



Bid Protest Update: What You Need to Know Heading Into the 2026 Bid Protest Season

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Panelists:

- Amy Fuentes, Partner, Holland & Knight LLP
- Anne Delmare, Senior Counsel, Holland & Knight LLP
- Ann McRitchie, Associate, Holland & Knight LLP

Holland & Knight

Today's Speakers



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- Partner, National Government Contracts Team
- Represents contractors in responding to stop work orders, agency terminations, requests for equitable adjustments, certified claims, and appeals to the board of contract appeals and the U.S. Court of Federal Claims.
- Advises clients on regulatory compliance matters including the FAR and DFARS, artificial intelligence and emerging technologies, and cybersecurity.
- Specializes in small business issues including size and status protests and appeals, affiliation analysis, mergers and acquisitions issues, and SBIR/STTR contracts.
- Serves as bid protest counsel before the GAO, U.S. Court of Federal Claims, and FAA ODRA.

Today's Speakers



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- Senior Counsel, Litigation and Government Contracts Practice
- Advises companies, including government contractors, across the full contract lifecycle, including bid protests, contract administration, claims, and disputes.
- Represents clients in contract disputes before the CBCA, ASBCA, U.S. Court of Federal Claims, and U.S. Court of Appeals for the Federal Circuit.
- Counsels corporate and individual clients in high-stakes government and internal investigations involving government contracting, aerospace, intelligence, and other highly regulated industries.

Today's Speakers



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- Associate, National Government Contracts Team
- Advises clients on the full spectrum of federal procurement matters, including bid protests, claims, requests for equitable adjustments, and subcontracting and supply chain issues.
- Former in-house attorney with significant experience in identifying and mitigating False Claims Act risk, resolving disputes with the government, and responding to government investigations, audits, False Claims Act investigations and litigations.

Agenda

- Review of GAO + COFC Statistics and Trends
- Bid Protest Updates: What is Working at GAO?
- A Closer Look: Some Notable GAO, COFC, & Federal Circuit Cases
- Timeliness Rules to Understand Heading into Bid Protest Season

