THE GOVERNMENT CONTRACTOR®

Information and Analysis on Legal Aspects of Procurement

AUGUST 27, 2025 | VOLUME 67 | ISSUE 32

¶ 216 FEATURE COMMENT: Bid Protests In The U.S. Procurement System: Assessing Proposed Reforms—Part I

Congress is considering a number of proposed changes to the U.S. bid protest system—reforms which would generally raise barriers to bid protests, without making bid protests a more effective risk-management tool. At the same time, the procurement community (both in the U.S. and internationally) is coming to understand that public procurement is, at its heart, an exercise in risk management. This article surveys the various reform proposals against that evolving understanding, to assess whether the reforms under debate would reduce risks to competition and uncover management failures in the procurement system—the two core risk-reducing purposes of bid challenges.

The Government Contractor is not printed the week of Labor Day. The next issue will be dated September 10, 2025.

Introduction—The good news is that bid protests in the U.S. Government are healthy and well-established, see, e.g., Daniel I. Gordon, Annals of Accountability: The First Published Bid Protest Decision, Procurement Law., Winter 2004, at 11 (ABA 2004)—indeed, they're a model for the world. The structure of the U.S. Government's bid protest system, where protests may be brought at (a) the purchasing agency, (b) an independent agency such as the Government Accountability Office, and (c) the courts, is seen in governments around the world. See, e.g., Collin D. Swan, Lessons from Across the Pond: Comparable Approaches to Balancing Contractual Efficiency and Accountability in the U.S. Bid Protest and European Procurement Review Systems, 43 Pub. Cont. L.J. 29, 38 (2013); Ian Hargreaves, Understanding the Standards of Bid Protest Standing: A Comparative Analysis of Bid Protest Standing Rights and Requirements Across 98 Countries and the European Union, 51 Pub. Cont. L.J. 227 (2022); United Nations Commission on International Trade Law (UNCITRAL), Guide to Enactment of the UNCITRAL Model Law on Public Procurement 298-99 (2014), *https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/guide-enactment-model-law-public-procurement-e.pdf;* see also European Commission, Remedies Directives, *https://single-market-economy.ec.europa.eu/single-market/public-procurement/legal-rules-and-implementation/remedies-directives_en* (discussing bid "remedies" (challenges) under EU directives).

U.S. firms working abroad regularly rely on other countries' bid challenge systems to ensure those firms

are treated fairly by other governments. Many international trade agreements and conventions which the U.S. has joined, such as the World Trade Organization (WTO) Government Procurement Agreement, see World Trade Org., Agreement on Government Procurement, art. XVIII, § 1 (2012), *https://www.wto.org/english/docs_e/legal_e/rev-gpr-94_01_e.pdf*, and the UN Convention Against Corruption, U.N. Off. on Drugs and Crime, United Nations Convention Against Corruption, art. 9, ¶ 1(d) (2004), *https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf,* specifically call for effective bid protest systems.

Bid protests have proven effective, nationally and internationally, because they allow those with the best information on procurement failures—typically other bidders—to bring those failures to light. The protesting bidders serve as whistleblowers reporting system failures, and their ability to protest reassures vendors that they will be treated in accordance with the rules, and so should invest in public competitions. Impairing protests—in essence, discouraging those whistleblowers—would undermine bid protests' core goals, which are (1) to reinforce confidence in the competitive process, and (2) to identify management failures in the procurement system. See, e.g., Christopher R. Yukins, Rethinking Discretionary Bid Protests, The Regulatory Rev. (Penn Prog. on Regulation 2021), *https://www.theregreview.org/2021/05/27/yukins-bid-protests/*.

