisition by another company during the pendency of the procurement.

In late 2020, DynCorp was awarded an IDIQ contract. Shortly thereafter, Amentum Government Services Holdings, LLC ("Amentum"), acquired all of the outstanding shares of DynCorp's former parent holding company, resulting in DynCorp becoming Amentum's wholly owned subsidiary. In December 2020, DynCorp submitted a proposal in response to a task order solicitation under the IDIQ contract. While DynCorp's proposal was pending and before award, DynCorp submitted documentation to DCMA requesting novation of its IDIQ contract to Amentum. DCMA, in turn, provided a copy of the novation agreement to the Air Force during its evaluation of DynCorp's proposal. Nonetheless, the Air Force completed that evaluation without considering what impact, if any, the Amentum acquisition would have on DynCorp's ability to perform. After the Air Force awarded the task order to DynCorp, Vertex protested, alleging, among other things, that the Air Force's failure to consider that specific question was in error.

GAO sustained the protest. In so doing, GAO noted that DynCorp's proposal made no mention of its recent acquisition, nor did the agency's evaluation record or source selection documentation make any reference to the acquisition or its potential effect on DynCorp's performance. GAO also rejected the Air Force's post-protest explanation that the acquisition would have no impact on DynCorp's performance, noting the lack of detail in the contemporaneous record explaining how the integration and consolidation of contract performance activities between the two companies would be accomplished to ensure that the resources and employees needed for the contract would be available. As a result, GAO held the record was insufficient to support a conclusion that the agency meaningfully and reasonably considered the effect of the corporate transaction on the awardee's ability to perform the task order.

Significantly, GAO stressed that decisions regarding matters of corporate status and restructuring are highly fact-specific, and turn largely on the individual circumstances of the proposed transactions and timing. With that in mind, companies undergoing corporate transactions should work closely with experienced government contracts counsel to determine the best way to minimize the impact such transactions may have on pending proposals, to affirmatively notify agencies of such transactions, and to provide sufficient assurance—*prior to an agency's award decision*—that such transactions will not impact the offeror's proposed performance.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Anuj Vohra

Partner – Washington, D.C.

Phone: +1.202.624.2502

Email: avohra@crowell.com

Cherie J. Owen

Senior Counsel – Washington, D.C.

Phone: +1.202.624.2629

Email: cowen@crowell.com

Issac D. Schabes

Associate – Washington, D.C.

Phone: +1.202.654.6706

Email: ischabes@crowell.com