Brief Review of GAO & COFC Statistics and Trends

GAO Bid Protest Statistics

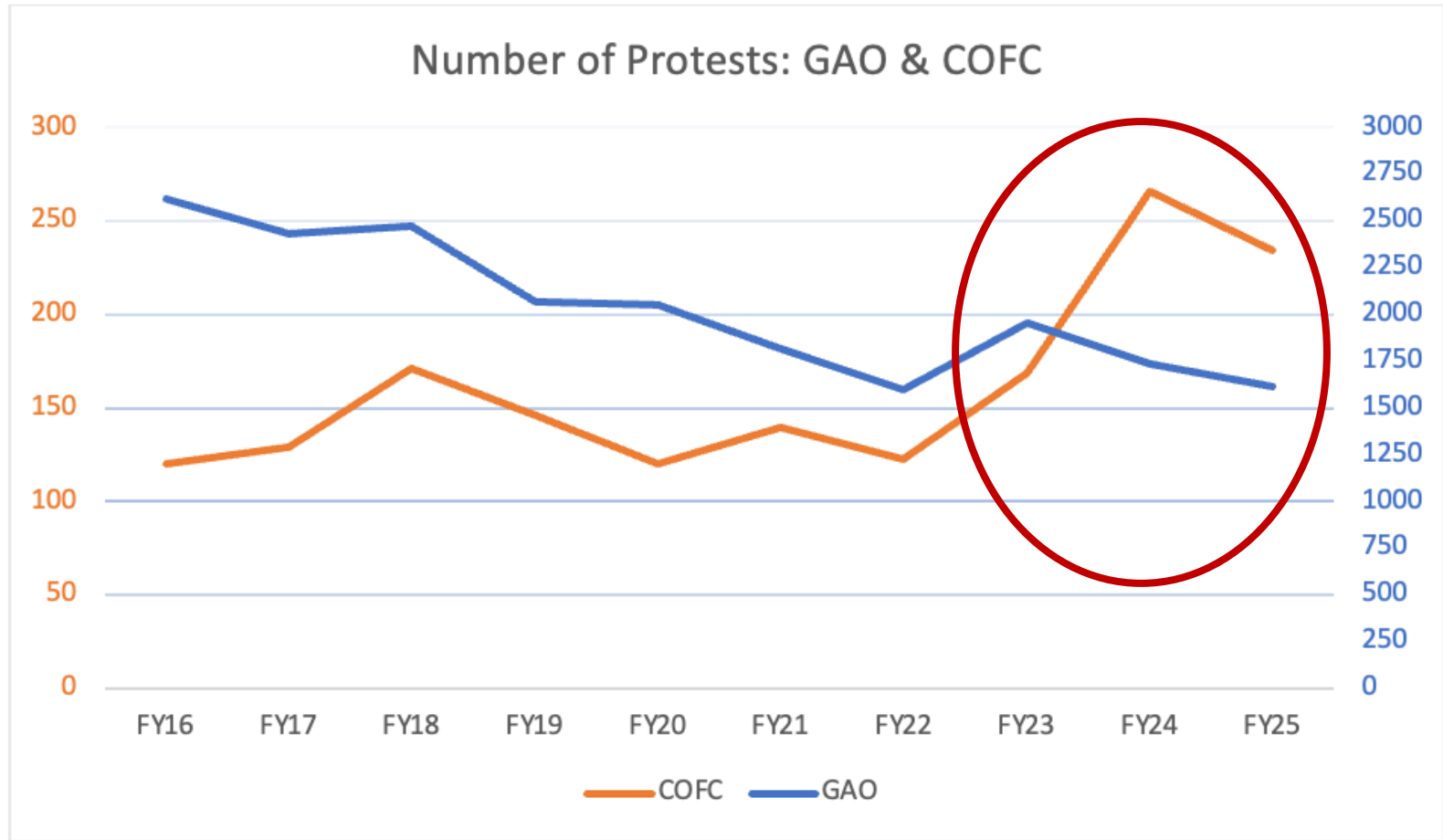
	FY2025	FY2024	FY2023	FY2022	FY2021
Cases Filed ¹	1688 (down 6%)	1803 (down 11%) ²	2025 (increase of 22%)	1658 (down 12%)	1897 (down 12%)
Cases Closed ³	1737	1706	2041	1655	2017
Merit (Sustain + Deny) Decisions	380	386	608	455	581
Number of Sustains	53	61	188	59	85
Sustain Rate	14%	16%	31%	13%	15%
Effectiveness Rate ⁴	52%	52%	57%	51%	48%
ADR ⁵ (cases used)	53	76	69	74	76
ADR Success Rate ⁶	91%	92%	90%	92%	84%
Hearings ⁷	.5% (3 cases)	.2% (1 case)	2% (22 cases)	.27% (2 cases)	1% (13 cases)

COFC Bid Protest Statistics

Fiscal Year 2021 - 2025

	FY 2021	FY 2022	FY 2023	FY2024	FY 2025
Bid Protests Filed	140	123	169	266	234
Bid Protests Disposed	153	125	152	188	247
Protests Pending on Sept. 30	62	63	79	159	113

GAO and COFC Bid Protest Trends



Bid Protest Updates: What is Working at GAO?

Executive Takeaways: Key Patterns from Sustained GAO Protests (January to August 2026)

10

Decisions sustained or
sustained-in-part

5

Involved evaluation
documentation failures

100%

Recommended cost
reimbursement

Top sustained protest grounds:

- Evaluation inconsistency with solicitation terms
- Unsupported/undocumented evaluation judgments
- Unstated evaluation criteria
- Amendment/revision unfairness
- Past performance evaluation errors
- Small business set-aside documentation gaps

GAO Sustained Decision Matrix (Jan. to Aug. 2026)

