

Paul Khoury Discusses DoD-Commissioned RAND Report on Bid Protest System

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Paul F. Khoury, co-chair of Wiley Rein's Government Contracts Practice, was quoted by *Bloomberg BNA's Federal Contracts Report* in a January 9 article about a study commissioned by the 2017 National Defense Authorization Act, evaluating the impact of the bid protest system on U.S. Department of Defense (DoD) procurements. The study, authored by the RAND Corporation, <http://src.bna.com/vmF>, relied on extensive data from the Government Accountability Office (GAO) and the Court of Federal Claims (COFC) as well as input from DoD and industry. Its key findings support the notion that that the bid protest process is an efficient means of assuring transparency and accountability in the procurement process. Its key findings include:

- A major reason for protests is "skimpy," "evasive," "adversarial" debriefings. Improving the debriefing process will likely result in fewer protests.
- The overall percentage of protests of DoD procurements is very small, only 0.3 percent of DoD contract actions. Bid protests "are exceedingly uncommon for DOD procurements."
- Task-order protests have a slightly higher effectiveness rate than other types of protests, suggesting the value of this jurisdiction at GAO.
- Most protest actions at GAO are resolved within 30 days, and fully 70 percent are resolved within 60 days. In these circumstances, there is not a substantial need for reduction in GAO's decision timeline.

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- Small businesses accounted for more than half of protest actions at the GAO and COFC.

The study appears to be “thorough and balanced,” according to Mr. Khoury. “The key takeaways make sense and are consistent with our experience,” he said.

Mr. Khoury also pointed to the study’s conclusion that the stability of the bid protest effectiveness rate over time is a sign that contractors “are not likely to protest without merit.”