

Brian Walsh Comments on “Bait-and-Switch” Government Contract Protests

Bloomberg BNA’s Federal Contracts Report

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Brian Walsh, a partner in Wiley Rein’s Government Contracts Practice, was quoted extensively in *Bloomberg BNA’s Federal Contracts Report* on April 14 regarding “bait-and-switch” protests, which occur when contracts are awarded to companies even though key personnel listed in the proposal are no longer there. While some companies knowingly misrepresent personnel that will be available for the contract, others may simply lose key employees during the bidding process.

The issue of personnel departures—which was raised as part of a March 27 decision reopening a Department of Education procurement—relates to a 2014 Government Accountability Office ruling in *Paradigm Technologies, Inc.* Mr. Walsh pointed out at a recent contracting conference that the 2014 ruling did not require that the protester show the awardee had intended to mislead the agency, which could lead to increased number of protests overall.

If a government agency discovers that a company lost personnel promised during the bidding process, it “can now use this as a basis to throw you out of the competition even if you intended to provide everyone you included in your proposal,” Mr. Walsh said.

This emphasis on retaining personnel throughout the procurement process can “at times lead to drawn-out procurements especially where a new company unseats an incumbent,” Mr. Walsh added.

One way to address the issue, according to Mr. Walsh, is for agencies to require that offerors demonstrate an ability to recruit and hire appropriate personnel, rather than list specific individuals who are

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qualified for the contract. "This would reduce or eliminate the use of specific people/resumes and help avoid these issues," Mr. Walsh said.