Case	Sustained Ground(s)
<i>Amentum Techn., Inc.; SOS In'tl Inc.</i> , B-423898 et. al, 2026 WL 266110 (Jan. 27, 2026)	Evaluation of proposals under the technical factor was unsupported by the record and inadequately documented
<i>Morrish-Wallace Constr.</i> , B-423796.2, 2026 WL 414919 (Feb. 5, 2026)	Agency unreasonably waived the awardee's failure to acknowledge a solicitation amendment as a minor informality, despite record evidence that the defect was material
<i>Effective Commc'n Strategies, LLC</i> , B- 423993 et. al, 2026 WL 948578 (May 13, 2026)* *Modified on reconsideration	Agency denied the protester a fair opportunity to improve its proposal by imposing unreasonably short response deadlines for revised and final proposal revisions—including deadlines falling on weekends—while simultaneously making multiple changes to its requirements.

GAO Sustained Decision Matrix (Jan. to Aug. 2026)

Case	Sustained Ground(s)
<i>N&S Property Servs., LLC</i> , B-423852.2, B-423852.3, 2026 WL 1396276 (Mar. 10, 2026)	(1) Agency's negative evaluation of the protester's technical proposal was unsupported by the solicitation's evaluation criteria or the proposal's contents. (2) Agency's evaluation of the awardee's technical proposal was unsupported by the record, and the agency failed to meaningfully respond to the protester's challenges.
<i>Owl Int'l, Inc.</i> , B-423281.4, 2026 WL 1197630 (Apr. 24, 2026)	Agency unreasonably limited revisions to cost/price proposals only, despite amending the solicitation in a way that materially affected technical proposals and notwithstanding the solicitation's requirement of consistency between cost/price and technical proposals

GAO Sustained Decision Matrix (Jan. to Aug. 2026)

Case	Sustained Ground(s)
<i>Veterans Mgmt. Servs., Inc.</i> , B-424182.2, B-424182.3, 2026 WL 2018901 (June 22, 2026)	Agency unreasonably evaluated the protester's past performance where the record demonstrates that the evaluation was not consistent with the terms of the solicitation
<i>Veros Real Estate Solutions, LLC</i> , B-423965.2 et. al, 2026 WL 2284240 (July 22, 2026)	Agency's evaluation of the awardee's past performance for relevancy was unreasonable and insufficiently documented
<i>DAS Fed'l, LLC</i> , B-424464 et. al., 2026 WL 2531558 (July 31, 2026)	Agency's technical evaluation was flawed because it applied unstated evaluation criteria to corporate experience and was internally inconsistent in other respects

GAO Sustained Decision Matrix (Jan. to Aug. 2026)

Case	Sustained Ground(s)
<i>Intelligence Consulting Enter. Sol., Inc.</i> , B-424433.3, B- 424433.7, 2026 WL 2391095 (Aug. 11, 2026)	Solicitation's prohibition on small business teaming arrangements violated the purpose and plain language of the Small Business Act
<i>LJR Solutions, LLC</i> , B-424487, 2026 WL 2493521 (Aug. 14, 2026)	Agency's decision not to set aside a multiple-award IDIQ contract for small business concerns was unreasonable or inadequately documented

What is working at GAO?

