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# Predicting Bid Protests: What Should Acquisition Teams (Not) Do?

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## Abstract

Bid protests are increasing, and the effectiveness for protestors is relatively high. Bid protests delay receipt of needed goods and services. They are costly to prevent and to adjudicate. The purpose of this research is to better understand why bid protests are lodged by interested parties. This research concentrates on meso-level factors controlled by the acquisition team that affect the receipt of a bid protest, namely, the characteristics of the procurement, acquisition strategy decisions, and human factors. Using an existing data set of 240 government source selections resulting from a survey of U.S. Navy contracting officials, 19 antecedent factors will be explored.

## Introduction

A central tenet of a public contracting system is to maintain the public's trust via instilled integrity, fairness, and openness (Hawkins et al., 2016). A bid protest is a corrective mechanism to ensure integrity and fairness by providing an interested party with a process to air complaints and obtain relief (Manuel & Schwartz, 2011). It is a written objection that can occur at any stage of the contract award process. Often, protests result from alleged errors or mistakes committed by the buying agency. The most common errors cited in protests are poorly written or vague contract requirements, failure to follow the process or evaluation criteria laid out in the request for proposals, unequal treatment of offerors, and failure to adequately document the record (GAO, 2014). Said errors can result in unfair discrimination against an offeror, and thus, lost business. Nevertheless, offerors also protest for opportunistic reasons such as to increase revenue, harm competitors, obtain competitive intelligence, prospect for protest viability, and negotiate a subcontract award (Maser & Thompson, 2010).

Bid protests have become a substantial aspect of government procurement (Cibinic et al., 2011). In 2016, 2,621 protests were received by the Government Accountability Office (GAO; 2016), double the number received in 2008 (Arena et al., 2018). This number trended steeply upward from 2007–2011, then levelled. “From FY2008–FY2014 total government spending, adjusted for inflation, decreased 25% while total protests increased 45%” (Schwartz & Manuel, 2015, p. 8). Thus, protests as a percentage of protest opportunities



(i.e., awarded contract actions) increased from 0.16% in 2008 to 0.26% in 2016 (Arena et al., 2018). Of those protest cases that made it to a decision from 2009–2014 (i.e., the few that were not dismissed, settled, or withdrawn), only 17% were sustained, but an average of 42% of all protest cases were effective (either sustained or resulted in corrective action taken by the buying agency prior to a decision). The effectiveness rate for 2017 grew to 47% (GAO, 2017).

Acquisition officials and end users loathe the receipt of a bid protest (Hawkins et al., 2016). The potential to receive a bid protest drives agencies to incur transaction costs to (1) prevent a protest by thoroughly documenting and substantiating proposal evaluations and trade-off decisions (Hawkins et al., 2016), (2) defend against an actual protest lodged (NASPO, 2013), and (3) take corrective actions. Responding to a protest requires the agency to generate a statement of facts and a memorandum of law, and to gather all of the pertinent supporting documents such as the solicitation, evaluations, proposals, and so forth, for distribution to the GAO and, in some cases, the protestor's legal counsel (Rumbaugh, 2010). The GAO resolves 70% of cases within 60 days, but consumes 90–100 days resolving the remaining 30%, which are complex cases (Arena et al., 2018). At best, an agency's voluntary corrective action means the competition is reopened, and proposals are allowed to be revised, necessitating further evaluations and delaying the contract award. At worst, an authority such as the GAO or Court of Federal Claims (COFC) sustains the protest, meaning that the procurement process must often start anew. This adds even more time and delays the receipt of needed goods and services, resulting in significant rework. The end users bear costs as well since their requirements are delayed or go unfulfilled. Bid protests are such a persistent concern that the U.S. federal government recently proposed legislation to impose a \$350 filing fee to dissuade frivolous protests (Poling, 2016), and the GAO, for the first time ever, temporarily banned a frequent protestor, Latvian Connection, from federal contract awards (Mlinarchik, 2016). Congress took a step further in its Conference Report for the fiscal year 2018 National Defense Authorization Act (NDAA), which included a pilot program to test the effects of an unsuccessful protestor paying the government's protest processing costs. Additionally, federal government agencies (Camm et al., 2012) and Congress (Arena et al., 2018) continue to commission studies to understand and mitigate problems. Furthermore, state governments are not immune to the public's concern for fair tendering; thus, they commissioned research of their own (Molenaar & Tran, 2015).

While some research downplays the impact of protests by emphasizing their relatively rare occurrence (Arena et al., 2018; Gordon, 2013), the buyer's reaction to the bid protest system is to apply extraordinary effort to defend acquisitions against a protest. Measures taken to avoid protests include (1) added layers of reviewers and legal counsel to scrutinize every document (and revision thereto) of the source selection record, (2) added procurement lead time, (3) conducting additional rounds of discussions to allow offerors an opportunity to rectify weaknesses and deficiencies rather than eliminating them from the competitive range, (4) unnecessarily retaining offerors in the competitive range, (5) awarding more contracts than intended, (6) modifying existing contracts rather than conducting full-and-open source selections, (7) shopping requirements to existing contracts for task order awards rather than conducting a full-and-open source selection, (8) utilizing a more objective, price-based source selection method such as LPTA rather than a full trade-off, (9) increasing the size of the acquisition team, and (10) offering more extensive debriefings. Furthermore, practitioners continue to devise procedures to mitigate protests (Curry, 2018; Finkenstadt & Hawkins, 2016). Together, efforts during source selections amount to an average \$235,000 of transaction costs each, or 7.7% of the contract value (Hawkins et al.,



2016). These burdens and costs are not trivial, which suggests that the bid protest system will continue to be controversial.

