



CHALLENGING A PUBLIC CONTRACT AWARD

You've spent precious resources responding to a solicitation, only to learn that your company was not selected for contract award. Under what circumstances should you challenge the government's decision? Business owners must weigh *when, why and how* to protest an unfavorable award decision. They must do so strategically, quickly, and in compliance with applicable law.

When to Protest

Typically, a disappointed bidder can challenge an award by filing a formal "protest." Bid protests challenge the procurement process and the government's evaluation of competing bids. Key protest issues include whether the awardee was responsible (financially sound) and responsive (met mandatory requirements); whether there were material mistakes in the process (not following evaluation criteria); and whether there are legitimate concerns about conflicts or bias among those evaluating responses.

Procurement officials have wide discretion in awarding contracts, so bid protests can be an uphill battle. They also have wide discretion in responding to bid protests – they can maintain the status quo, cancel the contract, or overturn an award and either rebid the contract or award it to the protester.

Why Protest?

Despite that broad discretion in awarding contracts and resolving challenges, a successful protest is possible. And, even losing protests can yield positive outcomes. For example, if the government historically disposed of scoring sheets post-evaluation, the protester may be able to convince the government to keep such documents to aid in future reviews of the decision-making process.

Government entities often see protests as opportunities to improve upon existing practices. But, protesters must also be sensitive to their desired customers, and tactfully challenge *process* without alienating *people*.

How to Protest

Protest/appeal procedures are typically set forth in the solicitation and/or

procurement statutes and regulations. Disappointed bidders must scrupulously follow the procedures – including strict adherence to rules prohibiting communication with procurement officials – or risk disqualification. A protest is presented by letter, articulating every basis for the protest, either seeking reconsideration by the procurement officer who made the decision, or reversal of the decision by that person's superior. The time within which protests must be submitted is extremely compressed. For example, the State requires a *comprehensive* protest within ten days of the date the file is made publicly available.

It is wise to have experienced legal or professional assistance throughout the procurement process, and certainly at the bid protest stage, where legal issues and strategic considerations must be presented and argued quickly, effectively and efficiently.

PROCUREMENT IN THE NEWS

- [\\$3B Behavioral Health Contract Dispute Slows Final Work on Arizona House Budget Packet](#)
- [Goldwater Institute Challenges Tucson Local Preference Ordinance](#)
- [Proponents of Interstate 11 Urge Public-Private Partnership Financing](#)

PB&P HONORS & AWARDS

This month, G&K shareholder and head of the firm's public bidding & procurement team, Kevin E. O'Malley, was recognized – for the 8th consecutive year – by *Southwest Super Lawyers®* in business litigation. And G&K associate Laura E. Antonuccio was also recognized as a 2014 *Southwest Super Lawyers Rising Star®* in government contracts.

FOR FURTHER INFORMATION, PLEASE CONTACT:

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