3

**Solicitation
amendment/revision/
fairness issues**

5

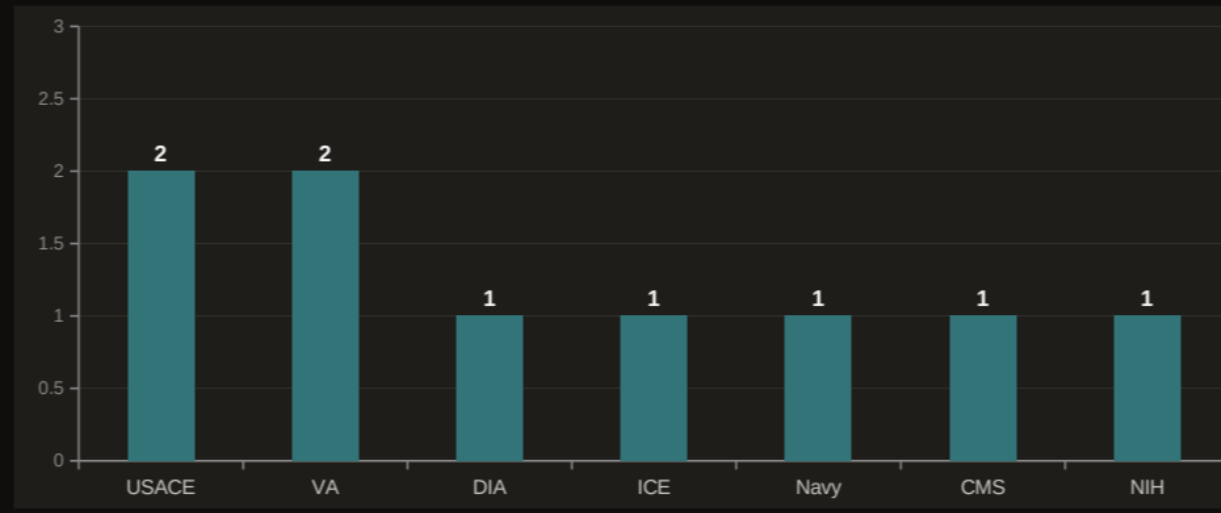
**Involved evaluation
documentation failures**

2

**Past performance
relevancy errors**

Agency Distribution

Agencies involved in sustained decisions



Protest Issue: Evaluation Documentation & Record Support

The most common sustained ground: showing the agency's evaluation conclusions were not supported by the record or were inconsistent with solicitation criteria.

- **Amentum/SOSi:** DIA tech evaluation unsupported; decreased-confidence findings unexplained; highest-rated selection not documented
- **DAS Federal:** Strengths described benefits but rating said no benefits shown—internal inconsistency
- **N&S Property:** ICE tech findings unsupported by solicitation criteria; agency failed to respond to challenges
- **Veros:** VA past perf. relevancy conclusory; credited awardee for work it did not perform
- **VMSI:** VA applied unstated 3-year recency limit on past performance data

Protester Strategy Takeaway

- Protesters should compare the solicitation's stated evaluation criteria against the agency's contemporaneous evaluation record word-by-word.
- Where the record uses boilerplate, fails to address a factor, or reaches conclusions not traceable to proposal content, GAO may sustain.

For Agencies:

- Document every evaluation conclusion with specific references to proposal content and solicitation criteria.
- Conclusory language ("acceptable" without explanation) is increasingly risky.

Protest Issue: Amendment & Proposal Revision Fairness

Three decisions sustained because the agency failed to provide a fair opportunity to respond to solicitation amendments or to submit meaningful revised proposals.

- *ECS/USACE*: Multiple very short response windows while requirements kept changing; insufficient time to address substantive technical revisions
- *Morrish-Wallace/Ryba*: Awardee failed to acknowledge a material solicitation amendment—a responsiveness defect the agency should have caught
- *Owl/Navy*: FPRs limited to cost/price only after removing FAR 52.222-46, even though the amendment materially affected technical proposal content

Protester Strategy Takeaway

- When agencies amend solicitations—especially mid-evaluation—protesters should examine whether the amendment materially changed requirements and whether offerors had a fair opportunity to revise affected proposal areas, not just pricing

For Agencies:

- When issuing amendments that affect technical requirements, allow offerors to revise all affected proposal volumes—not just cost.
- Track amendment acknowledgments before award.
- Short turnaround times invite protests.

Protest Issue: Past Performance Evaluation Errors

Two VA decisions sustained where the agency's past performance evaluation did not follow the solicitation's stated framework.

- **VMSI:** The solicitation did not limit past performance data to three years, but the VA evaluators applied that restriction anyway—an unstated criterion that excluded relevant experience
- **Veros:** VA credited the awardee for past performance on work it did not actually perform; CPARS relevance analysis was conclusory without meaningful explanation

Protester Strategy Takeaway

- Past performance protests work when the protester shows the agency applied criteria or limitations the solicitation did not state, or credited the awardee for work that isn't traceable in the record.