Understanding the impacts that proposed reforms might have on bid protests means understanding their role in managing public risk. As the Organization for Economic Cooperation and Development (OECD) pointed out in a recent landmark study, *Managing Risks in the Public Procurement of Goods, Services and Infrastructure (2023), https://www.oecd.org/content/dam/oecd/en/publications/reports/2023/06/managing-risks-in-the-public-procurement-of-goods-services-and-infrastructure_b0d29f96/45667d2f-en.pdf*, public procurement is an exercise in risk management. This is a new perspective: for centuries, public procurement rules too often were viewed as a check-the-box exercise in compliance. Increasingly, though, public procurement systems—and bid protests, as parts of those systems—are understood as a dynamic effort to manage the government's various procurement-related risks, in costs, performance and reputation.

At the same time, of course, governments must balance the benefits of bid protests against the disruptions and delay that protests can cause, especially if they are not properly managed. See, e.g., Daniel I. Gordon, Constructing a Bid Protest Process: Choices Every Procurement Challenge System Must Make, 35 Pub. Cont. L.J. 427 (2006), *https://ssrn.com/abstract=892781*.

Because of these competing interests, bid protests can be flashpoints of contention between agencies and industry, and have long been the focus of reform efforts. See, e.g., Daniel H. Ramish, Midlife Crisis: An Assessment of New and Proposed Changes to the Government Accountability Office Bid Protest Function, 48 Pub. Cont. L.J. 35 (2018); Marcia G. Madsen, David F. Dowd & Roger V. Abbott, Independent Review of Procurements Is Worth It: There Is No Support for Hamstringing the GAO Bid Protest Process, 19 Federalist Soc'y Rev. 4 (2018) (criticizing "loser-pays" reform proposal). Those reform efforts are often quite useful; sometimes, though, the proposed reforms could have serious and negative unintended consequences. This article will address several of the current proposals, including on "two-bite" forum shopping, incumbent contractors stalling new contracts, meritless protests, bid protest bonds, protest timetables and pleading standards. Part II of the article, scheduled to be published in the coming weeks, will examine promising reforms in agency debriefings and protests.

Bid Protest Reform Proposals—*"Two-Bite" Protests*: In the federal procurement system, as in many systems around the world, vendors can protest in three different forums: they may protest to (1) the procuring agency, (2) an independent agency (such as GAO), or (3) the courts (in the U.S. federal system, to the U.S. Court of Federal Claims).

Some have argued that these multiple forums give protesters the opportunity to take "two bites at the apple"—to bring the same protest to multiple forums, which may result in delays and inconsis-

tent rulings. See, e.g., Colonel Eugene Y. Kim, Reforming Bid Protests, Army Law., 2020, at 66, 67; Major T. Aaron Finley, Once Bitten, Twice Shy: How the Department of Defense Should Finally End Its Relationship with the Court of Federal Claims Second Bite of the Apple Bid Protests, Army Law., Jan. 2016, at 6, 6; see also Adam Lasky, Roadmap to Bid Protests at the U.S. Court of Federal Claims, Constr. Law., Winter 2018, at 22, 24.

To unpack this "two-bite protests" problem, at the outset it is important to understand that there are really only two forums at issue—GAO and the COFC—since vendors so seldom turn to the third forum, agency-level bid protests. See, e.g., Christopher R. Yukins, *Stepping Stones to Reform: Making Agency-Level Bid Protests Effective for Agencies and Bidders by Building on Best Practices from Across the Federal Government* (Admin. Conf. of the United States 2020), *https://www.acus.gov/sites/default/files/documents/Agency%20Bid%20Protests%20Report.pdf*.

Even if a vendor did go to an agency-level protest first, by international agreement the vendor must have an option to "appeal" an adverse agency decision to GAO or the courts. See WTO Agreement on Government Procurement, supra, at art. XVIII, ¶ 5. Blocking that right of "appeal" from agency-level protests might trigger an international trade issue that could complicate the Trump Administration's ongoing trade negotiations—in practice, it could give foreign trading partners another card to present against the U.S. in trade negotiations.

