PROTEST SUSTAINED BECAUSE OFFERORS WERE GIVEN INSUFFICIENT TIME TO RESPOND TO SOLICITATION AMENDMENTS AND TECHNICAL REVISIONS

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It is rare that the Government Accountability Office ("GAO") finds that offerors in a procurement (especially a simplified acquisition) has established unreasonable response times for changes made by the agency in a solicitation. In *Effective Communication Strategies, LLC*, B-423393, the GAO found insufficient and unreasonable the response times provided to solicitation amendments and to technical revisions ("TR") required by the agency. The solicitation in this case was issued by the Army Corps of Engineers for replacement appliances at multiple U.S. Navy installations.

The GAO concluded that the record in this case reflected that

> [B]eginning late in the afternoon on Friday, September 26 and continuing through the morning of Monday, September 29, the agency's requirements were undergoing rapid and material changes. For example, on Friday afternoon, the agency notified the protester that the requirement for Energy Star certification would be waived and that a previously proposed refrigerator, if proposed again, would make [Effective's] ("ECS's] quotation "good to go." The agency, however, never waived the Energy Star requirement and again rejected the re-proposed refrigerator. The agency then subsequently made material revisions to its requirements when it issued amendment 0008 on Sunday and provided vendors less than one hour to respond to the amendment with a revised quotation..Similarly, amendments 0009 and 0010, both issued on the morning of Monday, September 29, which either modified previous requirements or imposed and then repealed new requirements, provided vendors 75 minutes and less than an hour to respond, respectively. Under the circumstances, we find that ECS was not provided sufficient time in which to submit responses to the agency's ever-changing requirements issued in a series of amendments issued in quick succession. (Citations to the bid protest record omitted).

In sustaining this protest the GAO noted that contracting officers must establish solicitation response times that will afford offerors a "reasonable opportunity to respond." FAR 5.203(b). The same language appears in FAR 13.003(h)(2) for Simplified Acquisitions, which was the type of procurement here. However, GAO noted that what is a "reasonable opportunity to respond" depends on the circumstances of the procurement, such as complexity, commerciality, availability and urgency."

In this case, GAO found unreasonable the extremely short times (some of which arose on weekend days) for responding to amendments and TR's issued by the agency.

Takeaway. Although GAO often concludes that a short time to respond to amendments or technical revision requests may only be a small number of days (or hours), in this particular case, the time allotted was so short that it did not provide the protester with a

fair opportunity to improve its proposal and make it compliant with solicitation requirements.

GAO sustained the protest, and recommended that the agency amend the solicitation to provide vendors a reasonable opportunity to submit revised quotations, evaluate the quotations and make a new award decision.

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