

The Government Accounting Office's Decision in *SteerBridge Strategies, LLC* Provides an Important Reminder: Government Contractors Should Consider Challenging Issues with Solicitation Language Before Proposal Submission

By Kelly Buroker

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In the government contracting world, the term “bid protest” typically elicits visions of an unsuccessful offeror challenging an agency’s evaluation of proposals and award decision. While these “post-award” bid protests may be more common, contractors often forget that “pre-award” protests can be filed to contest terms or provisions in a solicitation. In practice, protesting the terms of a solicitation can be one of the most useful and underutilized tools in a contractor’s toolbox.

When conducting a thorough review of the specific terms of a solicitation, contractors often discover a wide variety of defects that might impact an agency’s ultimate evaluation and award decision. Some common issues include:

- Solicitations that contain contradictory requirements or terms that are ambiguous, making it unclear to the offeror how to draft a successful proposal.
- Requirements that restrict competition or favor a specific company or approach, impairing the offeror’s ability to compete or putting the contractor at an unfair competitive disadvantage.
- An agency’s decision to set aside—or not set aside—a procurement for one of the Small Business Administration’s socio-economic programs, which can effectively preclude companies from competing altogether.
- An agency’s improper use of its statutory “Other Transaction Authority” to acquire goods or services that should be acquired via a traditional procurement contract.
- The agency’s evaluation factors, award process or methodology. For example, offerors can challenge how an agency plans to consider past performance in the evaluation of proposals or challenge an agency’s decision to conduct a lowest-price, technical acceptable procurement rather than making the award on a best value basis.

Prospective offerors should first try to resolve these issues with the responsible contracting officer through the solicitation’s question and answer period. However, if that is not successful, a pre award protest to either the agency or the Government Accountability Office (GAO) is a viable—and often highly effective—option. Contractors should keep in mind that pre-award protests carry strict and sometimes confusing deadlines.

The GAO’s recently released decision in *SteerBridge Strategies, LLC*, B-422831.2, B-422831.3, Dec. 31, 2024 highlights this exact point. In that case, the Department of Veterans Affairs (VA) had initially issued the solicitation for modern claims processing support services as a small business set-aside. SteerBridge, a service-disabled, veteran-owned small business (SDVOSB), filed a pre-award protest with the GAO, asserting that the VA had failed to conduct adequate market research that, if performed, would have resulted in the procurement being set aside for SDVOSBs under the VA’s Rule of Two. In response, the VA opted to take corrective action, advising the GAO it planned to cancel the solicitation and resolicit it as a set-aside for SDVOSBs. The GAO accordingly dismissed SteerBridge’s protest.

Following that dismissal, the VA amended the solicitation, changing the procurement from being set aside for small businesses to one set aside for SDVOSBs. Although the VA initially planned to cancel the procurement to achieve this change, it instead opted to amend the solicitation for administrative reasons. The amendment included no other substantive changes to the solicitation’s terms.

Prior to the due date for offers, SteerBridge again protested the terms of the solicitation, this time arguing that the solicitation contained requirements that only the incumbent could meet, and that the decision to amend the solicitation

rather than cancel it resulted in a de facto sole source award to the SDVOSB that teamed with the incumbent contractor (who was not an SDVOSB). The GAO dismissed the protest as untimely, finding that the amendment did not create the issues identified by the protester. According to the GAO, those requirements were present in the initial solicitation and SteerBridge should have also contested them in its first protest challenging the set-aside. Simply put, SteerBridge was required to challenge all restrictive terms prior to the due date of initial proposals, and its failure to do so waived its ability to protest them at a later time.

It is unclear whether the GAO would have reached the same conclusion if the agency had canceled the solicitation and issued a new one, rather than just issuing an amendment to the initial solicitation. Regardless, the GAO's dismissal clearly demonstrates that offerors should be proactive about raising each and every concern they have with an objectionable solicitation in their initial protest filing. Thus, when a solicitation is issued, potential offerors should take great care to review the terms to ensure they are clear, consistent, and do not create any barriers or improper restrictions on the ability to compete fairly. This is particularly true now when the government contract landscape is so uncertain. If any problems in the solicitation exist, offerors should engage with bid protest counsel to determine how and where to challenge the solicitation to maintain the ability to compete fairly for the work.

[Read the full decision here.](#)

Please reach out to Vedder Price's full-service Government Contracts group if it can provide your company with any assistance in navigating these or any other issues faced by federal contractors.

If you have any questions about this article, please contact **Kelly E. Buroker** at kburoker@vedderprice.com or any other Vedder Price attorney with whom you have worked.

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