



# GAO and Court of Federal Claims Bid Protests: Strategic Planning to Optimize Litigation Success Rates

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The overarching tenet of the federal procurement process is *fairness*. The goal is to place all potential bidders on equal footing and ensure the impartial evaluation of proposals by the agency.

When a bidder identifies an improper (or even unlawful) flaw in a solicitation or contract award decision, it has the opportunity to seek relief through a bid protest. In simple terms, a bid protest is a “challenge to the award or proposed award of a contract for the procurement of goods and services or a challenge to the terms of a solicitation for such a contract.”<sup>1</sup> Given the intense competition that defines today’s federal marketplace, strategic planning for bid protests can help your company gain the upper hand.

The overwhelming majority of bid protests are raised in one of two forums: the Government Accountability Office (GAO) or United States Court of Federal Claims (COFC). The purpose of this article is to explore proven strategies for litigating bid protests in both forums. The article also covers two recent bid protests and discusses the current state of the law on some key government contracting issues.

## I. Bid Protests at the GAO

The most common venue for bid protests is the GAO. The GAO is an “independent, nonpartisan” government agency that “examines how taxpayer dollars are spent and provides Congress and federal agencies with objective, reliable information to help the government save money and work more efficiently.”<sup>2</sup> With respect to bid protests specifically, the GAO is designed to provide an “objective, independent, and impartial forum” for dispute resolution between the federal government and contractors.<sup>3</sup>

GAO bid protests serve two primary purposes: (1) to resolve solicitation defects prior to bid opening and (2) to challenge procurement errors in connection with the award of federal contracts. The bid protest process begins when a protestor files a written protest.<sup>4</sup> At this early stage, bid protests will only

be dismissed if they are procedurally defective (for example, untimely) or if they do not clearly state legally sufficient grounds for protest.<sup>5</sup>

After the contractor files the protest, the agency can either take corrective action (if it agrees with the protester) or submit an agency report that addresses the protest grounds.<sup>6</sup> The protester (and any permitted intervening parties) then has the opportunity to file responsive written comments to the agency report.<sup>7</sup> At that point, the record usually closes and the GAO issues a decision.

### Protest Timing at the GAO

The mandatory timing for filing protests at GAO depends on the situation. The baseline standard for protests challenging the terms of a solicitation is to file before the time for receipt of initial proposals. Contractors must file protests challenging the award of a contract (or for any reason other than a solicitation defect) within 10 days of when the protester knows or should know of the basis for the protest.<sup>9</sup>

But proceed with caution! There are a variety of considerations that can impact protest timing. For example, when a mandatory briefing is requested, a protest is timely if it is filed within 10 days after the debriefing.<sup>10</sup>

### Stay of Contract Award

One of the most attractive benefits of protesting at the GAO is the automatic stay of contract performance available under the Competition in Contracting Act (CICA).<sup>11</sup> A CICA stay automatically suspends contract award or performance during the pendency of the protest (unless the agency successfully overrides the stay due to “urgent and compelling circumstances”).<sup>12</sup> The stay removes the possibility of an agency arguing that it cannot take corrective action following a successful protest because performance is too far along (a

<sup>1</sup>*Bid Protests, Appropriations Law, & Other Legal Work*, U.S. Gov’t Accountability Off., <https://www.gao.gov/legal/bid-protests/faqs>.

<sup>2</sup>*About GAO: Overview*, U.S. Gov’t Accountability Off., <https://www.gao.gov/about/>.

<sup>3</sup>*Bid Protests, Appropriations Law, & Other Legal Work: Bid Protests*, U.S. Gov’t Accountability Off., <https://www.gao.gov/legal/bid-protests>.

<sup>4</sup>U.S. Gov’t Accountability Off., GAO-18-510SP, *Bid Protests at GAO: A Descriptive Guide 5* (2018) [hereinafter *GAO Bid Protest Descriptive Guide*].

<sup>5</sup>*Id.*

<sup>6</sup>See *id.*

<sup>7</sup>*Id.*

<sup>8</sup>4 C.F.R. § 21.2(a)(1).

<sup>9</sup>*Id.* at 21.2(a)(2).

<sup>10</sup>*Id.* at 21.2(a)(2); see also FAR 33.104(c).

<sup>11</sup>See generally 31 U.S.C. § 3553(c)-(d).

<sup>12</sup>*Id.*



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classic example of winning the battle, but losing the war).

