

CLIENT ALERT

GAO Clarifies Timeliness of Preaward Protests Challenging Solicitation Amendments

July 1, 2020

In *Computer World Services Corporation*, GAO sustained a protest challenging the Department of Homeland Security, U.S. Coast Guard's corrective action taken in response to an earlier sustained protest by CWS. In its original protest, CWS successfully challenged a task order award; in response, the agency informed offerors via e-mail that it intended to remove a limited price realism analysis from its evaluation, and requested that offerors revalidate their price quotes within two days. The agency did not, however, issue a formal solicitation amendment or provide offerors with an opportunity to submit revised quotes.

CWS challenged the announced corrective action ten days later, alleging that the agency had materially changed its evaluation methodology without providing an opportunity for proposal revisions, and that the agency's accompanying abandonment of reliance on an Independent Government Estimate (IGE) for its price realism evaluation was unreasonable. As a threshold matter, GAO determined the protest was timely, because the agency's request for validation did not constitute a proposal deadline, meaning its change in evaluation approach was subject to GAO's 10-day "known or should have known" timeliness rule. GAO then determined that elimination of the price realism component of the evaluation constituted a material change to the RFQ, requiring the agency to solicit revised quotations.

With respect to CWS' second challenge, that the agency should be required to develop a new IGE, GAO concluded the allegation was premature. GAO explained that CWS' true concern related to success of the agency's reevaluation, which could not be reviewed until it was actually conducted.

Bidders should closely monitor agency corrective action to assess new protest filing deadlines. Failure to timely challenge changes to evaluation methodology may prevent offerors from later arguing that those changes were improper.

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

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