



# Decision

**Matter of:** Worrell Contracting Company, Inc.

**File:** B-423208

**Date:** January 22, 2025

---

R. Bruce Thompson, II, Esq., Parker, Poe, Adams & Bernstein LLP, for the protester.  
Michelle F. Kantor, Esq., McDonald Hopkins, LLC, for Veterans Choise Services, LLC,  
the intervenor.

Linh Adams, Esq., and Sophia Lee, Esq., Department of Veterans Affairs, for the  
agency.

Heather Self, Esq., and Peter H. Tran, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

---

## DIGEST

Protest challenging adequacy of notice provided for solicitation amendment is dismissed as untimely where protest was not filed before the new due date for quotations established by the amendment.

---

## DECISION

Worrell Contracting Company, Inc., a service-disabled veteran-owned small business of Goldsboro, North Carolina, protests its exclusion from the competition under request for quotations (RFQ) No. 36C78624Q50310, issued by the Department of Veterans Affairs (VA) for grounds maintenance services. The protester takes issue with its elimination from the competition resulting from Worrell's failure to acknowledge an RFQ amendment that the protester maintains provided inadequate notice and insufficient time for response.

We dismiss the protest.

## BACKGROUND

On August 27, 2024, using the commercial item and simplified acquisition procedures of Federal Acquisition Regulation (FAR) subpart 12.6 and part 13, the agency issued the solicitation seeking quotations for grounds maintenance services at the Washington Crossing National Cemetery in Newtown, Pennsylvania. Agency Resp. to Intervenor's Req. for Dismissal ("Agency Resp.") at 1-2; Agency Resp. attach. 1, Contracting

Officer's Statement (COS) at 2; Agency Resp. attach. 2, RFQ at 1-2, 28.<sup>1</sup> The solicitation contemplated award of a single indefinite-delivery, indefinite-quantity contract under which fixed-price orders would be issued during a 1-year base period and four 1-year option periods. *Id.* at 2-3, 28. The solicitation provided award was to be made on a best-value tradeoff basis, considering three factors: (1) technical; (2) past performance; and (3) price. *Id.* at 28.

Relevant here, the solicitation established that quotations were due at 8 a.m. Eastern Time on September 27. RFQ at 1, 3-4. The solicitation advised: "Offerors are responsible for obtaining all amendments or additional information concerning this announcement at sam.gov." *Id.* at 3. Additionally, the solicitation cautioned: "Should an amendment not be endorsed by the interested Offeror, the quote will be considered ineligible for award." *Id.* Further, the solicitation instructed vendors to include in their quotations: "One (1) Signed Copy of all Solicitation Amendments." *Id.* at 4. Immediately following this instruction, the solicitation emphasized that: "**Failure to comply shall result in the offeror being ineligible for award.**"<sup>2</sup> *Id.*

At 11:39 p.m. Eastern Time on September 26, the agency posted RFQ amendment 1 to SAM.gov. Protest at 2; Protest exh. 3(a), RFQ amend. 1 SAM.gov Posting Notice at 2; COS at 2; Agency Resp. attach. 3, RFQ amend. 1 at 1. The primary purpose of the amendment was to provide a revised price schedule. COS at 2; RFQ amend. 1 at 1, 3. The amendment also extended the due date for quotations to 8 a.m. Eastern Time on September 30. *Id.* The extended due date was noted at least six times throughout the amendment. RFQ amend. 1 at 1, 3-4, 6-7, 34.

The protester represents that prior to "the recorded time of the posted modification, Worrell Contracting's offer was completed and scheduled for submission to the VA," and that Worrell's quotation "was received by the VA at 6:00 AM on September 27, 2024." Protest at 2. The agency confirms that Worrell "submitted its quote before the original deadline on September 27, 2024 at 6:00 AM," but notes that Worrell "did not submit a signed copy of Amendment 0001." Agency Resp. at 2. The VA asserts that Worrell also did not submit a signed copy of RFQ amendment 1 by the extended due date for quotations--8 a.m. Eastern Time on September 30. *Id.*

On November 29, the VA made award to Veterans Choice Services, LLC in the amount of \$3,599,017.05. COS at 3. That same day, the agency posted notice of the award to

---

<sup>1</sup> Citations use the Adobe PDF pagination of documents in the record.

<sup>2</sup> We note that because the solicitation at issue here was an RFQ under FAR part 13, vendors submitted quotations in response to the RFQ, rather than offerors submitting proposals. FAR 13.004(a) ("A quotation is not an offer, and consequently, cannot be accepted by the Government to form a binding contract."). The record as well as the submissions by the parties, however, use the terms "offers," "offerors," "proposals," and even sometimes "bids" when referring to this procurement. We have left unchanged the use of these terms when quoting from the record and submissions by the parties.