For pre-award protests, a protester obtains a CICA stay by the mere act of filing a timely protest. Once an agency receives notice of a timely pre-award protest from GAO, it may not award the contract at issue in the bid protest until GAO resolves the protest.<sup>13</sup>

If the agency already awarded the contract, the issue of CICA stay timing becomes imperative. A protester must file within 10 days of the date of award or five days after the required debriefing (whichever is later) in order to receive the stay.<sup>14</sup> If a contractor does not meet these timing requirements, GAO will not grant the stay and contract performance will begin while the protest is pending, which can take up to 100 days.<sup>15</sup>

## GAO Bid Protest Decisions and Aftermath

A GAO bid protest concludes when – after considering the facts and legal issues raised by the parties – GAO issues its written decision.<sup>16</sup> GAO can either deny the protest on the merits or sustain and recommend the agency take appropriate corrective action.<sup>17</sup> GAO recommendations to the agency to take corrective action or pay costs to an interested party are not legally binding on the agency; they are simply suggested courses of action.<sup>18</sup> GAO can, however, report an agency's failure to implement a GAO recommendation to Congress and suggest Congress investigate the agency or cancel agency funding.<sup>19</sup>

If the GAO denies a protest, the contractor has the opportunity to request reconsideration by a different GAO attorney.<sup>20</sup> The protester must file the request within 10 days after learning the basis for reconsideration.<sup>21</sup> The bar for reconsideration is high. The protester may not reassert the same grounds (even if you think the GAO got it wrong).<sup>22</sup> Instead, the “requesting

party must show that GAO's prior decision contains errors of either fact or law, or must present information not previously considered that warrants reversal or modification of the decision.”<sup>23</sup>

The other option for a disappointed protester is to “appeal” the decision. The word “appeal” is in quotes here because, in reality, there is no direct way to appeal a GAO bid protest decision. Rather, the correct procedure is to assert that GAO's decision was arbitrary, capricious, and an abuse of discretion and file suit at the COFC.<sup>24</sup> The COFC action amounts to a clean slate and a fresh look at the procurement – not a referendum on the GAO. That said, the GAO decision is included as part of the administrative record before the COFC.

Just under 2,200 protests were filed at GAO during the 2019 fiscal year, with 587 of them reaching a decision on the merits (whether to sustain or deny).<sup>25</sup> GAO sustained 77 protests, and 40 protests went to alternative dispute resolution, which had a 90% success rate.<sup>26</sup> The sustain rate at GAO in the past five fiscal years has been as low as 12% in 2015 and as high as 23% in 2016.<sup>27</sup> In looking at GAO's sustain rate, it is always important to remember that the number is not as bleak as it appears. GAO does not publish the number of cases where the agency elected to take corrective action before GAO issued a final decision (which would certainly improve the number of “successful” protests to a more palatable percentage).

## II. Bid Protests at the COFC

The other common forum for litigating bid protests is the COFC. In somewhat of a contrast to the GAO, COFC bid protests are filed, prosecuted, and resolved more like federal court cases. COFC protests begin with the filing of a traditional complaint, which must conform to federal pleading standards and requirements.<sup>28</sup>

<sup>13</sup>Id. at § 3553(c).

<sup>14</sup>See FAR 33.104(c).

<sup>15</sup>31 U.S.C. § 3554(a)(1).

<sup>16</sup>GAO Bid Protest Descriptive Guide, supra note 4, at 6.

<sup>17</sup>Id.

<sup>18</sup>See 31 U.S.C. § 3554(c)-(e).

<sup>19</sup>Id. at § 3554(e)(1).

<sup>20</sup>See 4 C.F.R. § 21.14(a).

<sup>21</sup>Id. at 21.14(b).

<sup>22</sup>Id. at 21.14(c).

<sup>23</sup>Id.

<sup>24</sup>See infra (discussion of COFC bid protests).

<sup>25</sup>U.S. Gov't Accountability Office, GAO Bid Protest Annual Report to Congress for Fiscal Year 2019 5 (2019), available at <https://www.gao.gov/assets/710/702551.pdf>.

<sup>26</sup>Id.

<sup>27</sup>Id.

<sup>28</sup>See generally Rules of the Court of Federal Claims (RCFC).