That leaves the "two-bite" protests that go to both GAO and the courts. Between GAO and the courts, the path runs in only one direction (GAO, then the courts) because GAO will dismiss a matter that has been brought first to the courts. See GAO, GAO Bid Protests: A Descriptive Guide, at 30 (2018), *https://www.gao.gov/assets/gao-18-510sp.pdf*. As a result, the core remaining question is whether vendors should be blocked from protesting first at GAO, then (if they lose) at the COFC.

There are a number of reasons to allow these "second-bite" protests, which are relatively rare. See Andrew Ferguson, The Court of Federal Claims, the Government Accountability Office, and "Two Bites at the Apple" Bid Protests, 48 U. Dayton L. Rev. 143, 156 (2023). One reason lies in the transparency of the administrative record; in many ways, the bid protest system forces transparency on those corners of the procurement system that need it most, where there are credible doubts about the procurement decisions an agency has made. In an initial protest to GAO the defending agency will essentially control the record to be produced at GAO, under discovery rules that are less demanding than the COFC rules. Compare 4 CFR § 21.3 (GAO rule calling for agency production of "relevant" materials) with Rules of the U.S. Ct. of Fed. Cl., app. C, ¶¶ 21–28 (detailing administrative record materials to be produced in any bid protest). See generally Major Jason W. Allen, What Is the Contemporaneous Record in a Bid Protest?, Army Law., 2019, at 35, 35. As a result, a vendor disappointed with the agency record produced at GAO may have to pursue a second protest at the COFC to receive a full administrative record.

Studies have shown that a more complete record before the COFC can lead to very different outcomes on the "second-bite" protest. See Richard J. Webber, Bid Protests: Different Outcomes in the Court of Federal Claims and the Government Accountability Office in 2008, Procurement Law., Spring 2009, at 1. Allowing second-bite protests at the COFC thus helps to ensure a full consideration of the record—especially important in complex and high-value cases (often the cases where systemic failures pose the highest risk). See, e.g., Robert S. Metzger & Daniel A. Lyons, A Critical Reassessment of the GAO Bid-Protest Mechanism, 2007 Wis. L. Rev. 1225 (2007). The rare "second-bite" protests at the COFC thus can reinforce confidence in the integrity of the procurement system, though at the cost of potential delay while the second protest is pending. See James W. Nelson, GAO-COFC Concurrent Bid Protest Jurisdiction: Are Two Fora Too Many?, 43 Pub. Cont. L.J. 587 (2014).

Protests by Incumbents: Critics have complained that incumbent protesters file weak protests only in order to be awarded temporary bridge contracts—and thus extend their revenue streams—while the protest is pending. To discourage these protests, a pending provision in the House of

Representatives would force protesting incumbent contractors to forfeit any profits they earned during the period of protest if they lost the "stalling" protest. See, e.g., House Armed Servs. Comm., 119th Cong., H.R. 3838—Streamlining Procurement for Effective Execution and Delivery and National Defense Authorization Act for Fiscal Year 2026—Chairman's Mark, at 10, *https://armedservices.house.gov/uploadedfiles/chairmans_mark.pdf*.

There are a number of problems with this suggestion to forfeit protesting incumbents' profits:

- The proposal may be both too broad (it assumes that *all* incumbent protests are mere excuses for delay) and too narrow (of the minuscule number of awards protested—fewer than one percent of all DOD awards, for example—the numbers of incumbent protests will be even smaller). See Mark V. Arena et al., *Assessing Bid Protests of U.S. Department of Defense Procurements: Identifying Issues, Trends, and Drivers* xiii, RAND Corp. (2018) (noting that bid protests are "exceedingly uncommon for DoD procurements"), *https://www.rand.org/pubs/research_reports/RR2356.html*.

- Punishing all protesting incumbents could worsen problems in the underlying procurement system. Sometimes incumbents are the *best* protesters—they have the most experience with the agency requirements and are in the best position to point out agency mistakes. Targeting them for special discouragement may in effect turn away an important class of whistleblowers.