Simply disagreeing with a rating is not enough. Show a structural error in how the agency applied its own rules.

A Closer Look: Some Notable GAO, COFC, & Federal Circuit Cases

Aim for AdVantage, LLC

Facts:

- Proposals due by Noon on June 22nd
- Submissions through the Digital MarketPlace Portal; CUI information through DoDSafe.
- Q&A and Industry Day Briefing advised of a 5MB attachment size maximum

Factual Discrepancies

Timeline of Events in Complaint

- June 22 – Between **1:36PM and 1:45PM** AFA submitted four files containing CUI through DoD SAFE.
- June 22 - Between **~10AM and 12PM** attempted proposal submission through Portal

Army's Unrebutted Timeline

- June 8 – Account automatically locked out after 30 days of inactivity
- June 22 – at **12:58PM**, user attempts to recover account
- June 22 – at **1:05PM**, user successfully logs into Portal

Aim for AdVantage, LLC

“AFA acknowledges that the Army’s newly produced technical records clarify and, in some respects, contradict AFA’s initial understanding of the submission events.”

“[The GAO] do[es] not find credible the protester’s claim that AFA somehow mis-recalled attempting to submit its proposal for two hours before the submission deadline”

“Here, [the GAO] find[s] the sanction of dismissal is warranted due to the flagrant disregard AFA showed for the integrity of our bid protest process”

Aim for AdVantage, LLC

Key Takeaways:

- Be Truthful (*we are as surprised as you are to see that this needs to be stated!*)
- Carefully track proposal requirements, submission requirements, and relevant deadlines



Strategi Consulting, LLC v. United States

Facts:

- Strategi completed a Phase II SBIR Contract to develop “Voltron”
- USG ignores Strategi’s Phase III proposal; directs “Dragon Army” to build a competing platform
- USG demand Strategi turn over Voltron codebase

Strategi Consulting, LLC v. United States

Key Arguments and Holdings:

- 1. No Procurement - No Jurisdiction** → Court found that Strategi's proposal, USG's rejection thereof, and USG's request for codebase established a connection to a procurement.
- 2. FASA Task Order Bar Precludes Protest** → Court found that allegations are focused on USG's failure to fulfill SBIR Phase III preference obligations; FASA Bar inapplicable
- 3. Claims are not Redressable** → Court relied on its broad ability to grant injunctive and declaratory relief.

Strategi Consulting, LLC v. United States

Key Takeaways:

- The Court of Federal Claims has jurisdiction over the USG's *failure* to award a SBIR follow-on contract
- The facts mattered – Strategi built up a strong record
- This case is about jurisdiction, not a final decision(yet)



Global K9 v. United States

Facts:

- USPS awarded K2 a canine explosive-detection services contract; Global K9 filed a sealed bid protest.
- Global K9 amended its complaint to allege K2 materially misrepresented its capabilities; COFC disqualified K2.
- K2 then moved to intervene; COFC denied intervention as moot/untimely.
- On appeal, K2 reframed as a Rule 19 joinder problem.

Global K9 v. United States

Key Holding:

- The intervention was not moot. The misrepresentation finding remained relevant to K2's challenge to USPS's termination for default.
 - Rejected Rule 19 theory: K2 could have protected itself by intervening earlier.
 - Reputational injury was not enough.
 - Injunction did not bind K2 (it ran against USPS).

Global K9 v. United States

Key Takeaways:

- Awardees should consider early intervention.
- Interests can diverge quickly.
- Docket monitoring alone may not be enough.
- Rule 19 is not a backstop for waiting too long.



Bottom line: For awardees, the safest course is to intervene early—or at minimum move promptly when the protest record signals that the challenge may implicate the awardee’s own conduct.

CSI Aviation v. United States

Facts:

- CSI challenged DHS's limited-competition procurement for CSRO services (contract >\$1B).
- DHS excluded CSI and awarded to Salus, which intervened in the protest.
- CSI claimed DHS violated CICA and FAR 6.302-2.
- CSI did not seek a PI; no voluntary stay of performance.
- After cross-MJARs, Salus moved to dismiss for lack of interested-party status.