Periodically, the GAO publishes a list of common infractions leading to sustained protests. Such micro-level factors include a failure to follow the solicitation evaluation criteria; inadequate documentation of the record; unequal treatment of offerors; and unreasonable price or cost evaluation (GAO, 2014). Certain meso-level systemic characteristics could facilitate these micro-level mistakes. Surprisingly, however, few studies have examined the meso-level factors pertaining to the structure of an acquisition, the context of the procurement, and human factors. One study by Maser and Thompson (2010) found that protests are more likely in cases of (1) more bidders, (2) smaller bidders, (3) a high value of the protested contract as a percentage of the protestor's revenue, (4) contracts with long delivery times (i.e., extended lock-outs), (5) buying services, and (6) international winners. But what other strategy decisions are being made by the acquisition team that contribute to an offeror's decision to protest? Other factors could include the source selection method applied, whether oral presentations are conducted, whether sufficient procurement lead time is allotted, whether discussions were conducted, the size of the acquisition team, and the experience level of personnel involved. Further, do characteristics of the procurement affect an offeror's decision to protest?

In addition to the very practical utility of unveiling factors that may reduce or increase bid protests, perhaps greater value from investigating this line of logic is the extension of inter-organizational justice theory to pre-award supplier selection (i.e., not just pertaining to managing established post-award supplier relations). After all, a bid protest is purportedly a manifestation of a supplier's perceived injustice. Heretofore, justice theory applied to inter-organizational contexts is scant (Liu et al., 2012) and has ignored a challenging stage of supplier relationships— relationship initiation (Dwyer et al., 1987). However, the intersection of justice expectations and a competitive supplier selection presents a “sticky” situation in need of clarity.

This research, backed by quantitative data, seeks to bridge this gap. In doing so, all business-to-business/business-to-government (B2B/B2G) relationships stand to benefit by a better understanding of the specific phenomena leading to more efficient and effective supplier relationship formation (i.e., less perceived injustice and conflict).

## **Research Questions and Objectives**

The purpose of this research is to better understand why bid protests are lodged by interested parties. An objective is to identify various meso-level decisions and actions of buy-side acquisition teams that affect the receipt of a bid protest. Another objective is to seek extensions to inter-organizational justice theory based on the findings. The following research questions (RQ) will be explored:

- RQ1: What characteristics of a procurement affect whether a bid protest is received?
- RQ2: What acquisition strategy variables/decisions affect whether a bid protest is received?
- RQ3: What human factors contribute to receipt of a bid protest?
- RQ4: Are the pertinent theories surrounding inter-organizational exchange complete, and if not, what extensions should be considered?



## **Research Scope**

This research examines only sources of bid protests attributable to buying organizations. The scope excludes examining non-buyer sources of bid protests such as those lodged for reasons other than buyer action or inaction. Allegedly, it is common for businesses to protest a contract award due to business strategy reasons such as to buy more time (i.e., revenue) on a service contract as an incumbent, to gain another chance to secure an otherwise lost business opportunity, or to disadvantage a competitor in some way.

The remainder of this research is organized as follows. First, the relevant literature is surveyed raising a conceptual framework and proposed hypotheses. Next, the the research design and methodology are explained. Then, the study provides an analysis of the proposed models and reports the findings. Lastly, the study offers a summary discussion, offers implications for theory and practice, and concludes with study limitations and logical and useful vectors for future research.

## **Literature Review**

### ***Bid Protest Evolution and Diffusion***

The U.S. government's bid protest system evolved as a means to ensure fairness to taxpayers, whose resources should not be wasted, and to suppliers that relied upon the government for business. Its origin traces to the Tucker Act of 1887; thereby, the government waived its sovereign immunity, allowing it to be sued in certain contractual matters (Arena et al., 2018). The U.S. Government Accounting Office was created in 1921 (Arena et al., 2018) and began hearing bid protests shortly thereafter, with the first recorded decision in 1925 (Gordon, 2013). Eventually, the courts also gained jurisdiction to hear protests, currently the Court of Federal Claims. An underlying theory of the bid protest system is equity; private firms should have an equivalent chance to secure government contracts (Arena et al., 2018). For protests filed at the GAO, relief is restricted to *interested parties*—those firms deemed to have direct economic interest (Cibinic et al., 2011) by being in a position for contract award given a sustained protest decision (Edwards, 2006).

Bid protest systems for the deterrence and relief of injustice are not unique to the U.S. federal government. Their effectiveness in fostering integrity and fairness is so recognized that protests became part of international trade through forums such as the North American Free Trade Agreement, World Trade Organization, the United Nations Commission on International Trade Law, and the European Union (Gordon, 2013). Notwithstanding, most U.S. state governments allow for administrative bid protests without having to resort directly to a lawsuit (NASPO, 2013).