- Incumbents are not guaranteed a bridge contract if they protest—nothing in the Federal Acquisition Regulation says that a bridge contract must be awarded to an incumbent during a protest. The Defense Logistics Agency's supplement to the FAR emphasizes that a bridge contract is an "independent" contract, subject to normal competition and sole-source rules, DLAD § 16.191, and the Defense Acquisition University explains how the bridge contract can be competed among other vendors. Defense Acquisition University, *Bridge Contracts*, *https://www.dau.edu/library/damag/september-october2020/bridge-contracts* (last visited Aug. 20, 2025). Agencies could, therefore, simply bypass obstructive incumbent contractors.

- Finally, as the American Bar Association's Public Contract Law Section suggested in a letter to GAO, see American Bar Association, Public Contract Law Section, *Letter to U.S. Government Accountability Office re: NDAA FY 2025, Section 885 – Response to GAO Data Requests*, at 4–5 (May 9, 2025), *https://www.americanbar.org/content/dam/aba/administrative/public_contract_law/comments/2025-0507-aba-pcls-response-gao-data-requests.pdf,* and as GAO and DOD have noted, it could prove both inefficient and difficult to effect the suggested remedy—to determine accurately what an incumbent's profits were during the period of the protest. In its response to Section 885 of the National Defense Authorization Act for FY2025, GAO reported to Congress that the costs of such a profit forfeiture would outweigh the benefits and could negatively impact competition, and noted that DOD concurred. See U.S. Gov't Accountability Off., *GAO Response to Section 885 of the FY2025 NDAA,* GAO Report No. B-423717, at iii (July 14, 2025) ("[C]oncerning a potential requirement for a contract clause that would permit the recoupment of profit or fee from incumbent contractors who file protests that are subsequently dismissed as legally or factually insufficient, DOD noted that, in its view, the costs outweigh the benefits of such a requirement, and that such a provision could also negatively impact competition if contractors decide not to bid due to the requirement."), *https://www.gao.gov/assets/880/879950.pdf*.

- Depriving incumbents of their profits almost certainly would lead to collateral litigation, which could spawn more costs and management distraction.

Erecting special barriers to incumbents' protests thus may undermine core goals of bid protests—to

enhance the integrity of the competitive process as efficiently as possible, and to bring procurement failures to light.

Meritless Protests: Critics have also complained that vendors may file meritless protests that result in delays and costs for agencies. See, e.g., Eric S. Underwood, Tackling Meritless Bid Protests: The Case for Rebalancing Protest Costs in the Federal Procurement Arena, 52 Tulsa L. Rev. 367 (2017). Some of these critics have suggested that contractors with a demonstrated history of filing meritless protests should not have access to future contracting opportunities.

Both GAO and the COFC have extensive procedural tools at hand to dispose of meritless protests. See, e.g., 4 CFR § 21.10; James F. Nagle & Adam K. Lasky, A Practitioner's Road Map to GAO Bid Protests, Constr. Law., Winter 2010, at 5, 7. GAO has made it clear that it has the power to dismiss frivolous protests, see Jason Miller, 2-year Suspension for Serial Protester after Continued 'Incoherent, Irrelevant, Derogatory and Abusive' Filings: GAO Wrote a Blunt Assessment of Its Decision to Ban Latvian Connection from Filing Complaints for Two Years, Fed. News Network (Dec. 4, 2017), *https://federalnewsnetwork.com/reporters-notebook-jason-miller/2017/12/two-year-suspension-for-serial-protester-after-continued-incoherent-irrelevant-derogatory-and-abusive-filings/,* and the COFC has similar authority, see Rules of the Ct. of Fed. Cl., Rules 11, 12, 56.

As a practical matter, if a vendor obnoxiously submits a series of frivolous and vexatious protests, it faces a risk of being considered non-responsible (of being excluded from future procurements), see FAR 9.104-1, or receiving poor performance evaluations, see FAR 42.1501(a). The cure, in other words, is already in the law.

