

Acquisition Research Symposium

Panel #8

Bid Protests: Considerations for Prevention & Resolution

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Protests: Good, Bad, or Just a Nuisance?

- Many voices suggest the acquisition system (or, specifically, the DOD acquisition system) would be more efficient, better, less troubled if there were fewer protests.
- A balancing act
 - Provides mechanism for holding Agencies accountable
 - Protects the rights of aggrieved offerors
 - Ensures fair treatment by the government
 - Provisions allows procurements to proceed without undue disruption



Protests Are Increasing

- No question that protest volume is up, slightly, after many years of decline
- No matter how you crunch the data, the number of protests is tiny when compared to the total procurement volume
- Significant increase in DoD protests in past 5 years—**23% increase 2008**
-Statutory changes drove increase –**task and delivery orders +\$10M**
- Perception of more protests is likely a result of an increase in high profile/high impact protests –**Boeing Tanker...**
- When the stakes are high, bid protests are likely, no matter what, especially for complex, long-term and high-value contracts—**there is no disincentive to try for another bite at the apple**
- GAO protests stats



Protests to GAO

GAO	FY 2009	FY 2008	FY 2007	FY 2006	FY 2005
Cases Filed	1,989	1,652	1,441	1,327	1,356
Cases Closed	1,920	1,581	1,393	1,274	1,341
Number of Sustains	57	60	91	72	71
Sustain Rate	3.0%	3.8 %	6.5 %	5.7 %	5.3 %
ADR Cases	149	78	62	91	103
ADR Success Rate	93%	78 %	85 %	96 %	91 %

Conclusions

- Protests are a (relatively) efficient form of third-party oversight in ensuring the government follows the rules
- In general, bid protests are increasing
 - not a large problem within the context of all DoD contracting.
 - The number of protests **not** increasing as rapidly as total dollars contracted
 - Rate of protests (particularly those that are sustained) is decreasing, especially when the total dollars contracted are considered.
 - Can be significant impacts for programs affected
- Bid protest costs can be high (as combination of programmatic costs and schedule delays)
- Bid protest process is important to maintain the reality and perception of fairness and transparency of DoD acquisition
 - It's about stewardship of the public \$\$, credibility, etc....
- Section 843 of the 2008 Defense Authorization Act lifted ban on GAO protest for task orders valued over \$10M —**impact not yet evident.**



What's the answer?

- Two unattractive alternatives:
 - more auditors and IG's - up to a one-to-one ratio with CO's
 - less disciplined (and, clearly, less transparent) government behavior
- Better debriefings (pre- and/or post-award) lead directly to a reduction in bid protests
- More ADRs
- Better RFPs