

MEDIA MENTION

Paul Khoury Discusses Bid Protest Changes Sought by U.S. Department of Defense

Law360

May 29, 2013

Paul F. Khoury, a partner in Wiley Rein's Government Contracts Practice, was interviewed by *Law360* yesterday for a story on changes the U.S. Department of Defense (DOD) has proposed for the federal bid protest system.

The proposal would prevent contractors whose protests are rejected by the U.S. Government Accountability Office (GAO) from seeking a separate review by the U.S. Court of Federal Claims (COFC). Rather than having the option to seek redress in both forums, protesters would have to choose between the GAO and the COFC. The DOD requested that change as part of a legislative package sent to lawmakers on April 26, *Law360* reported.

The DOD says the rule change is necessary because contract dispute resolutions are needlessly delayed when protesters can turn to the COFC after losing at the GAO. Critics say the agency's proposal would limit contractors' ability to appeal GAO decisions while doing little to improve the bid protest system's efficiency, according to the article.

While the number of bid protests has risen every year since 2006, Mr. Khoury was among attorneys who said the DOD may be overstating the impact of protests that are brought at the COFC after a negative GAO ruling.

"There's probably a misapprehension of how many cases are truly what might be called 'second bite' cases," Mr. Khoury told *Law360*. "Those are not nearly as common as I think some people assume they are."

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When contractors who disagree with a GAO ruling do turn to the COFC, agencies can usually minimize the disruption, he said. Unlike GAO bid protests, which automatically prevent disputed contracts from moving forward, bid protests filed with the COFC do not trigger an automatic stay. Mr. Khoury added that the two venues have disagreed on a few recent cases, and said the current system provides important checks and opportunities for redress.

“GAO does a great job in handling most of the protests that people bring, but every now and then the court brings a different perspective,” he said. “That allows the case law to evolve in a manner that is probably best for public policy purposes. I think both ... learn from each other.”