### ***Justice Theory***

Because of its importance, justice is receiving increased academic attention (Kaynak et al., 2015). Perceived (in)justice affects key outcomes such as trust, satisfaction, commitment, and unethical behaviors (Greenberg, 1990) and has been positively associated with alliance profitability (Beugre & Acar, 2008). Of the three dimensions of justice, distributive justice dominated early work. Distributive justice represents an individual's assessment of the distribution of outcomes (Gilliland, 1993). Interested parties often seek to ensure that outcomes are distributed among the parties fairly. Commonly, the basis of those assessments is equity—a comparison of an individual's own *get* versus *give* ratio versus that of a referent. When this investment-to-outcome ratio is approximately equal among parties, justice is perceived, and vice versa. An inequity results in decreased satisfaction and often a search for alternatives.



Similar to findings in organizational theory (Gilliland, 1993; Leventhal, 1980; Thibaut & Walker, 1975), channel members expect to be treated fairly, a dimension referred to as procedural justice. “Procedural fairness is the glue that holds the relationship together” (Kumar, 1996, p. 104). It has been found to be more important than distributive justice (Gilliland, 1993). Procedural justice increases knowledge sharing, continuous commitment, and relationship investment, which, in turn, increase buyer–supplier relationship performance (Liu et al., 2012).

Procedures are seen as just when they include the following six principles: (1) bilateral communication, (2) impartiality (equal opportunity), (3) refutability, (4) explanation, (5) familiarity, and (6) respect (Kumar, 1996). Other important aspects of procedural justice include the following: consistent decisions based on accurate information, consideration of the ethical values of affected individuals, and outcomes that could be modified (Leventhal, 1980). A nuance of procedural justice concerns the treatment of affected individuals while enacting a decision—a phenomenon termed *interactional justice* (Bies & Moag, 1986). Not only is the content of a decision important, but so is the way in which it is communicated. Affected people’s justice perceptions are affected by whether they receive an explanation for a decision (i.e., justification), and whether they are respected and not treated rudely (i.e., treated well).

Inter-organizational justice has been defined as “boundary spanners’ perceptions of the fairness of each other’s actions in interorganizational relationships” (Beugre & Acar, 2008, p. 452). Inter-organizational justice during sourcing processes is important due to its effect on relationship continuity (Kaynak et al., 2015). In procurement, justice or fairness has been examined in relation to many essential processes such as supplier selection (Plank et al., 1994), inspection and acceptance (Plank et al., 1994), dispute resolution (Lu et al., 2017), post-award negotiations of changes (Lu et al., 2017), forecast information sharing (Blancero & Ellram, 1997), and supplier performance evaluation (Blancero & Ellram, 1997; Hawkins & Gravier, 2016), to name a few.

A common thread across inter-organizational justice theory and social exchange theory is communication. Most of the aforementioned principles pertain in some way to communication. The theory of channel communication might be instructive (Blancero & Ellram, 1997; Mohr & Sohi, 1995), but pertains to ex post versus ex ante relationship formation. Very little research addresses the essential elements of communication during relationship formation, and particularly the interplay of these communication elements with perceptions of justice. Therefore, the focus here entails supplier selection prior to relationship formation.

Many of the meso-level factors predicting bid protests should focus on the seminal effects of buyer–supplier communication. As such, this research addresses how the structural design of the acquisition process either hinders or facilitates the communication of expectations, explanations of decisions, respect, disagreement, and opportunity. Pertinent factors can be organized as characteristics of the procurement, acquisition strategy components, and human factors.

### ***Characteristics of the Procurement***

It has been suggested that when revenue is at stake, incumbents who are unsuccessful offerors on the follow-on contract source selection are likely to protest (Arena et al., 2018). We also know that protests increase as the contract value as a proportion of the offeror’s total revenue increases (Maser & Thompson, 2010). Similarly, requirement criticality represents the level of contribution an acquired good or service makes to the requiring activity’s mission (Kraljic, 1983). When goods and services are critically important,



the requiring activity is likely to have a persistent need. This means that not only is the revenue and profit of the current requirement at stake, but so is that of future, repeat procurements. Offerors may protest so as to not lose out on the promise of persistent income. Thus, it is expected that:

**H1: There will be a positive relationship between dollar value of the proposed contract and receipt of a bid protest.**

**H2: There will be a positive relationship between criticality of the requirement and receipt of a bid protest.**

Maser and Thompson (2010) found that protests are more likely in cases of procured services versus goods. The more difficult the definition of requirements (i.e., the communication of all expectations and performance levels), the more likely the buyer's evaluation team will misunderstand the proposed value offering. Hence, an overly strict evaluation criterion rating, a weakness, or a deficiency could be undeservingly assigned to the offeror's proposal. Similarly, the more intangible the service or its outcome, the more likely the buyer will omit a specification or inadequately define it for offerors. Thus, offerors may not adequately address a true underlying, yet undescribed, need. The mis-evaluation of poorly or under-specified needs may raise perceptions of procedural injustice. Therefore, it is posited that:

**H3: The type of value procured will be associated with receipt of a bid protest.**

Protest risk has been found to be a significant predictor of fear of protest (Hawkins et al., 2016). Protest risk represents the product of the probability of receiving a bid protest and the magnitude of the consequences of receiving a protest. As previously discussed, negative consequences could include delayed receipt of needed goods and services, added effort of a source selection team increasing transaction costs, litigation costs such as bid and proposal costs, contract termination for convenience costs, potential shame and embarrassment to the acquisition team, and even adverse personnel action to those committing errors.

