

CLIENT ALERT

Misleading Discussions Can Be With Awardee

October 19, 2006

In *Advanced Systems Development, Inc.* (Sept. 19, 2006, <http://www.gao.gov/decisions/bidpro/298411.pdf>), the GAO held that the agency improperly tipped the tables when it incorrectly advised the future awardee in discussions that one portion of its price violated the solicitation's price target and never disclosed that the excess was caused at least in part by an upward adjustment the agency had made to compensate for an error in another part of the awardee's pricing proposal. In response to this incorrect and incomplete information provided during discussions, the offeror lowered its final price below that of the competition, including the protestor, who prevailed on the theory that the agency's discussions with the awardee were not meaningful.

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

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