

CLIENT ALERT

During Bid Protest Stay Agency Should Have Terminated Award To Large Business Following SBA Size Decision

December 29, 2006

Departing from precedent and a FAR provision seemingly on point, the GAO, in *ALATEC Inc.* (Dec. 4, 2006, <http://www.gao.gov/decisions/bidpro/298730.pdf>), held that even though the Army's award of a small business set aside contract occurred more than 10 days after a timely small business size protest was referred to the SBA, an award action permitted by FAR 10.302(h)(1), the Army should have terminated that contract following the SBA's determination that the awardee was in fact a large business. Because performance of the contract had been stayed due to a GAO protest, and because the SBA's Office of Hearings and Appeals sustained the size protest, GAO could not identify any "plausible countervailing circumstances" that weighed in favor of permitting a large business to perform the contract.

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

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