Not all acquisitions are equally susceptible to protest. For instance, a 10-year, multi-billion-dollar, unique service contract (e.g., cloud computing or cybersecurity) will have higher odds of being protested than a similar single-year contract due to its dollar amount, duration, and associated compounding reputational effects. Neither are the consequences of a protest the same for each acquisition. For example, redoing an evaluation of three proposals entails less transaction costs than that of 14. Similarly, redoing evaluations involving four evaluation criteria entails less transaction costs than that involving 20. Further, delaying the award of a \$5 billion acquisition would likely cost the buyer more than that of a \$2,000 acquisition. In terms of justice theory, where the distribution of negative consequences is unbalanced between buyer and seller or between competing offerors, protest risk should increase. Where the product of protest probability and magnitude of consequences is large, a protest is more likely. Thus, it is posited that:

**H4: There will be a positive relationship between protest risk and receipt of a bid protest.**

### ***Acquisition Strategy Variables/Decisions***

Government source selections take time. But, agencies, in their acquisition processes, should not consume too much time, thereby dissuading the best firms from participating in the government market (Edwards, 2006). Sometimes, the allotted



procurement lead time is limited in order to receive the goods and services when needed, and sometimes proper advance planning does not occur necessitating expedited sourcing. It is logical that when the myriad of tasks associated with source selection are rushed, mistakes may occur. Likewise, the insufficiency of planned procurement lead time has been found to increase the fear of protest (Hawkins et al., 2016). Ill-suited procurement lead time may signal to offerors that their proposals have not been thoroughly or fairly evaluated or that reasonable and legitimate trade-off decisions have been made and documented; thus, perceptions of procedural justice may suffer. It is thus posited that:

**H5: There will be a negative relationship between sufficiency of planned procurement lead time and receipt of a bid protest.**

Various methods are available to source selection teams to evaluate offers and choose between them. The three best value methods mentioned in FAR Part 15 include a full trade-off (FT), a price-past performance trade-off (PPT), and the low-price, technically-acceptable (LPTA) method. The FT method allows for trade-offs between price and non-price factors. Hence, using a FT method, a buyer is permitted to pay more for higher performance. In contrast, under a LPTA method, non-price factors are evaluated as acceptable or unacceptable. Once proposals are deemed acceptable on each non-price evaluation criterion, the award decision defaults to the low-price offer. Therefore, a binary rating of acceptable or unacceptable under an LPTA method is, in general, easier to defend than is an ordered-categorical-scale rating (e.g., outstanding, good, acceptable, marginal, unacceptable). Further, making and justifying trade-offs between such categorical ratings and price poses challenges in order to withstand scrutiny. For example, how outstanding does an offer need to be to warrant paying a 5% higher price?

Qualitative evidence suggests that contracting officers believe that their choice of source selection method can affect the receipt of a bid protest, and that this impacted their decision (Arena et al., 2018; Gordon, 2013). The LPTA method, due to its lower subjectivity, is more easily defensible and is less prone to errors than is the FT method. Under an FT method, multiple criteria and multiple evaluators could invite dissonance in evaluations among team members of the meaning of criteria, and could invite the subliminal use of unstated evaluation criteria that, arguably, needed to have been in the solicitation. Evaluations conducted contrary to the process prescribed in the solicitation can raise perceptions of procedural injustice by offerors. In several cases, an LPTA source selection has been used or suggested explicitly as a means of avoiding a bid protest (Pocock, 2009; Schwartz & Manuel, 2015). As such, it is posited that:

**H6: There will be a negative relationship between source selection method appropriateness and receipt of a bid protest.**

**H7: The LPTA source selection method will be negatively associated with receipt of a bid protest.**

Bid protests have been associated with socio-economic status (Maser & Thompson, 2010). Small businesses account for most protests at the GAO (53%) and at the COFC (58%) (Arena et al., 2018). Maser and Thompson (2010) posited that small businesses are more likely to protest than are large businesses, and further, that small businesses commonly protest other small businesses' contract awards. Given that protests are related to the procurement's proportion of the offeror's revenue (Maser & Thompson, 2010), this proportion will be higher for small businesses. Thus, it is posited that:





**H8: There will be a positive relationship between a small business set-aside and receipt of a bid protest.**

The acquisition strategy encompasses the source selection method but is more broad. It also entails such components as the contract type, milestones, team members, team size, evaluation criteria, contract duration, incentives, options, number of contracts, contract line item structure, price and cost analysis method, contract clauses and solicitation provisions, and payments method—to name a few. The extent to which these components of strategy do not fit the procurement could invite errors in the evaluation of proposals. As such, it is posited that:

