

# Antecedents And Consequences Of Federal Bid Protests

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Issues with Bid Protests

Purpose & Research Question

Theoretical Frameworks

Methodology

Results

Implications



- Protest are costly – ex ante and ex post
  - Transaction costs are not tracked
- Protests are increasingly problematic
  - raw # increasing
  - low *sustain* rate (17%) , but high “*effectiveness*” rate (43%)
  - protest per 1,000 protestable contract actions increased, 2005-2010
- Much “conventional wisdom” and anecdotal evidence of 2<sup>nd</sup>-order effects of bid protests, but....
  - Don’t know the magnitude of the “*fear*” of bid protests
  - No research has empirically and quantitatively explored:
    1. the drivers of fear of protests
    2. the outcomes of fear of protests



# Issues

“Another concern about the cost of the protest system relates to what might be called its indirect impact. *Fear of protests* is *often* given as the explanation for Contracting Officers’ preference for certain courses of action over others.”

- [Gordon, D. I.](#) (2013). Bid Protests: The Costs are Real, But the Benefits Outweigh Them, *Public Contract Law Journal*.

“*Fear of a protest* could also prompt officials to try to structure a contract in a manner they deem less likely to be protested, such as using lowest price technically acceptable as an award criteria instead of a best-value competition.”

- Schwartz, Moshe, and Kate Manuel. (2009). "[GAO Bid Protests](#): Trends, Analysis, and Options for Congress." Congressional Research Service.

“Gordon's article is okay, but he understates the cost of *fear of protests*. Such fear is very real...and retards process innovation.”

- [Vernon Edwards](#) (2013), Blog Post, Where In Federal Contracting, 6 Sep 13.

## Purpose:

- Quantify the magnitude of protest fear, and
- Explore the antecedents and consequences of protest fear

## Research Questions:

- Do bid protests lead to sub-optimal acquisition strategy decisions?
- Do bid protests affect source selections?
- If yes, does contractor performance suffer?
- How is contracting officers authority affected?