There is also a hidden risk here: by barring vendors automatically from future awards, agencies could inadvertently damage their supply chains. A recent report for DOD assessed a similar proposal to automatically exclude contractors with labor law violations. See David Drabkin & Christopher Yukins, *Congressionally Mandated Study on Contractor Debarments for Violations of U.S. Labor Laws* (Acquisition Innovation Research Center 2023), *https://acqirc.org/publications/research/congressionally-mandated-study-on-contractor-debarments-for-violations-of-u-s-labor-laws/*. The study (done at the direction of Congress) found that an automatic bar could exclude nearly 10 percent of DOD contractors—and it would not be clear in advance which vendors could be struck from the defense industrial base. Id. at 17. A rule of automatic exclusion, in other words, raises supply chain risks of its own.

Bonding: Some critics have argued that filing a protest is inexpensive for contractors but may lead to disruption and delay for agencies. They have argued that protesters therefore should be required to file a monetary bond with their protests.

The first problem with this suggestion is that it is based on a false premise—it assumes that protests are inexpensive to file and prosecute. They're not. Members from the ABA's Public Contract Law Section, who regularly handle bid protests, estimated that protests at GAO cost over $100,000 on average for the awardee to defend, and that protests at the COFC cost over $200,000. See ABA, Public Contract Law Section, supra, at 2. It is likely to cost even more to bring a protest, for the protester almost always bears the burdens of proof and persuasion. Filing a protest is a difficult and costly decision for vendors, especially because they know they have a relatively small chance of actually winning the contract even if they win the protest. See Daniel I. Gordon, Bid Protests: The Costs Are Real, But the Benefits Outweigh Them, 42 Pub. Cont. L.J. 489, 498 (2013); Eric S. Underwood, supra, at 368.

Notably, the COFC rules already contemplate a possible bond when a protester seeks an injunction pending the protest. See U.S. Ct. Fed. Cl. Rules, app. C, ¶ 15(f). As a practical matter, it appears that bonds are rarely actually required by the Court. Courts have discretion in issuing bonds and there is "little precedent" available on point. See Nathaniel E. Castellano & Sierra A. Paskins, "Preliminary Injunction Bonds: An Emerging Bid Protest Issue," 39 Nash & Cibinic Rep. NL ¶ 14 (Mar. 2025); *Sanofi-Synthelabo v. Apotex, Inc.*, 470 F.3d 1368 (Fed. Cir. 2006); *LEGO A/S v. ZURU Inc.*, 799 F. App'x 823 (Fed. Cir. 2020).

The impetus for a bonding requirement may, however, be coming from outside the procurement system. In March 2025, President Trump issued an executive order directing agencies to ask that courts require a bond where (as in bid protests) the opposing party seeks injunctive relief against the Government. See The White House, Fact Sheet: President Donald J. Trump Ensures the Enforcement of Federal Rule of Civil Procedure 65(c) (Mar. 6, 2025), *https://www.whitehouse.gov/fact-sheets/2025/03/fact-sheet-president-donald-j-trump-ensures-the-enforcement-of-federal-rule-of-civil-procedure-65c/*. Since the COFC, as noted, already has a bonding mechanism in place, which could be used to implement President Trump's executive order; the only open question is whether GAO should institute a similar bonding requirement.

A general bonding requirement at GAO would chill even the most meritorious protests and could raise serious barriers to small businesses that sought to protest. For small businesses, the financial burdens likely would be much more acute. If the bond requirement took the burden on small businesses into account—if GAO's rules said that a small business protesting a procurement would be less likely to be burdened with a bond requirement—implementing the bonding requirement could prove extremely complicated, especially in cases with multiple protesters. Cf. GAO Bid Protests: A Descriptive Guide, supra, at 4 (stating that the GAO bid protest process is "easy and inexpensive").