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The government responds to the complaint either by answering or filing a motion seeking summary disposition. From there, the parties can engage in discovery, taking advantage of the substantial due process afforded by the Court. Most COFC protests are resolved after the close of discovery through cross-motions for judgment on the administrative record.<sup>29</sup> If the case makes it all the way to trial, the presiding judge makes the final determination. There are no jury trials at the COFC and all disputes are heard by a sitting judge.

### Protest Timing at the COFC

Bid protest timing takes on much less significance at the COFC when compared to GAO, which enforces short and very strict timeliness requirements. The COFC does not enforce any hard deadlines other than the six-year statute of limitations generally applicable to claims.<sup>30</sup> Contractors are not allowed to unreasonably delay filing a protest – but that is uncommon, as contractors are usually invested in raising protest issues as soon as possible.

### Stay of Contract Award

There is no automatic stay at the COFC (i.e., nothing comparable to the CICA stay available at GAO). If a protester wants a stay of contract award or performance, it must petition the court for a temporary restraining order (TRO). Obtaining a TRO at COFC can be challenging and requires the protester to prove: (1) the likelihood of success on the merits, (2) irreparable harm, (3) that the balance of hardships tips in the protester's favor, and (4) that the stay is in the public interest.<sup>31</sup>

### COFC Decision and Aftermath

The COFC “may award any relief the court considers proper, including declaratory and injunctive relief” that is binding on the agency.<sup>32</sup> COFC decisions do not come with rushing speed or

aspirations (like the GAO's 100-day mandate). Typically, COFC bid protests take in the ballpark of five months to resolve.

If the COFC denies the protest, there is an automatic right of appeal to the United States Court of Appeals for the Federal Circuit. The contractor must file the appeal within 60 days after the COFC enters final judgment on the protest.<sup>33</sup>

The COFC does not receive or adjudicate nearly as many protests as the GAO, although the Court has experienced a slight uptick in recent years. The COFC also does not publish success rates or other comparable statistics.

## III. Pros and Cons of Bid Protest Litigation Forums

An essential step in bid protest litigation is deciding *where* to file. As outlined above, the GAO and COFC offer forum-specific benefits and challenges. One size does not fit all – and success on one occasion in a particular forum does not guarantee future outcomes.

Based on experience, I recommend reserving GAO bid protests for clear solicitation errors and other self-evident agency errors. The number one virtue of the GAO is speed. The GAO decides protests within 100 days of filing, making it the efficient choice for resolving procurement errors. Coextensive with GAO's speed is the availability of a CICA stay. GAO offers contractors the ability to slam the brakes on procurement errors and resolve them quickly. Some procurement errors, however, require a deeper dive. When complex legal issues are involved, the COFC offers contractors more options for discovery and the time to properly flesh out the root cause. The key at the COFC is the administrative record – a collection of documents that represent all materials considered by the agency. The administrative record includes “the information relied upon by the agency as it made its decision, as well as documentation of the agency's decision-making process.”<sup>34</sup> The broad scope of the administrative record in a COFC protest is a major upgrade over GAO, where the agency report is only required to include the documents relevant to protest arguments raised.<sup>35</sup>

<sup>29</sup>RCFC 52.1.

<sup>30</sup>28 U.S.C. § 2501.

<sup>31</sup>Munilla Constr. Mgmt. LLC. v. United States, (2017 COFC Bid protest) at 4. Available at [https://ecf.cofc.uscourts.gov/cgi-bin/show\\_public\\_doc?2016cv1684-36-0](https://ecf.cofc.uscourts.gov/cgi-bin/show_public_doc?2016cv1684-36-0).

<sup>32</sup>28 U.S.C. § 1491(b)(2).

<sup>33</sup>See 28 U.S.C. §§1295(a)(3); 2107(b); 2522; COFC Rule 58.1; FRAP Rule 4; CAFC Rules 3 and 4.

<sup>34</sup>Kerr Contractors, Inc. v. United States, 89 Fed. Cl. 312, 335 (2009); see also MG Altus Apache Co. v. United States, 102 Fed. Cl. 744, 752 (2012) (“The [administrative record] should contain all relevant information on which the agency relied or allegedly should have relied in making the challenged decision.”).

<sup>35</sup>See 4 C.F.R. § 21.3(d).