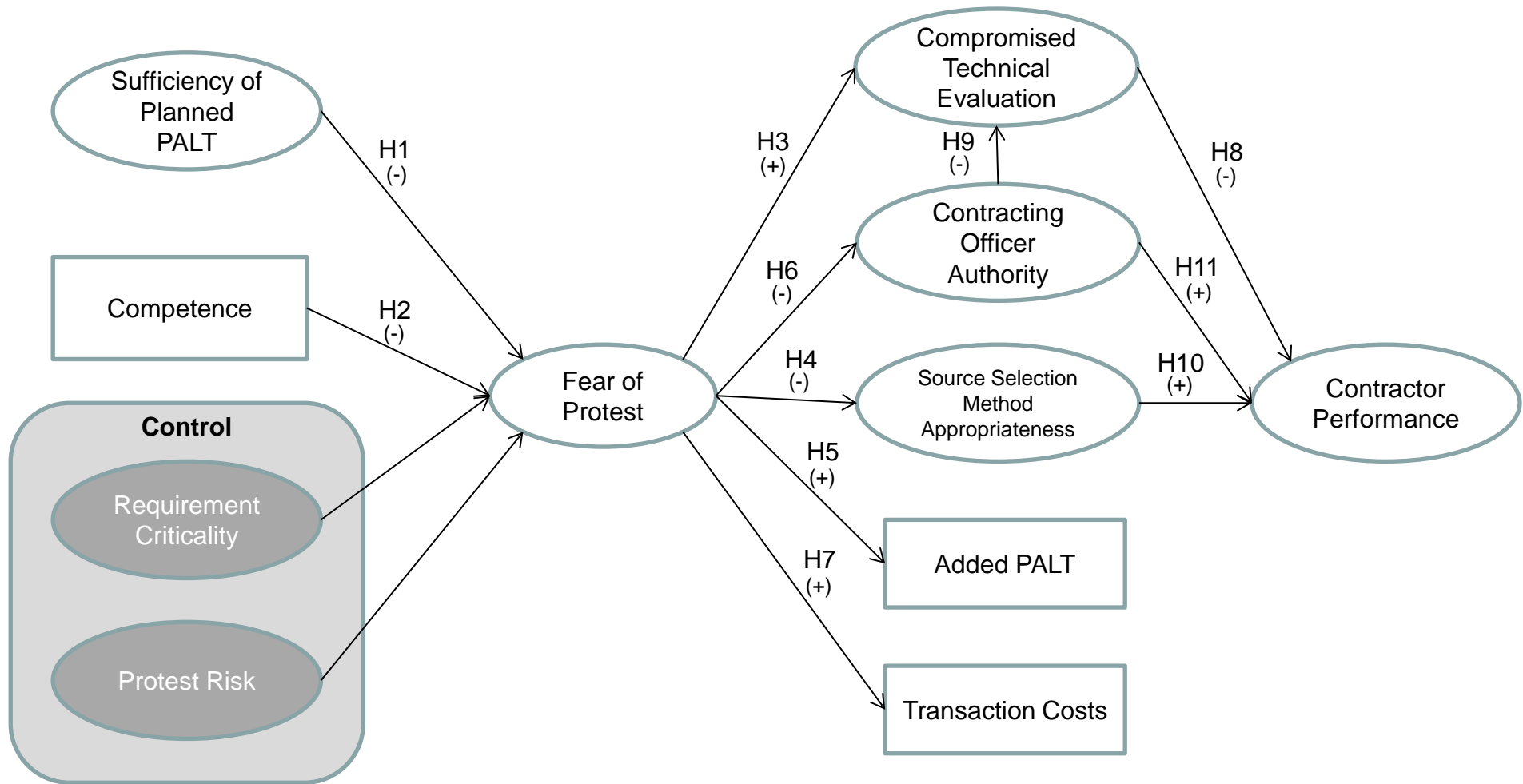


## Public Value Framework

- **Strategic Triangle** (Heymann, 1987; Moore, 1995)
  - public value,
  - legitimacy support,
  - operational capability



# Results – Conceptual Model



## Qualitative

- Interviewed 18 KOs ( $\bar{x}$  exp = 15 yrs)
- Validated conceptual model & measures

## Quantitative

- Online Survey
- Sample:
  - 350 civ & mil contracting personnel experienced in FAR Part 15 source selections
  - RR = 17% (9% usable)
  - $\bar{x}$  exp = 13.6 yrs
  - $\bar{x}$  protests = 2
  - 15.4% exp a sustained protest
- Structural Equation Modeling + multivariate models