**H9: There will be a negative relationship between acquisition strategy appropriateness and receipt of a bid protest.**

In source selection, often all technical evaluators are not involved in the determination of evaluation criteria or in the definition of their meaning. Furthermore, often, technical evaluators are not versed in the nuances of the rules of proposal evaluation and bid protests (Molenaar & Tran, 2015). Criteria that should have been in the solicitation but were omitted, for whatever reason, can by mistake or otherwise, inappropriately creep into the evaluation. A failure to follow the stated evaluation criteria is cited as a leading cause of sustained protests (GAO, 2014). Evaluation comments and proposal critiques that are useful in discriminating between offers can, therefore, be discouraged by review committees and legal counsel (Arena et al., 2018). The extent to which technical evaluator's evaluations are sanitized by reviewers should mitigate procedural injustices, and therefore, protests. Thus,

**H10: There will be a negative relationship between compromised technical evaluations and receipt of a bid protest.**

Often, source selection teams are rushed by aggressive milestones for contract award. One way to reduce procurement lead time is to bypass discussions (i.e., negotiations or, more often, the resolution of weaknesses and deficiencies in proposals). In order to award a contract without discussions, the contracting officer must notify offerors in the solicitation of the intent to award without discussions, making it a deliberate acquisition strategy decision. Rushing the process and forgoing an opportunity to fully understand each aspect of each proposal might invite errors to the evaluations. Additionally, one aspect of procedural justice is to afford individuals an opportunity to impact the decision process (e.g., proposal evaluations) or offer input (Thibaut & Walker, 1975). Forgoing discussions denies such input. Thus, it is posited that:

**H11: There will be a positive relationship between intent to award without discussions and receipt of a bid protest.**

On the other hand, discussions entail strict procedural rules ripe for errors. For example, discussing one aspect of a proposal with one offeror and failing to check the same with each other offeror (e.g., past performance reference relevance in terms of type of work, location, or weather) could be a protestable offense (Wallace, 2018). The unequal treatment of offerors was cited as a leading cause of sustained protests (GAO, 2014). If discussions are opened, the procurement becomes substantially more error-prone due to the strict procedures and documentation required. Inadequate documentation is cited as a leading cause of sustained bid protests (GAO, 2014; Wallace, 2018). For this reason, discussions are sometimes avoided by contracting officers (Gordon, 2013). As such,

**H12: There will be a positive relationship between conducting discussions and receipt of a bid protest.**



Oral presentations constitute the submission of proposal information orally (Edwards, 2006). Oral presentations were codified in the FAR in concert with the rewrite of Part 15 in 1997 as a tool to streamline the source selection process and to improve pre-award communications between offerors and the government (Hannaway, 2000). Oral presentations facilitate communication from the offeror of its understanding of the work, its capabilities (Edwards, 2006), its past performance, and its technical approach (Rumbaugh, 2010). This explanation should enhance evaluators' understanding of the proposals resulting in more accurate evaluations and ratings (e.g., proposal risk). Indeed, explanation and bilateral communication are among the six principles of the theory of justice (Kumar, 1996).

On the other hand, oral presentations add one more step to a complicated evaluation process (i.e., more opportunity to make a mistake). Specifically, entertaining oral presentations without opening discussions means that source selection team members, in their communications, must be careful not to allow an offeror to revise its proposal—even orally (Cibinic et al., 2011; Edwards, 2006). Of course, this requires a perfect knowledge of each element of an offeror's written proposal in order to recognize whether any statement made during an oral presentation constitutes a change to any prior written or oral proposal submission. Obviously, prospective contracts with expansive or complicated scopes of work can render such perfect knowledge untenable. Proposal revisions may inadvertently be made. Consider also that salespeople naturally want to satisfy evaluators (i.e., avoid negative ratings or perceptions of weaknesses); thus, changes to proposals can be difficult to avoid as salespeople can sense evaluators' concerns by either non-verbal cues or by the ensuing line of questioning. Given the aforementioned conflicting arguments to the benefit or harm of an oral presentation, no directional claim is made.

**H13: There will be a relationship between the use of oral presentations and receipt of a bid protest.**

The GAO (2014) repeatedly cites inadequate documentation of the record as a chief culprit of sustained bid protests. Poor documentation could include contradictions in the records and omissions of details needed to justify ratings and trade-off decisions. Documents relied upon during proposal evaluations include the source selection decision document, comparative analysis of proposals, evaluation notices to offerors, source selection plan, debriefing scripts, technical evaluations, past performance evaluations, cost or price analyses, rating charts, and evaluation briefing charts. Additionally, protest probability has been qualitatively associated with source selection document scrutiny (Arena et al., 2018). The purpose of the scrutiny is to avoid a protest. Thus, logic holds that more revisions reduce errors and thereby lower the chances of receiving a bid protest. Added scrutiny entails often multiple acquisition team members poring over all of the documents to prevent errors such as those cited by the GAO—unequal treatment of offerors and following the evaluation process and criteria per the RFP. As such, it is posited that:

**H14: There will be a negative relationship between the number of source selection document revisions and receipt of a bid protest.**

In order to appease otherwise unsuccessful offerors and thwart a protest, contracting officers will sometimes award more contracts than planned. In essence, the work gets split among two or more contractors so that there are no losers. For example, building, fielding, and sustaining two varieties of Littoral Combat Ship platforms substantially increased costs relative to doing so for a single platform (O'Rourke, 2014) but mitigated the threat of a protest. Thus,