CSI Aviation v. United States

Key Holding:

- An offeror challenging exclusion must show it could perform the contract it says it should have had a chance to win.
- Plaintiffs must “plead, and then prove, facts demonstrating both standing and prejudicial error.”
- Preparing or submitting a proposal is not sufficient per se to confer standing.
- An offeror’s belief that it can compete “does not equate to standing.”
- CSI also failed to prove interested-party status or prejudice on the merits.

CSI Aviation v. United States

Key Takeaways:

- Standing is not automatic—challengers must demonstrate the ability to perform the contract at issue.
- Submitting a proposal or believing you can compete is not enough to confer standing.
- Standing and prejudice evidence must be built into the complaint and opening MJAR from the start.



Bottom line: Pleading standing is a substantive burden, not a formality. Address capability, scope, and prejudice up front.

CSI Aviation v. United States (Continued)

Pleading Failures & Practice Checklist

Practice Checklist:

- Plead specific facts showing capability to perform the contract.
- Address the full scope of work, not just adjacent or incumbent experience.
- Identify subcontractor or teaming support where needed.
- **Put standing and prejudice evidence into the opening MJAR.**
- **Do not rely on reply declarations or post-argument amendments to fix standing defects.**



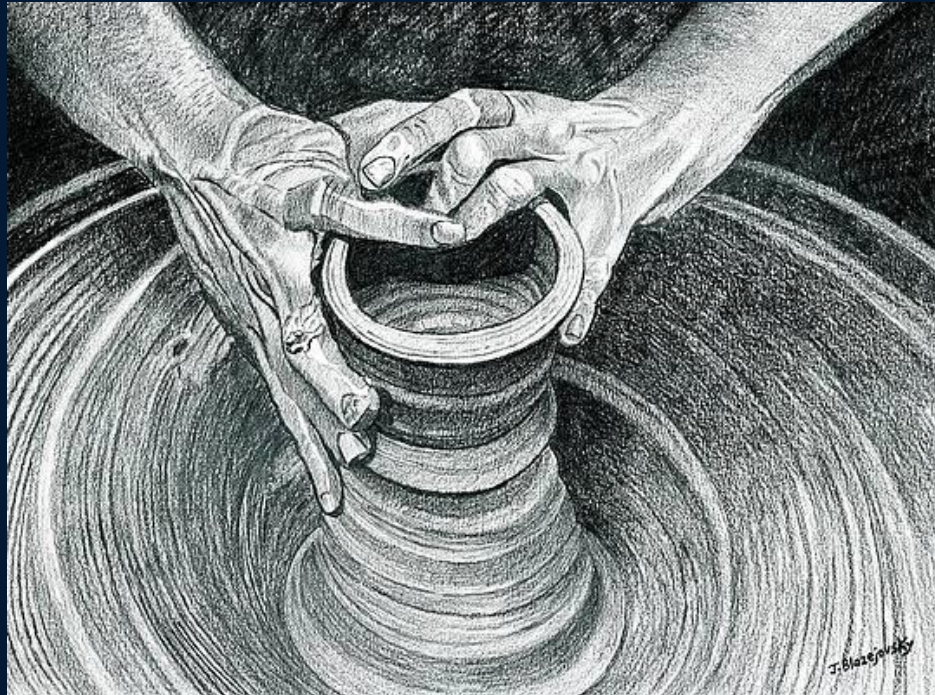
Bottom line: Fix standing at the front end—in the complaint and the opening MJAR—because the Court will not let you cure it later.

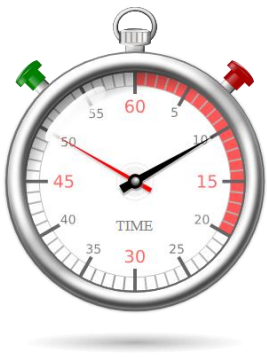
Timeliness Rules You Need to Understand Heading into Bid Protest Season

Prepare Early

- Protest deadlines can be exceptionally short—understand your options before an award notice (or disappointed offeror letter) arrives.
- Understand the anticipated award schedule, the applicable procurement rules, and whether a post-award debriefing will be available.