Because bonds are very rare in federal bid protests, it's worthwhile looking more globally to assess them. The OECD sponsors a tool used to assess procurement systems, which is emerging as the "gold standard" for assessment worldwide—the Methodology for Assessing Procurement Systems, or "MAPS." See MAPS Initiative, *Methodology for Assessing Procurement Systems, https://www.mapsinitiative.org/en.html*. Notably, GAO itself recently relied on the MAPS assessment tools, in *World Bank Procurement: Risk Monitoring Can be Enhanced as U.S. Businesses Face Challenges Competing,* (GAO-24-106718) (Sept. 26, 2024), *https://www.gao.gov/products/gao-24-106718,* a report in which GAO used the MAPS assessment tools for "internationally recognized leading practices." Id. at 3.

The MAPS tool discusses bid protests (which are sometimes known as "appeals," "remedies" or "challenges" outside the U.S.) to assess whether bid protest systems are "effective" (the measure required by international trade agreements and the UN Convention Against Corruption). E.g., Agreement on Government Procurement, supra, at art. XVIII; United Nations Convention Against Corruption, supra, at art. 9. The MAPS tool uses "indicators" as benchmarks. To gauge whether an appeals process (a bid protest process) is efficient and effective (Indicator 13), the MAPS tool confirms that the reviewing body (here, GAO) "does not charge fees that inhibit access by concerned parties." Methodology for Assessing Procurement Systems, supra, at 49.

By imposing costs that would inhibit access to the bid protest system, a protest bond requirement could, by the MAPS measure, make the GAO bid protest system "ineffective." Protesters—who are, in practical terms, generally self-funded whistleblowers—would face new monetary obstacles in trying to bring to light waste, fraud, and abuse.

If the bonding requirement rendered the bid protest process "ineffective," the bonding requirement also could (as was discussed above) throw the U.S. bid protest system out of compliance with the international trade agreements which call for "effective" bid challenge mechanisms, see, e.g., U.S.-Mexico-Canada Agreement, ch. 13, July 1, 2020 (requiring a review authority that is timely, transparent, and effective), and so could raise new issues in ongoing trade negotiations by the Trump Administration.

Consistent Timelines for Protests: Critics have also complained of inconsistent and unpredictable timelines for the resolution of protests, which can lead to unnecessary delays and uncertainty. They have suggested imposing binding deadlines for the filing and resolution of protests. See, e.g., Raymond M. Saunders & Patrick Butler, A Timely Reform: Impose Timeliness Rules for Filing Bid Protests at the Court of Federal Claims, 39 Pub. Cont. L.J. 539 (2010).

GAO already has very clearly defined timelines for filing and resolving protests. See, e.g., GAO Bid Protests: A Descriptive Guide, supra, at 9-25. The COFC does not have fixed timelines for resolving protests, see, e.g., Scott McCaleb, Strategies for Litigating Bid Protests: Forum Selection, 2011 WL 5039650, at *6; Michael J. Schaengold, T. Michael Guiffré & Elizabeth M. Gill, Choice of Forum for Federal Government Contract Bid Protests, 18 Fed. Circuit B.J. 243, 309 (2009), but in principle could do so under its statutory authority to amend its rules per 28 USCA § 2503(b).

Finally, as will be discussed in Part II of this Feature Comment, fixed timelines could be set for agency-level bid protests, probably by an amendment to FAR 33.103, to lend potential protesters confidence that those agency-level protests will be resolved in a timely manner and with a minimum of uncertainty.

Heightened Standards: Critics have complained, finally, that "technical" protests—protests based purely on minor defects in procedure—undermine the FAR's goals in efficiency, and that therefore Congress should impose heightened standards for pleading and judgments.

In many ways, this seems to be a problem already resolved.

- Agencies hearing agency-level bid protests are highly unlikely to be swayed by purely "technical" arguments regarding their own procurements.