**H15: There will be a negative relationship between increased actual number of contracts awarded versus that intended and receipt of a bid protest.**

Qualitative evidence suggests that contracting officers adjust the chosen type of contract to the probability of a protest (Arena et al., 2018). More complicated contract types (e.g., cost reimbursement) entail more complicated cost analyses that are prone to controversy and error (e.g., should-cost analysis). Prior research found that cost plus-type contracts are more likely to be protested (Maser & Thompson, 2010). Thus, it is posited that:

**H16: Contract type will be associated with receipt of a bid protest.**

Acquisition officials exercise judgment in assigning an appropriate amount of resources to conduct a source selection. They must consider evaluators' availabilities, expertise, and location. Potential resources are balanced with the task demands such as the award milestones, required travel, quantity of expected proposals, and quantity of evaluation factors and sub-factors (Edwards, 2006). For source selections with higher protest risk, acquisition officials may assign more evaluators and other team members and for a larger portion of their time. Logically, more people and more effort should mitigate protest-worthy mistakes. More resources can be indicated by transaction costs, determined by the number of full-time equivalent personnel working on the source selection. Therefore,

**H17: There will be a negative relationship between transaction costs and receipt of a bid protest.**

***Human Factors***

Fear of protest describes the level of apprehension a contracting professional has about receiving a bid protest (Hawkins et al., 2016). It follows that in cases in which contracting officers are worried about a protest, the acquisition team will take added measures to prevent a protest. Thus, it is posited that:

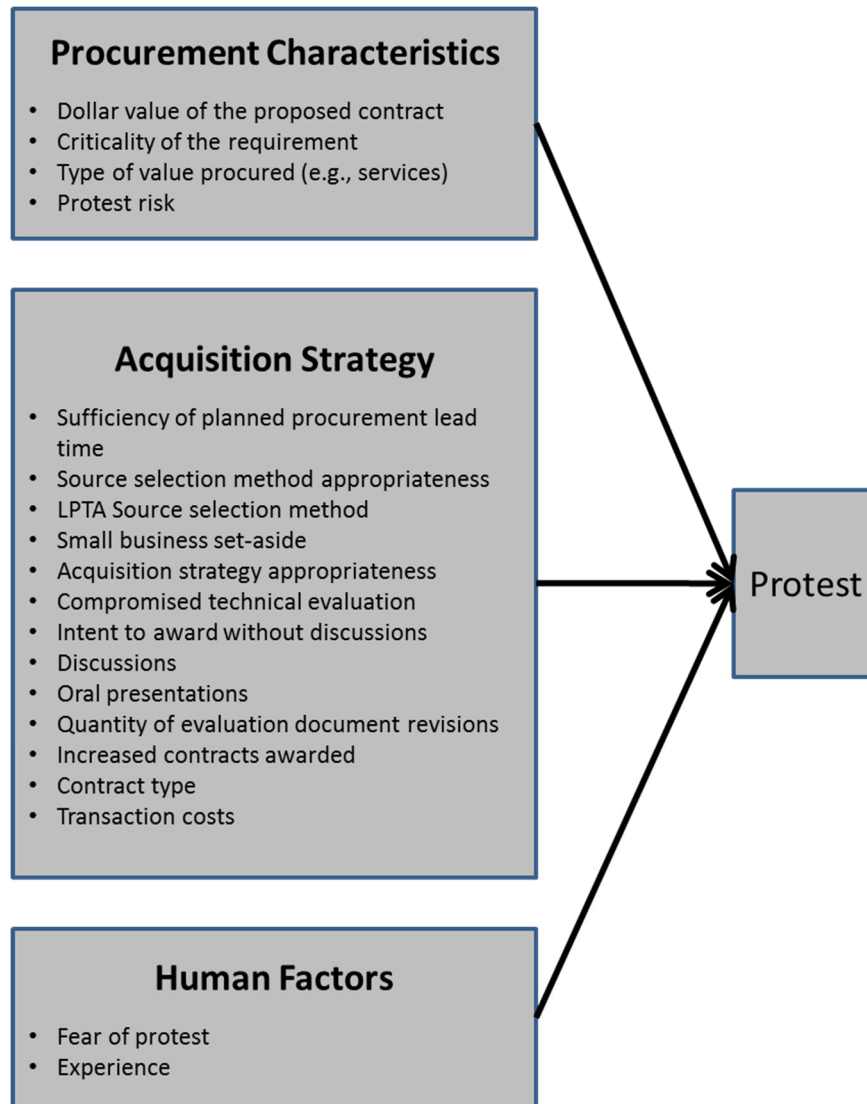
**H18: There will be a negative relationship between fear of protest and receipt of a bid protest.**

The RAND Corporation's study of bid protests revealed that industry representatives question the competency of the acquisition workforce, citing a need for additional training (Arena et al., 2018). Additionally, source selection experience has been found to reduce fear of protest (Hawkins et al., 2016). Experience appears to yield confidence in the compliance of the procurement process. Training and education may also provide the necessary awareness of the myriad of laws, regulations, and case law—any of the peculiarities of which could jeopardize a procurement. Therefore, it is reasonable to expect that:

**H19: There will be a negative relationship between experience and receipt of a bid protest.**

Combined, this set of hypotheses should help predict bid protests. The conceptual mode (Figure 1) is sufficiently comprehensive to enable practitioners to determine needed definitive action to improve the effectiveness of their source selections.