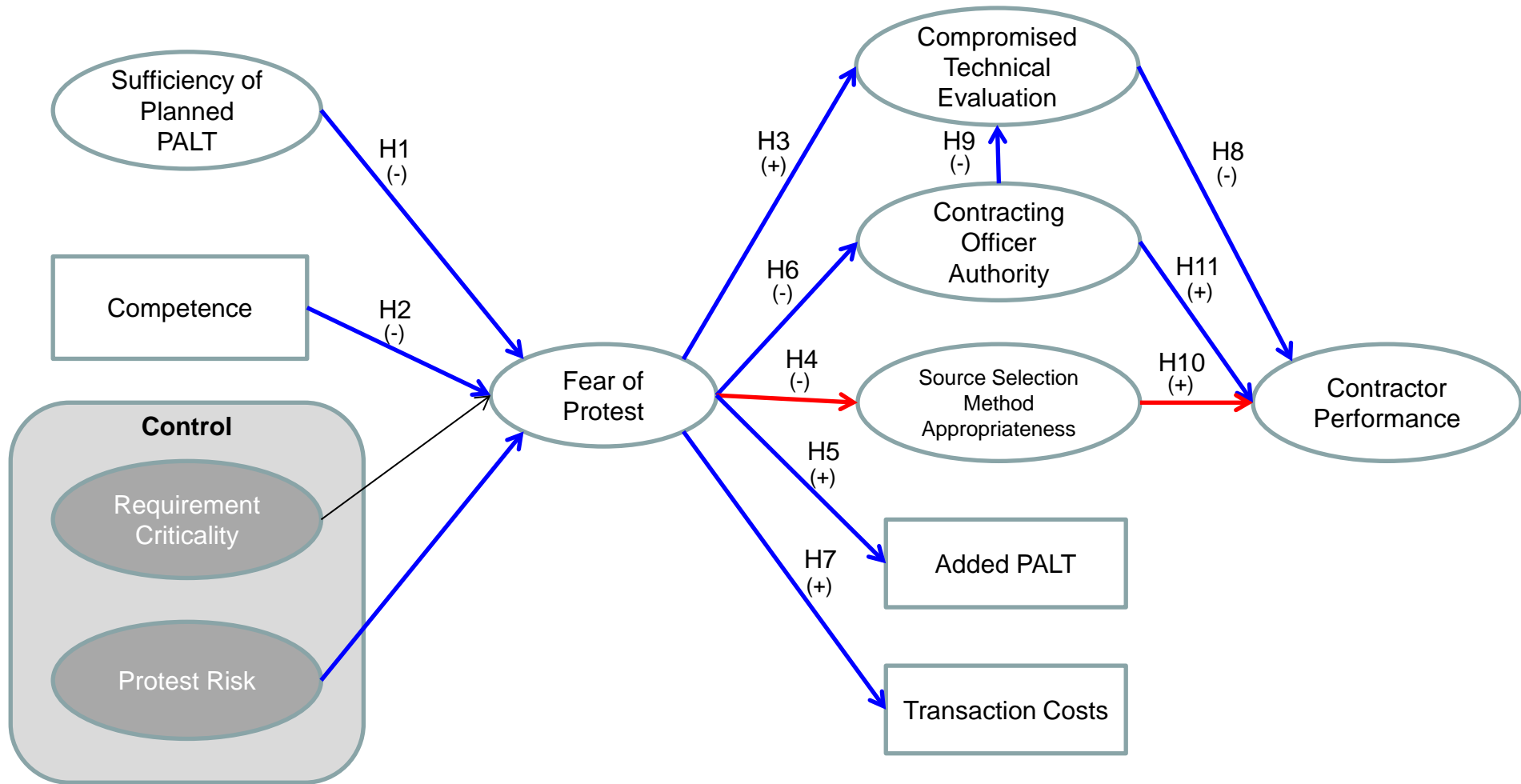


- **Magnitude of Fear:**

- Combined avg score = 16.33 (scale range 4 - 20).