SAM.gov. *Id.* On November 30, Worrell requested a brief explanation of award, which the VA provided on December 2. *Id.* The agency's brief explanation to Worrell stated:

You were not eligible for award. You did not respond to the amendment that posted for 36C78624Q50310. Per the solicitation, "One (1) Signed Copy of all Solicitation Amendments. Failure to comply shall result in the offeror being ineligible for award." Page 4 of 36C78624Q50310 Combined Synopsis Solicitation; Instructions to Offerors Company Information (Volume A).

Your company failed to acknowledge and submit a signed amendment prior to the close of the solicitation.

Protest exh. 6, Email from VA to Worrell, Dec. 2, 2024. On December 3, Worrell, the incumbent contractor, filed this protest with our Office. Protest at 1, 5.

## DISCUSSION

Worrell asserts that its "protest is based on the timing of the [amendment] posted to SAM.gov on September 26, 2024 which was issued at \*\*11:39 PM\*\* with a revised Attachment A-Price Cost Schedule and an extended submission deadline." Protest at 2. The protester maintains that "[t]he VA's award to Veterans Choice is therefore considered improper because the late posting of the [amendment] caused an unfair disadvantage and impacted the fairness of the procurement process." *Id.* While acknowledging that amendment 1 extended the due date for receipt of quotations, the protester contends that the timing of the amendment "did not allow for proper or effective notice to all offerors, which is violation of fair competition principles" and section 15.203 of the FAR. *Id.* at 2, 5.

Veterans Choice Services, the intervenor, requests that our Office dismiss the protest as an untimely solicitation challenge. Intervenor Req. for Dismissal at 1. Specifically, the intervenor argues "[t]he fact that Worrell is basing its Protest on the timeliness of when the Amendment was published makes this a Pre-award protest," and instead of filing its protest at the time of the amendment, "Worrell 'sat on its rights' and did nothing" until after contract award thereby "miss[ing] its deadline for filing a proper Pre-Award protest." *Id.* at 3. The VA concurs with the dismissal request, arguing that because "Worrell's protest challenging Amendment 0001 of the Solicitation was filed long after the closing date for submissions of quotations," the protest is untimely. Agency Resp. at 1. We agree.

Our Bid Protest Regulations contain strict rules for the timely submission of protests. These timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without disrupting or delaying the procurement process. *FD Inc.*, B-422920, B-422920.2, Oct. 4, 2024, 2024 CPD ¶ 238 at 3. Relevant here, our regulations require that protests based on "alleged improprieties which do not exist in the initial solicitation but which are subsequently

incorporated into the solicitation must be protested not later than the next closing time for receipt of proposals” or quotations following the incorporation. 4 C.F.R. § 21.2(a)(1); *Vigor Marine LLC*, B-420955.2, Oct. 31, 2022, 2022 CPD ¶ 276 at 4.

The protester responds to the dismissal request by arguing that Worrell only “became aware of the grounds for protest on November 29, 2024” when the firm learned of the contract award. Resp. to Req. for Dismissal at 2. Worrell insists that it “did not have constructive or actual knowledge of the issues raised in the protest prior to that date. *Id.* According to the protester, because the alleged solicitation impropriety was not known until November 29, “the laws and regulations did not require [Worrell] to file a protest prior to the bid opening.” *Id.*

The protester claims the “Intervenor and the agency want to punish Worrell for being diligent and preparing its proposal in advance of the original deadline,” and that “they are asking GAO to reward Intervenor for the agency literally posting an 11th hour change to the solicitation.” Resp. to Req. for Dismissal at 3. Worrell asserts that “[a] reasonable bidder would not know, nor should they have known, that a federal agency would change the terms of the solicitation just hours before the bids were due.” *Id.* Further, the protester maintains “[t]here is no reasonable basis to expect Worrell to check the website in the early morning hours as it was diligently preparing its bid proposal,” thus, “Worrell had no reason to know that the solicitation had been amended until at least November 29, 2024, when the agency posted a notice” of contract award. *Id.*

The question of the protester’s actual knowledge is not in dispute. Thus, we have no reason to question the protester’s representation that it did not have *actual* knowledge of amendment 1 until after contract award, because, prior to the 11:39 p.m. September 26 posting of amendment 1 to SAM.gov, Worrell had set its quotation to automatically send to the VA on the morning of September 27. The fact that Worrell did not check SAM.gov for updated information about the solicitation after preparing its quotation to auto-send, however, does not absolve the protester from having *constructive* knowledge of amendment 1. Rather, once the VA posted amendment 1 to SAM.gov--which is the governmentwide point of entry (GPE)--Worrell was imputed to have constructive notice of the amendment.