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Comparing and Contrasting GAO and the COFC:

GAO	COFC
Relatively informal proceedings	More formal proceedings
Efficient, with a decision typically issued within 100 days	Typically less efficient; No set timeline for decisions
Less access to discovery documents	More in-depth discovery, including requirements for the administrative record
44% effectiveness rate in 2019 <sup>36</sup> (success measured through GAO sustaining the protest or the agency taking corrective action without a formal decision)	Legally binding decisions generally provide more certainty that GAO corrective action
Mandatory CICA stay for timely pre-award and post-award filings	No mandatory CICA stay; Procedure requires either a voluntary agency stay or TRO/Preliminary Injunction litigation
Typically less expensive than COFC	Typically more expensive to litigate

The ultimate wildcard in choosing between the GAO and COFC in terms of bid protest litigation is the CICA stay. In some instances, the ability to obtain an immediate stay of contract award or performance – just by meeting a filing deadline – is extraordinarily valuable. Electing to forego (potentially) a stay at the COFC requires strategic planning and thoughtful consideration.

## IV. Bid Protests with Limited Jurisdiction

Sometimes, contractors need to think strategically about the pros and cons of pursuing a bid protest in a particular forum – and sometimes the law makes the decision for you. Contractors need to be aware of the limited jurisdiction over certain subject matter. Here are some key examples:

### A. IDIQ Contract Task Orders

GAO alone has jurisdiction over IDIQ task and delivery protests valued in excess of \$25 million for DoD, NASA, and the Coast Guard and in excess of \$10 million for civilian agencies.<sup>37</sup> That is, GAO can hear bid protests related to IDIQ task orders as long as they meet the corresponding monetary threshold.<sup>38</sup>

The COFC, on the other hand, is generally barred by statute from hearing bid protests in connection with the issuance of task orders under FAR Part 16. COFC judges are required to dismiss protests of task order awards for lack of jurisdiction.<sup>39</sup> A limited exception arises for protests over task orders or delivery orders where the protester alleges the order is outside the scope of the IDIQ.

<sup>36</sup>U.S. Gov't Accountability Office, GAO Bid Protest Annual Report to Congress for Fiscal Year 2019 5 (2019), available at <https://www.gao.gov/assets/710/702551.pdf> (showing the rate of effectiveness has remained in the mid-forties percentage rate since 2015).

<sup>37</sup>FAR 16.505(a)(10).

<sup>38</sup>See 41 U.S.C. § 4106(f).

<sup>39</sup>SRA Int'l, Inc. v. United States, 766 F.3d 1409, 1413 (Fed. Cir. 2014) (“The statutory language of FASA is clear and gives the court no room to exercise jurisdiction over claims made ‘in connection with the issuance or proposed issuance of a task or delivery order.’”).





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## B. Other Transaction Authority (OTA) Contracts

The COFC does not have jurisdiction over bid protests related to Other Transaction Authority (OTA) agreements.<sup>40</sup> The COFC, under the Tucker Act, has jurisdiction over disputes and bid protests related to “procurement” contracts and solicitations. OTA agreements and solicitations are not traditional procurement contracts and therefore fall outside this umbrella.<sup>41</sup>

GAO has ability to hear bid protests related to the “procurement of property and services.”<sup>42</sup> Like the COFC, GAO generally does not consider OTAs to be traditional procurement contracts. It therefore generally will not review “protests of the award or solicitations for the award of [OTAs] under our bid protest jurisdiction.”<sup>43</sup>

However, GAO will consider OTA protests in certain narrowly limited instances. In a recent 2019 decision, GAO confirmed that it will review “timely pre-award protest[s] that an agency is improperly using its other transaction authority to procure goods or services.”<sup>44</sup> The contractor in that case argued GAO had discretion to hear OTA protests because its regulations provide that “GAO generally does not review protests of awards, or solicitations for awards, of agreements other than procurement contracts.”<sup>45</sup> GAO disagreed, stating “the use of the term ‘generally’ ... is not intended to connote some reserved discretion,” instead, “it connotes that GAO may, in limited circumstances, hear a protest that tangentially impacts an agency’s award or proposed award” with respect to a non-procurement contract.<sup>46</sup> GAO dismissed the protest for lack of jurisdiction because it did not allege the Army improperly used its OTA authority “to acquire goods or services that should be acquired via a procurement contract.”<sup>47</sup>

## C. Suspension and Debarment

Consideration of federal suspensions and debarments directly relate to an agency’s “responsibility” determination during proposal evaluations. Contractors that are suspended or debarred (or proposed for suspension or debarment) are considered “not responsible” or “nonresponsible.”<sup>48</sup> The FAR directs contracting officers to reject any bid from a contractor listed for suspension or debarment, meaning such contractors cannot “be evaluated for award or included in the competitive range.”<sup>49</sup>