- GAO has in the past weeks already imposed a consolidated, arguably tightened standard of review. In its Aug. 5, 2025 decision in *Warfighter Focused Logistics, Inc.*, Comp. Gen. Dec. B-423546 & B423546.2, 2025 CPD ¶ ___, GAO explained: "In order to make it clear that only protests meeting the standards of legal and factual sufficiency will survive dismissal, we proposed to replace our existing formulation with a requirement that protesters must provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. GAO's Proposal in Response to Section 885 of the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (FY2025 NDAA), B-423717, July 14, 2025 at 22–23. We adopt this formulation of our pleading standard here and in future decisions." Id. note 3. Studies have shown that GAO typically sustains protests only on serious grounds such as an agency's misapplication of award criteria, see, e.g., Will Dawson, Data Scarcity in Bid Protests: Problems and Proposed Solutions, 51 Pub. Cont. L.J. 131, 159 (2021), and GAO's rules make clear that it will recommend relief only after taking into account the recommendation's practical effect:

  > In determining the appropriate recommendation(s), GAO shall … consider all circumstances surrounding the procurement or proposed procurement including the seriousness of the procurement deficiency, the degree of prejudice to other parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, the cost to the government, the urgency of the procurement, and the impact of the recommendation(s) on the agency's mission.

  4 CFR § 21.8(b).

- Like GAO, the COFC will carefully consider the practical impact of its protest decisions—it will not simply sustain "technical" protests—as the U.S. Department of Justice has made clear in its own practice guidance. See U.S. Dep't of Just., U.S. Attorneys' Manual: Civil Resource Manual, Sec. 71. Protest Of Contract Awards, *https://www.justice.gov/archives/usam/civil-resource-manual-71-protest-contract-awards*. The protester "must show that the Government's error prejudiced it." Id. (citing *Labatt Food Serv. v. U.S.*, 577 F.3d 1375, 1378 (Fed. Cir. 2009); 51 GC ¶ 320; *Myers Investigative & Sec. Servs. v. U.S.*, 275 F.3d 1366, 1370 (Fed. Cir. 2002); 44 GC ¶ 25 . To show that an agency's decision lacked a rational basis, according to DOJ, the protest must show that "the contracting officer 'entirely failed to consider an important aspect of the problem, offered an explanation for [her] decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.' " Id. (quoting

Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983)). According to DOJ, the "rational basis" standard is "highly deferential" to purchasing agencies, a "heavy burden," which is " 'not met by reliance on [the] pleadings alone, or by conclusory allegations and generalities.' " Id. (quoting *Bromley Contracting Co. v. U.S.*, 15 Cl. Ct. 100, 105 (1988)); see also *Campbell v. U.S.,* 2 Cl. Ct. 247, 249 (1983). Finally, noted DOJ, "even if the protestor can demonstrate errors in the procurement process, the protestor must then show that it was "significantly prejudiced" by those errors." Id. (citing *Bromley Contracting Co. v. U.S.*, 15 Cl. Ct. 100, 105 (1988)). As a practical matter, the strict standards for pleading and proof mean that "purely technical" bid protests cannot prevail at the COFC, either.

Conclusion—As the discussion above reflects, the bid protest reform proposals before Congress generally have been the subject of many years of debate in the procurement community. Some of those proposals could have untoward, unforeseen effects; others, such as expanded debriefings and reforms of the agency-level bid protest process (to be discussed in Part II of this article) could bring welcome improvements to the federal procurement system.

♦

This Feature Comment was written for THE GOVERNMENT CONTRACTOR by* Christopher R. Yukins*, who serves as the Lynn David Research Professor in Government Procurement Law at the George Washington University Law School. Abi Searle, GW Law Class of 2027, kindly contributed to this article, which is based in part on testimony that Prof. Yukins delivered on July 22, 2025 at a hearing of the U.S. House of Representatives Subcommittee on Government Oversight, see https://publicprocurementinternational.com/2025/07/28/house-government-oversight-subcommittee-bid-protest-reform/. GW Law will be holding a free webinar on pending bid protest reforms at 9 am Eastern time on Sept. 9, 2025; registration is at https://law-gwu-edu.zoom.us/webinar/register/WN_Y1x8apeFSkG5AG_RYFD_4Q#/registration.