The FAR designates SAM.gov as the GPE, “the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public.” FAR 2.101. Our Office has explained consistently that protesters are charged with constructive notice of procurement actions published on the GPE. *FD Inc., supra* at 6; *Phoenix Data Sec., Inc. et al.*, B-419956.200 *et al.*, July 10, 2023, 2023 CPD ¶ 172 at 12 n. 11; *Allosense, Inc.*, B-420201, Dec. 27, 2021, 2021 CPD ¶ 395 at 5; *Prudential Protective Servs., LLC*, B-418869, Aug. 13, 2020, 2020 CPD ¶ 272 at 3-4.

The doctrine of constructive notice creates a presumption of notice in law that cannot be rebutted. *Boswell & Dunlap, LLP*, B-416623, Oct. 10, 2018, 2018 CPD ¶ 351 at 3, *citing*

*Townsend v. Little and Others*, 109 U.S. 504, 511, 3 S. Ct. 357, 27 L. Ed. 1012 (1883) (“Constructive notice is defined to be in its nature no more than evidence of notice, the presumption of which is so violent that the court will not even allow of its being controverted.”). By definition this doctrine imputes knowledge to a party without regard to the party’s actual knowledge of the matter at issue. *Boswell & Dunlap, supra*. Thus, Worrell had constructive notice of the basis of its protest on September 26, when the agency posted the award notice on SAM.gov.

Consequently, we find meritless the protester’s contention that only through the notice of contract award did Worrell become aware of the basis of its protest--*i.e.*, that RFQ amendment 1 provided insufficient notice of and inadequate time for preparation of quotations in response to the changed solicitation. The protester’s argument, in this regard, would render meaningless the doctrine of constructive notice. Moreover, even if this were not the case, the solicitation here specifically: (1) provided that vendors were responsible for obtaining all amendments from SAM.gov; (2) cautioned that if a vendor did not endorse an amendment, the vendor’s quotation would not be eligible for award; (3) instructed vendors to include in their quotations a signed copy of all amendments; and (4) emphasized that failing to include a signed copy of all amendments would result in a vendor’s quotation being ineligible for award. RFQ at 3-4. Thus, Worrell’s lack of actual knowledge does not excuse the protester from being charged with constructive knowledge of amendment 1.<sup>3</sup> See *e.g., FD Inc., supra* at 7 (dismissing protest as untimely where protester was charged with constructive knowledge of award notice posted on SAM.gov, notwithstanding protester’s claim of not having actual knowledge).

---

<sup>3</sup> Worrell also attempts to rely on the requirements of FAR part 15 as support for its argument that amendment 1 provided inadequate notice and insufficient time for vendors to respond. Specifically, the protester argues that section 15.203 of the FAR requires adequate time “be provided for potential offerors to review and respond to modifications that may impact their proposals,” and that the posting of amendment 1 “ONLY 8 hours and 20 minutes before the final proposal submission deadline of September 27, 2024 8:00 AM” failed to “provide Worrell Contracting with sufficient time to adjust our proposal accordingly, which caused a disadvantage relative to other offerors.” Protest at 4-5. As the solicitation here was issued using the commercial item and simplified acquisition procedures of FAR subpart 12.6 and part 13, we find the protester’s reliance on the provisions of FAR part 15 to be misplaced. Rather, the guidance for the publication of, as well as response time to, solicitations for simplified acquisitions are set forth in sections 5.101, 5.202, 5.203, and 13.105 of the FAR. Notwithstanding the protester’s misplaced FAR references, the time for Worrell to raise its concerns--that the VA’s “11th hour change to the solicitation” and provision of only a 3-day extension of time were inadequate--was prior to the September 30 due date for quotations established by the amendment. As discussed above, because the protester failed to challenge the alleged flaws in amendment 1 prior to the new due date for quotations, Worrell’s protest is untimely. See *e.g., Brian X. Scott*, B-410195, Nov. 7, 2014, 2014 CPD ¶ 335 at 4-5.