Generally, when a contractor wants to challenge its suspension, debarment, or proposed suspension or debarment, it must follow the administrative procedures set out in FAR 9.406-3 (debarment) and 9.407-3 (suspension). The GAO generally does not review contractor “protests that an agency improperly suspended or debarred a contractor from receiving government contracts.”<sup>50</sup> The contracting agency “is the appropriate forum for suspension and debarment disputes” because sections 9.406-(3)(b) and 9.407-3(b) of the FAR provide “specific procedures for both imposing and challenging a suspension or debarment action.”<sup>51</sup>

The COFC, however, exercises jurisdiction over the propriety of debarment decisions in connection with bid protests, provided that the protest is filed prior to contract award. Typically, contractors must appeal agency debarment decisions in district courts under the Administrative Procedure Act<sup>52</sup> and prove the agency acted “arbitrarily and capriciously,” amounting to a “clear error.”<sup>53</sup> In the context of bid protests, however, the COFC relies on the Tucker Act’s “implied contract jurisdiction to resolve allegations of error in suspension actions affecting specific procurements.”<sup>54</sup> Under Section 1491(a)(1) of the Tucker Act, the COFC may “entertain bid protests ‘challenging the proposed award of contracts based on

<sup>40</sup>See *Space Expl. Techs. Corp. v. United States*, 144 Fed. Cl. 433, 445 (2019).

<sup>41</sup>*Id.* at 442.

<sup>42</sup>31 U.S.C. § 3551(1).

<sup>43</sup>*Blade Strategies, LLC*, B-416752 (Sept. 24, 2018) 2018 CPD ¶ 327, at 2 (<https://www.gao.gov/assets/700/694730.pdf>).

<sup>44</sup>*MD Helicopters, Inc.*, B-417379 (Apr. 4, 2019) at 2 (<https://www.gao.gov/assets/700/698281.pdf>) (dismissing protest that “concern[ed] the agency’s evaluation of proposals and award decision” because they “are not within our bid protest jurisdiction.”).

<sup>45</sup>*Id.* (quoting 4 C.F.R. § 21.5(m)) (emphasis in original).

<sup>46</sup>*Id.*

<sup>47</sup>*Id.* at 3.

<sup>48</sup>Kate M. Manuel, Cong. Research Serv., RL34753, *Debarment and Suspension of Government Contractors: An Overview of the Law Including Recently Enacted and Proposed Amendments 1* (2008).

<sup>49</sup>FAR 9.405(d). Contracting officers must reject bids from contractors listed for suspension or debarment unless “the agency head determines, in writing, that there is a compelling reason to consider the bid.” *Id.*

<sup>50</sup>*Matter of: Aria Target Logistics Servs.*, B-409055.2 (Feb. 27, 2014) at 2 (dismissing protest of contractor that was excluded from agency’s competitive range because it was on a list of contractors that were proposed for debarment).

<sup>51</sup>*Id.*

<sup>52</sup>*IMCO, Inc. v. United States*, 97 F.3d 1422, 1425 (Fed. Cir. 1996).

<sup>53</sup>Samantha Block, Essay, *Defying Debarment: Judicial Review of Agency Suspension and Debarment Actions*, GEO. WASH. L. REV. 1316, 1332 (2018); see also 5 U.S.C. § 706(2)(A).

<sup>54</sup>*FAS Support Servs., LLC v. United States*, 93 Fed. Cl. 687, 695 (2010).



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alleged improprieties in the procurement process.” This means that a protestor can argue “that its contractual entitlement to a full, fair, and honest consideration of its bid was breached” by an improper debarment.<sup>56</sup>

In other words, a direct challenge to general suspension from government contracting “divorced from any connection with a pending procurement, belongs in a district court,” but protests related to “the propriety of [a] proposed debarment” that precluded an award to the protestor may be heard in the COFC.<sup>57</sup>

## V. Case Studies (Interesting Recent Protests at the GAO and COFC)

The vast majority of federal bid protests cover familiar ground in one of three areas:<sup>58</sup>

- Solicitations by agencies for bids or proposals for proposed contracts that include incorrect, overly restrictive, or other problematic information;
- Erroneous awards or proposed awards of federal contracts; and
- Any other alleged violations of statutes or regulations about procurements or proposed procurements.