**Figure 1. Conceptual Model**

## Methodology

The purpose of this research was to identify factors associated with the receipt of bid protests. This study examines a unique, rich data set of 350 government source selections resulting from a survey of U.S. Navy contracting officials. The data went beyond that of typical protest research that relies on summary-level contract award data from FPDS-NG and GAO’s Electronic Protest Docketing System. Rather, the data set includes unique insights from those involved in the source selection, including perceptions (e.g., source selection method appropriateness) and objective data elements not captured elsewhere (e.g., intent to award without discussions). Given the exploratory nature of the research, a backward stepwise logistic regression model will be applied to the data.



## **Unit of Analysis**

The unit of analysis for this data is a U.S. federal government source selection. Since many bid protests stem from a protestable action associated with a source selection (e.g., a proposal rating, rating justification, or basis of a trade-off analysis), this is the proper unit of analysis for the study. The data pertained to source selections conducted pursuant to FAR Part 15; those conducted using simplified acquisition procedures and task order competitions will be excluded.

## **Data**

The data set included 350 records of source selections. Many records were omitted from this analysis due to missing data and conflicting data. Five records reported zero PALT, which is not possible. Another 32 records reported PALT less than 45 days. While the original survey instructed respondents to complete the survey pertaining to a FAR Part 15 source selection, some respondents may have reported on task order competitions. Due to advertising requirements (15 days), proposal preparation time (30 days), and time for evaluations, FAR Part 15 source selections should consume at least 45 days from receipt of a complete requirements package. Also, 15 records either included no dollar value or a value that was less than the simplified acquisition threshold (\$150,000—meaning FAR Part 13 procedures or task order procedures were more likely). Finally, 66 records did not include sufficient transaction cost data to determine full-time equivalents. Together, for the sake of complete data and consistency of source selection rules, these 110 records were removed, leaving a data set of 240 records for analysis.

## **Summary**

This research offers a first step toward quantitative, transaction-level investigation into reasons for bid protests. While no one can prevent an interested party from filing a bid protest (Rumbaugh, 2010), the factors identified herein can help acquisition managers hedge against the likelihood. This research will explore 19 meso-level antecedent factors that can be categorized as characteristics of the procurement, acquisition strategy decisions, and human factors. Based on the exploratory findings, the research will draw implications for theory and practice, and chart promising directions for future research into this important stream of acquisition research.

## **References**

- Arena, M.V., Persons, B., Blickstein, I., Chenoweth, M. E., Lee, G. T., Luckey, D., & Schendt, A. (2018). *Assessing bid protests of U.S. Department of Defense procurements: Identifying issues, trends, and drivers*. Santa Monica, CA: RAND Corporation.
- Beugre, C. D., & Acar, W. (2008). Offshoring and cross-border interorganizational relationships: A justice model. *Decision Sciences*, 39(3), 445–468.
- Bies, R. J., & Moag, S. (1986). Interactional justice: Communication criteria of fairness. *Research on Negotiation in Organizations*, 1, 43–55.
- Blancero, D., & Ellram, I. (1997). Strategic supplier partnering: A psychological contract perspective. *International Journal of Physical Distribution & Logistics Management*, 27(9), 616–629.
- Camm, F., Chenoweth, M. E., Graser, J. C., Light, T., Lorell, M. A., Rudavsky, R., & Lewis, P.A. (2012). Government Accountability Office bid protests in Air Force source selections: Evidence and options. Santa Monica, CA: RAND Corporation.



