

A Closer Look at Bid Protests in the Department of Defense

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Policy Question

- ▶ Considering the passage of GAO Bid Protest Reforms in the FY 2018 NDAA, what is the potential effect on protests of DoD contract awards?
- ▶ Are there other policy options that the government should consider outside of the FY 2018 NDAA recommendations?
 - ▶ If so, how would these alternatives alter the protest process and to make it easier for private contractors to do business with the federal government?

Current Trends

- ▶ Number of DoD protests at GAO have doubled since from 2001-2015
- ▶ Little data shows the cost of filing protests to businesses or government
- ▶ Key RAND Corporation recommendations
 - ▶ *Enhance the quality of post-award debriefings*
 - ▶ *Consider implementing an expedited process for adjudicating protests involving contracts valued under \$0.1 million*

Current Trends- FY 2018 NDAA

- ▶ 2 year pilot program requiring businesses to reimburse DoD for costs incurred in processing covered protests:
 - ▶ Protests denied by GAO
 - ▶ Filed by a party with over \$250 million in annual revenues
- ▶ RAND found that 0.3% of contracts are protested and most are on small contracts
- ▶ No definition of “cost incurred”

115TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { 115-404

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2018

CONFERENCE REPORT

TO ACCOMPANY

H.R. 2810



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Methodology

- ▶ 472 GAO closed docket protest for the previous year in three agencies:
 - ▶ Defense Logistics Agency
 - ▶ Navy Supply Systems Command
 - ▶ Army Material Command
- ▶ Cross-referenced solicitation numbers with FBO's "Value at Time of Award"
 - ▶ 159 solicitations contained "Value at Time of Award" information

Search All Published Bid Protest Decisions:

Use this keyword search to access any of our published decisions.

 [Start over](#)

Search the Bid Protest Docket:

Use these specific fields to find status information about cases filed in the past 12 months.

Status: All Open Docket Closed Docket

Agency:

Solicitation Number:

Protestor:

File Number: Example : 123456

[Start over](#)

About 239 results for Legal: Bid Protest: Bid Protest Docket: Closed Docket: Department of Defense : Defense Logistics Agency: ""

Show Results For

Bid Protest Docket
Dismissed (161)
Denied (30)
Withdrawn (45)
Sustained (3)

Refine By

Date
Past Month (5)
Past 6 Months (100)
Past Year (209)
Custom Date Range

Sort By: Results per page:

[Cole Motorsports, LLC](#)
<https://www.gao.gov/docket/B-415686.1>

Agency: Department of Defense : Defense Logistics Agency
File Number: B-415686.1 Outcome: Dismissed Date Decided: Dec 15, 2017

[Premier Global Resources Corporation](#)
<https://www.gao.gov/docket/B-415552.2>

Solicitation Number: SPO600-17-R-0211
Agency: Department of Defense : Defense Logistics Agency
File Number: B-415552.2 Outcome: Withdrawn Date Decided: Dec 11, 2017

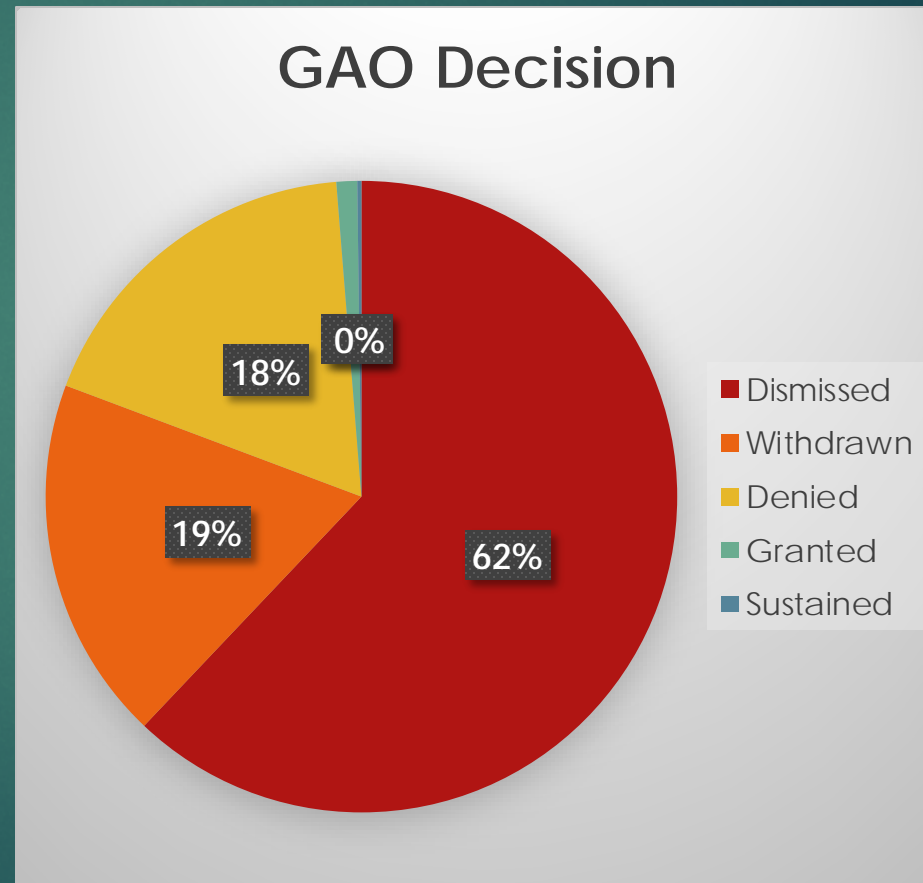
Results

- ▶ Inflated Army Material Command Center values
- ▶ Multiple large protests on singular solicitation
 - ▶ 34 protests regarding one \$500,000,000 contract

Agency	Number of Protests with "Value at Time of Award"	Average "Value at Time of Award"
Defense Logistics Agency	39	\$23,222,383.76
Navy Supply Systems Command	24	\$31,690,997.52
Army Material Command	96	\$292,140,760.84

Results

- ▶ 31 of 159 “Value at Time of Award” protests denied: 88 of 472 total
- ▶ Most contracts would not be effected by FY 2018 NDAA reforms



Criteria and Policy Alternatives

Criteria

- ▶ Decrease the number of contract protests presented to GAO
- ▶ Increase potential new business partners with DoD
- ▶ Save the government money and time

Policy Alternatives

- ▶ Make “losers pay” pilot program in FY 2018 NDAA permanent law
- ▶ Funnel all DoD protests regarding a singular solicitation into one review
- ▶ Eliminate GAO’s role in adjudicating bid protests

Score	Explanation
0	Fails to satisfy criterion
1	Partially satisfies criterion
2	Fully satisfies criterion

Alternative 1: Make “losers pay” pilot program in FY 2018 NDAA permanent law

	Decrease Number of Protests	Increase New Business Partners	Save Government Time and Money	Total
Losers Pay Law	0	0	1	1

Alternative 2: Funnel all protests for one solicitation into a single review

	Decrease Number of Protests	Increase New Business Partners	Save Government Time and Money	Total
Funnel All Protests	2	1	2	5

Alternative 3: Eliminate GAO's role in adjudicating bid protests

	Decrease Number of Protests	Increase New Business Partners	Save Government Time and Money	Total
Eliminate GAO's Role	0	0	1	1

Conclusion: Decision Matrix

	Decrease Number of Protests	Increase New Business Partners	Save Government Time and Money	Total
Losers Pay Law	0	0	1	1
Funnel All Protests	2	1	2	5
Eliminate GAO's Role	0	0	1	1

Thank you

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