However, within even these standard guideposts, there are certain protests that offer a different twist or force us to look at how we approach procurements in a new way. Here are two examples from 2019 – the first from GAO and the second from the COFC:

### A. Matter of: Blue Origin Fla., LLC, GAO (Nov. 18, 2019)

In Blue Origin, GAO sustained a protest alleging that the Air Force improperly combined offers – rather than using the traditional (and required) best value trade-off process.

The Air Force planned to award two fixed-price requirements contracts for launch services related to national security space missions from FY 2020 through FY 2024.<sup>59</sup> Rather than evaluate all proposals and award to the two representing the “best value” to the government, the agency awarded the contracts to the two

offerors that, “when combined, represent the overall best value to the Government.”<sup>60</sup> The Air Force would then further drill down on the pair selected for award, with the better getting 60% of the work and the other 40%.<sup>61</sup>

The protestor argued that the “when combined” best value method was ambiguous because it evaluated proposals based on how well one proposal complemented “another unknown proposal with unknown qualities,” rather than evaluate each proposal’s merits individually.<sup>62</sup> GAO concluded the Air Force’s basis for award did not “provide an intelligible and common basis for competition.”<sup>63</sup> It reasoned that, “short of colluding with other potential offerors to coordinate their respective proposals,” it was not clear “how an offeror could intelligently compete” when award was “dependent on [an offeror’s] general compatibility with a proposal independently developed and submitted by another offeror.”<sup>64</sup>

GAO supported its decision by looking to FAR 3.301(a) (which states collusive bidding or sharing of business can be anticompetitive practices) and FAR 3.303(c)(1) (which notes the filing of a joint bid by competitors may be a violation of antitrust laws if one competitor has sufficient capability to carry out contract performance).<sup>65</sup>

### B. PAE-Parsons Glob. Logistics Servs., LLC v. United States COFC (2019)

This case of first impression at the COFC addresses whether the Court has jurisdiction over a protest challenging an agency’s rating of a contractor that directly resulted in the contractor losing out on *both* an IDIQ contract *and* its related task order. The protest concerned an Army solicitation seeking to award four to six separate IDIQ contracts and their associated task orders on a best value determination.<sup>66</sup>

The protestor argued the technical evaluations were flawed and resulted in a competing contractor receiving one of the IDIQ contracts for which the protestor was better qualified.<sup>67</sup> The government countered that the Federal Acquisition Streamlining Act of 1994 (FASA) barred the contractor from bringing a protest in connection with an IDIQ task order at COFC.<sup>68</sup>

<sup>58</sup>28 U.S.C. § 1491(b)(1).

<sup>59</sup>Blue Origin Fla., LLC, B-417839 (Nov. 18, 2019) at \*4.

<sup>60</sup>Id. at \*5.

<sup>61</sup>Id. at \*5-6.

<sup>62</sup>Id. at \*6.

<sup>63</sup>Id. at \*9.

<sup>64</sup>Id. at \*8-9.

<sup>65</sup>Id. at \*9.

<sup>66</sup>PAE-Parsons Glob. Logistics Servs., LLC v. United States, 145 Fed. Cl. 194, 197 (2019).

<sup>67</sup>Id. at 196.

<sup>68</sup>Id.



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The Court sided with the protester, concluding this is not a task order protest, but rather a challenge to “underlying technical evaluations in the award process.”<sup>69</sup> The Army’s evaluation ratings ranked offerors in descending orders of priority for each IDIQ contract.<sup>70</sup> The rankings within each IDIQ contract, in turn, “directly impacted the task orders for which [a contractor] would then become eligible.”<sup>71</sup> The Court also observed that the agency made separate best value determinations for each IDIQ contract, and even though the IDIQ contracts and their associated task orders

were awarded simultaneously, “the Army functionally issued four separate and distinct” IDIQ contract awards.<sup>72</sup>

The Court denied the government’s motion to dismiss for lack of jurisdiction, holding that the “the task order awards [were] inextricably linked to the ratings for the IDIQ contract,” and the fact that task orders happened to result from the IDIQ contract awards was not enough to eliminate jurisdiction over the IDIQ awards themselves.<sup>73</sup> ■

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<sup>69</sup>Id.  
<sup>70</sup>Id. at 197, 199.  
<sup>71</sup>Id. at 199.  
<sup>72</sup>Id. (emphasis in original).  
<sup>73</sup>Id.