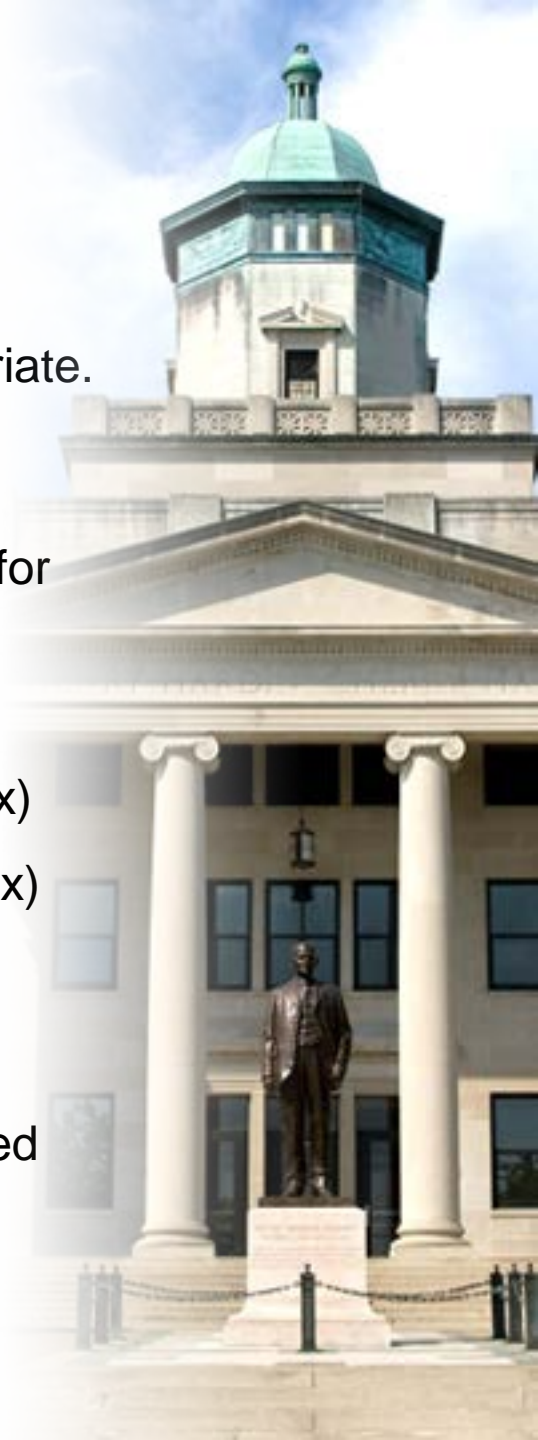


# Results



- Supported in SEM Model
- Supported outside of SEM Model
- Not Supported

- **Source Selection Method Appropriateness (SSMA):**
  - 13 /133 respondents used LPTA though inappropriate
  - 10/174 respondents used full trade-off though inappropriate.
    - ~ 7.5% of the 307 respondents
- Logistic regression with SSMA scored high/low (binary DV) related significantly to *Fear of Protest* (also scored high/low) for those source selections using LPTA method, but low R-Sq
- 84 respondents used task orders to avoid a protest (avg 47x)
- 67 respondents used sole source to avoid a protest (avg 15x)
- 64 used modifications to avoid a protest (avg 17x)
- *Fear of Protest* not related to increase in # contracts awarded



- H7: Fear of Protest → Transaction Costs (TC)
  - Tested outside of SEM model via regression due to missing data ( $n=270$ )
  - =  $\Sigma(\text{salary}) * (\# \text{ people}) * (\text{fraction of allocated time})$
  - Avg 9 different people worked on a given source selection team in the various roles (avg 3.5 FTEs).
  - TC range: \$700 - \$3.5M
  - Avg TC per source selection = \$235K
  - As a % of the total contract price, the transaction costs averaged 7.7%



- Acquisitions should not be hastened short of the time thought to be adequate by the KO.
  - Publish standard lead times
- Increase the # of source selections experienced by contracting officers.
  - Source selection simulations and scenario-based training vs. only OJT
- Source selection costs are not trivial
  - Time sunk in SS is time not invested elsewhere
  - Drives manning
  - Compare against common industry metrics (e.g., total spend per sourcing FTE (CAPS Research, 2011))





- For contractors: When a buying office builds an acq strategy ill-suited to the buying situation, it may be due to the fear of a bid protest.
  - Prospective offerors may misinterpret the use of LPTA as an added emphasis on price. Their bid strategy, then, may be influenced by reducing costs and price, potentially putting high performance at risk.
  - But, the agency may not be terribly concerned about price.
- Need to counter compromised technical evaluations
  - In-depth SS training to tech evaluators
  - Tech evaluators write SOW/specs should be on SSET



# Implications

- Better training is needed for contracting personnel and technical evaluators to develop the requisite competence in source selections.
  - oversight/reviews could be curtailed.
  - Some protest risk could be accepted for the sake of efficiency and better decision making (i.e., plan to hold discussions but limit technical leveling)
- If not capable, trusted and empowered to make the necessary decisions, procurement clerks (series 1105) would be much less costly than contracting professionals (series 1102).



- The *fear of protest* was empirically validated.
- Fear of protests affects:
  - Source selection method
  - KO authority
  - Tech evaluation effectiveness
  - Transaction costs & lead time

## **Future research:**

- Expand the sample Fed-wide
- Seek higher RR
- Explore means to increase SS efficiency w/o compromising fairness
- Explain LPTA inappropriate use (factors other than fear of protest)