- Cibinic, J., Jr., Nash, R. C., Jr., & O'Brien-DeBakey, K. (2011). *Competitive negotiation: The source selection process* (3rd ed.) Washington, DC: The George Washington University Press.
- Curry, W. S. (2018, August). Reversing the surge in protests: The “total weighed score” proposal scoring method. *Contract Management*, 48–59.
- Dwyer, F. R., Schurr, P. H., & Oh, S. (1987, April). Developing buyer-seller relationships. *Journal of Marketing*, 51, 11–27.
- Edwards, V. (2006). *Source selection answer book* (2nd ed.). Vienna, VA: Management Concepts.
- Finkenstadt, D., & Hawkins, T. (2016). #eVALUate: Monetizing service acquisition trade-offs using a Quality-Infused Price© methodology. *Defense Acquisition Research Journal*, 23(2), 202–230.
- Gilliland, S. (1993). The perceived fairness of selection systems: An organisational justice perspective. *Academy of Management Review*, 18(4), 694–734.
- Gordon, D. I. (2013). Bid protests: The costs are real, but the benefits outweigh them. *Public Contract Law Journal*, 42(3), 489–516.
- Government Accountability Office. (2014). *GAO Bid Protest Annual Report to Congress for Fiscal Year 2013* (GAO-14-276SP). Retrieved from [www.gao.gov/assets/660/659993.pdf](http://www.gao.gov/assets/660/659993.pdf)
- Government Accountability Office. (2016). *GAO Bid Protest Annual Report to Congress for Fiscal Year 2016* (GAO-17-314SP). Retrieved from <http://www.gao.gov/assets/690/681662.pdf>
- Government Accountability Office. (2017). *GAO Bid Protest Annual Report to Congress for Fiscal Year 2017* (GAO-18-237SP). Retrieved from <https://www.gao.gov/assets/690/688362.pdf>
- Greenberg, J. (1990). Organizational justice: Yesterday, today, and tomorrow. *Journal of Management*, 16(2), 399.
- Hair, J. F., Jr., Black, W. C., Babin, B. J., & Anderson, R. E. (2010). *Multivariate data analysis* (7th ed.). Upper Saddle River, NJ: Pearson Prentice Hall.
- Hannaway, S. (2000). Oral presentations in negotiated procurements: Panacea or Pandora's box. *Public Contract Law Journal*, 29(3), 455–509.
- Hawkins, T., & Gravier, M. (2016). Antecedents and consequences of supplier performance evaluation efficacy. In *Proceedings of the 13th Annual Acquisition Research Symposium* (pp. 178–193). Monterey, CA: Naval Postgraduate School, Acquisition Research Program.
- Hawkins, T., Gravier, M., & Yoder, E. C. (2016). Federal bid protests: Is the tail wagging the dog? *Journal of Public Procurement*, 16(2), 152–190.
- Kaynak, R., Sert, T., Sert, G., & Akyuz, B. (2015). Supply chain unethical behaviors and continuity of relationship: Using the PLS approach for testing moderation effects of inter-organizational justice. *International Journal of Production Economics*, 162(4), 83–91.
- Kraljic, P. (1983). Purchasing must become supply management. *Harvard Business Review*, 61(5), 109–117.



- Kumar, N. (1996). The power of trust in manufacturer-retailer relationships. *Harvard Business Review*, 74(6), 92–106.
- Leventhal, G. S. (1980). What should be done with equity theory? In K. J. Gergen, M. S. Greenberg, & R. H. Willis (Eds.), *Social exchange: Advances in theory and research*. New York, NY: Plenum Press.
- Liu, Y., Huang, Y., Luo, Y., & Zhao, Y. (2012). How does justice matter in achieving buyer–supplier relationship performance? *Journal of Operations Management*, 30(5), 355–367.
- Manuel, K. M., & Schwartz, M. (2011). *GAO bid protests: An overview of time frames and procedures* (R40228). Retrieved from [www.fas.org/sqp/crs/misc/R40228.pdf](http://www.fas.org/sqp/crs/misc/R40228.pdf)
- Maser, S. M., & Thompson, G. F. (2010). *Understanding and mitigating protests of Department of Defense acquisition contracts* (WIL-CM-10-164). Salem, OR: Willamette University. Retrieved from <http://www.acquisitionresearch.org/files/FY2010/WIL-CM-10-164.pdf>
- Mlinarchik, C. (2016). How many bid protests is too many? *Contract Management*, 56(11), 38–47.
- Mohr, J. J., & Sohi, R. S. (1995). Communication flows in distribution channels: Impact on assessments of communication quality and satisfaction. *Journal of Retailing*, 71(4), 393–416.
- Molenaar, K. R., & Tran, D. (2015). *Practices for developing transparent best value selection procedures*. Washington, DC: Transportation Research Board.
- National Association of State Procurement Officials (NASPO). (2013). *Research brief: State bid protests*. Retrieved from [http://www.naspo.org/dnn/portals/16/documents/.FINAL\\_NASPO\\_BidProtests\\_Research\\_Brief\\_042413.pdf](http://www.naspo.org/dnn/portals/16/documents/.FINAL_NASPO_BidProtests_Research_Brief_042413.pdf)
- O'Rourke, R. (2014). *Navy littoral combat ship (LCS) program: Background and issues for Congress* (RL33741). Retrieved from <http://www.fas.org/sqp/crs/weapons/RL33741.pdf>
- Plank, R. E., Landeros, R., & Plank, L. F. (1994). Values driving decisions in questionable purchasing situations. *International Journal of Purchasing and Materials Management*, 30(4), 45–53.
- Pocock, C. (2009, June 17). Tanker protagonists square off for round three of U.S. bid. AIN Online. Retrieved from <http://www.ainonline.com/aviation-news/paris-air-show/2009-06-17/tanker-protagonists-square-round-three-us-bid>
- Poling, S. A. (2016, April 15). Proposed rules: Government Accountability Office. *Federal Register*, 81(73), 22197–22203.
- Rumbaugh, M. G. (2010). *Understanding government contract source selection*. Vienna, VA: Management Concepts.
- Schwartz, M., & Manuel, K. M. (2015). *GAO bid protests: Trends and analysis* (R40227). Washington, DC: Congressional Research Service. Retrieved from <https://www.fas.org/sqp/crs/misc/R40227.pdf>
- Thibaut, J., & Walker, L. (1975). *Procedural justice: A psychological analysis*. Hillsdale, NJ: Erlbaum.



Wallace, J. C. (2018, January–February). GAO rulings in contract protests. *Defense AT&L*, 39–43.







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