As noted above, our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Such a rule promotes efficiency by ensuring that concerns regarding a solicitation are raised before contractor and government resources are expended in pursuing and awarding the contract, thus avoiding costly and unproductive litigation after the fact. *Draeger, Inc.*, B-414938, Sept. 21, 2017, 2017 CPD ¶ 308 at 5. Accordingly, we dismiss the protest as untimely because Worrell failed to challenge the terms of amendment 1 prior to the September 30 closing time established by the amendment. See e.g., *WareonEarth Commc'ns, Inc.*, B-298408, July 11, 2006, 2006 CPD ¶ 107 at 2, 4 (dismissing as untimely challenge to solicitation amendments where protest was not filed until after due date for revised proposals established by amendments

Moreover, to the extent Worrell's protest can be read as arguing that reasonable time did not exist to permit filing a protest prior to the extended September 30 due date for quotations, we do not find the argument persuasive for two reasons. First, the circumstances present here are not comparable to circumstances where we have concluded that a vendor did not have a reasonable opportunity to protest solicitation terms prior to the next due date for receipt of quotations--instances where the protester faced an extremely limited timeframe within which to challenge the solicitation provisions at issue. See e.g., *Eastern Forestry*, B-411848, Nov. 9, 2015, 2015 CPD ¶ 348 at 2, 4 (protester learned basis of protest from amendment posted at 7:00 p.m. the night before bid opening at 10 a.m. the following day and amendment did not change bid opening time); *Skyline Indus., Inc.*, B-257340, Sept. 22, 1994, 94-2 CPD ¶ 111 at 3 (time for receipt of proposals was "practically simultaneous with solicitation itself"); *Ling Dynamic Sys., Inc.*, B-252091, May 24, 1993, 93-1 CPD ¶ 407 at 3 (protester learned basis for challenging solicitation only 2 hours before bid opening).

Here, while the agency posted amendment 1 within nine hours of the initial time set for receipt of quotations, the amendment also included a 3-day extension of the quotation due date, thus providing adequate time for vendors to either prepare a revised quotation or protest the terms of the amendment. See e.g., *WareOnEarth Commc'ns, supra* at 4 (finding protester had sufficient time to protest terms of solicitation amendments where "protester received the amendments 4 days--or, as the protester describes them, 2 working days--before revised proposals were due); *Concepts to Operations, Inc.*, B-248606, Sept. 10, 1992, 92-2 CPD ¶ 164 at 3 (finding three calendar days, one business day, was sufficient time to file protest).

Second, even if we were to conclude that a reasonable time did not exist to permit filing a protest prior to the new due date established by amendment 1--which we do not conclude--Worrell still was required to protest no later than 10 days from when it knew or should have known the basis of its protest. 4 C.F.R. 21.2(a)(1); *WareOnEarth Commc'ns, supra* at 3; *Microgenics Corp.*, B-419470, Feb. 2, 2021, 2021 CPD ¶ 72 at 4. As discussed above, Worrell was charged with constructive notice of the amendment when it was posted to SAM.gov on September 26. Thus, Worrell would have had to file its protest challenging the amendment no later than October 7 for it to

be timely.<sup>4</sup> The protest here was not filed until December 3, and is, therefore, unquestionably untimely.

Finally, the protester urges that even if our Office “somehow determines that the protest was filed late,” we should nevertheless consider it under the provision of our regulations providing for review of “an untimely protest where exceptional circumstances beyond the protester’s control caused the delay in filing the protest, or where the protest presents novel or significant issues of interest to the procurement community.” Resp. to Req. for Dismissal at 4. Specifically, the protester maintains that “[r]eviewing a last minute amendment to the solicitation certainly raises issues significant to the procurement system,” and that our Office “should conduct a full hearing to benefit the entire procurement community.” *Id.* at 4.

As the protester notes, our regulations allow our Office to consider the merits of an untimely protest when good cause is shown or when the protest raises issues significant to the procurement system. 4 C.F.R. § 21.2(c). To prevent our timeliness rules from becoming meaningless, however, exceptions are strictly construed and rarely used. *Vigor Marine LLC, supra* at 4. What constitutes a significant issue is decided on a case-by-case basis. *Id.* Generally, we regard a significant issue as one of widespread interest to the procurement community that has not been considered on the merits in a prior decision. *Id.* Whether to invoke the significant issue exception is a matter entirely within our Office’s discretion. *Id.*

Here, the agency posted amendment 1 to SAM.gov, and, as a result, Worrell was charged with constructive notice of the amendment. The fact that prospective contractors are charged with constructive notice of procurement opportunities posted to the GPE has been discussed in numerous decisions from our Office over the years. Consequently, we do not find that the protester’s failure to challenge the amendment in a timely fashion presents a significant issue for the procurement system.

The protest is dismissed.

Edda Emmanuelli Perez  
General Counsel

---

<sup>4</sup> The tenth day after September 26 was Sunday October 6. When the last day of the 10-day period is a Saturday, Sunday, or Federal holiday the period extends to the next day that is not a Saturday, Sunday, or federal holiday, which here would be Monday October 7. 4 C.F.R. § 21.0(d).