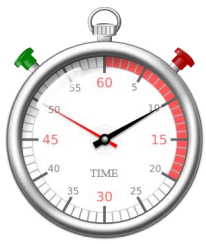
Pre-Award Protests Shaping the Opportunity





Pre-Award Protests: WHEN DO I HAVE TO DECIDE?

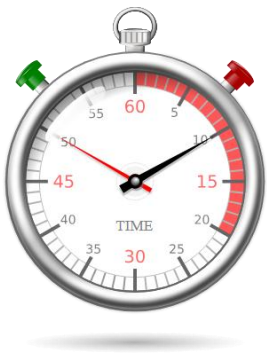
- **Agency-Level Filing Deadlines**
 - Before bid opening or the closing date for receipt of proposals
- **COFC Filing Deadlines**
 - Prior to proposal deadline



Pre-Award Protests: WHEN DO I HAVE TO DECIDE?

- **GAO Filing Deadlines**

- Prior to the time set for receipt of initial proposals or prior to bid opening
 - Or, if no further proposal submissions are anticipated, within 10 days
- ***Unless prior agency-level protest was lodged – then, 10 days after denial or “initial adverse agency action” in response to agency-level protest
 - **Be careful about informal communications with the agency.** Depending on phrasing, they could be considered agency-level protests that **start the 10-day clock.**



Pre-Award Protests: WHEN DO I HAVE TO DECIDE?

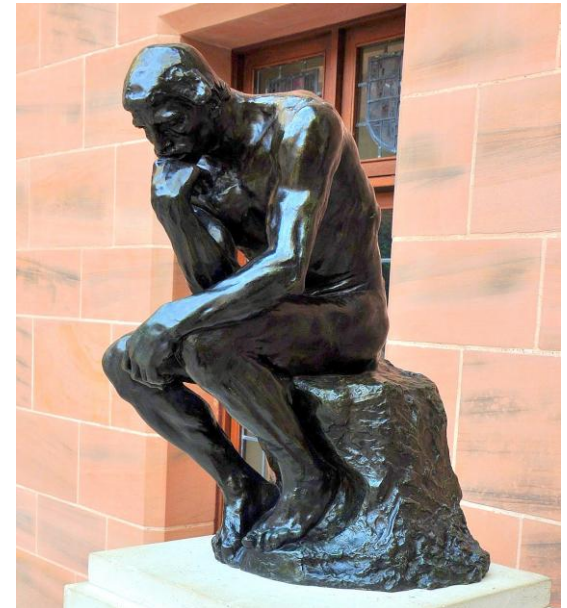
- **“Protest” of the Size Standard/NAICS Code**
 - 10 days after issuance of solicitation
 - Filed at SBA Office of Hearings and Appeals, not bid protest forums

Pre-Award Protests: WHEN DO I HAVE TO DECIDE?

- **Filing Deadlines**

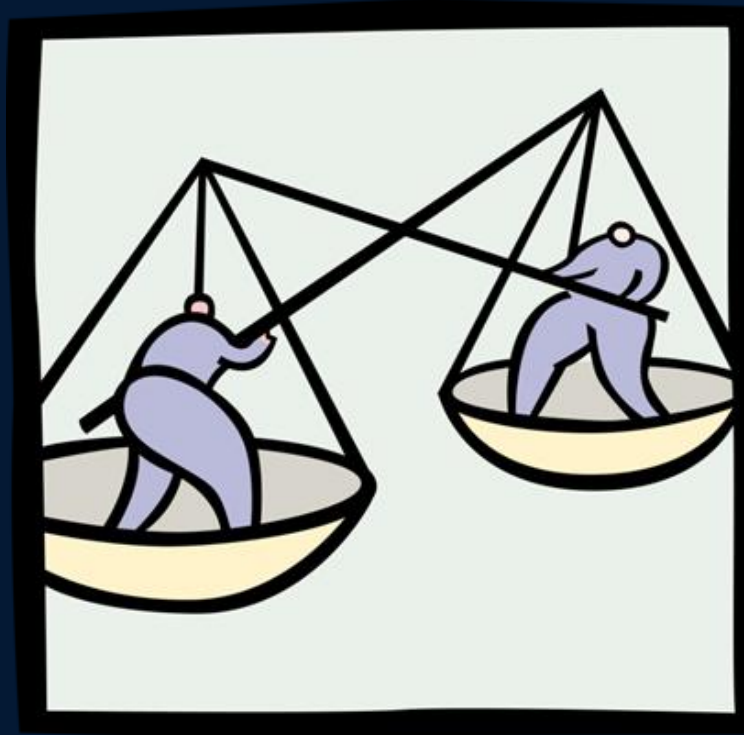
- Use it or lose it!
- Post-award protests based on defects in the solicitation or other established “ground rules” will be dismissed as untimely.

I wish I'd filed that pre-award protest!



Post-Award Protests

Fixing a Flawed Process



WHEN DO I HAVE TO DECIDE?

Agency-Level

- Within 10 days after you know or “should have known” the basis of the protest
- No debriefing exception on timeliness, only for triggering the stay

GAO

- Default: 10 days after you know/should have known
- If debriefing requested: **5 days** after debriefing for automatic stay; **10 days** after debriefing to be timely

COFC

- No statutory deadline, but delay weakens injunctive relief arguments and reduces the likelihood of a voluntary agency stay.

HOW TO LEARN AS MUCH AS POSSIBLE BEFORE DECIDING WHETHER TO PROTEST?

➤ Importance of Debriefings

- Critical to timeliness of post-award protest and the competitive-range exclusion type of pre-award protest and the automatic stay.
 - Starts the protest clock.
- Learn potential protest grounds
- Failing to request or attend debriefing can result in loss of protest grounds

WHEN IS A DEBRIEFING REQUIRED OR JUST OPTIONAL?

Debriefing Required

- FAR Part 15 procurements
- IDIQ task/delivery order procurements
- Must be timely requested
- Pre-award (if exclusion notice) or Post-award

Debriefing Not Required

- FAR Part 8: Federal Supply Schedule Procurements.
- FAR Part 12: Commercial Item Procurements
- FAR Part 13 (simplified acquisition)
- FSS procurements
- Only a “brief explanation” of the award decision required

FSS: 10 days from award to protest at GAO for stay—not 5 days from brief explanation

MAKE SURE YOUR DEBRIEFING REQUEST IS TIMELY

➤ Timely Request for Debriefing

- Within three calendar days of receiving unsuccessful offeror notice
 - Take the first date offered for debriefing
 - Pre-award elimination: Request pre-award debriefing
- ***Key to preserving Automatic Stay and timely protest***

HOW TO LEARN MORE FROM A DEBRIEFING

“Enhanced” Debriefing Questions at DoD

- DFARS 215.506-70 – requires DOD agencies to deem debriefings open until answers provided.
- Debriefed offeror has 2 business days to submit additional questions
- Agency must respond in writing within 5 business days
- Protest clock starts to run when DoD delivers answers to questions

Timeline: Notice → 2 business days to ask questions → 5 business days for agency response → Protest clock starts

Summary on Timing

- Filing deadlines for bid protests are strictly enforced, and timing errors are some of the most common reason protests are dismissed without review.
- If you believe a basis for protests may exist, early consultation with counsel is critical.

Key Reminders for Bid Protest Season

- Challenge solicitation problems pre-award
- Request your debriefing within three calendar days
- Know which debriefing rules apply to your procurement
- The automatic stay requires speed
- Be ready to prove you can do the work
- If you won and there's a protest, get involved early
- **Get counsel involved early**

Thank you for attending!

For help with bid protests and other government contract legal questions, please contact:

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