Antecedents And Consequences Of Federal Bid Protests

12th Annual Acquisition Research Symposium

Tim Hawkins, Lt Col, USAF (Ret.), Ph.D.
Michael J. Gravier, Ph.D.
E. Cory Yoder, Cdr, USN (Ret.)

14 May 2015
# Antecedents And Consequences Of Federal Bid Protests

**Authors:**
Western Kentucky University, 1906 College Heights Blvd, Bowling Green, KY, 42101

**Performer:**
Presented at the 12th Annual Acquisition Research Symposium held May 13-14, 2015 in Monterey, CA.

**Security Classification:**
- a. REPORT: unclassified
- b. ABSTRACT: unclassified
- c. THIS PAGE: unclassified

** limitation of abstract:** Same as Report (SAR)

**Distribution/Availability Statement:**
Approved for public release; distribution unlimited

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The report focuses on the antecedents and consequences of federal bid protests. It is presented as part of the 12th Annual Acquisition Research Symposium, indicating its relevance to the field of public procurement and contract management. The information is designed to provide insights into the motivations behind bid protests and their implications for governmental agencies and contractors.
Overview

Issues with Bid Protests
Purpose & Research Question
Theoretical Frameworks
Methodology
Results
Implications
Protests are costly – ex ante and ex post
  - Transaction costs are not tracked

Protests are increasingly problematic
  - raw # increasing
  - low sustain rate (17%) , but high “effectiveness” rate (43%)
  - protest per 1,000 protestable contract actions increased, 2005-2010

Much “conventional wisdom” and anecdotal evidence of 2nd-order effects of bid protests, but….
  - Don’t know the magnitude of the “fear” of bid protests
  - No research has empirically and quantitatively explored:
    1. the drivers of fear of protests
    2. the outcomes of fear of protests
“Another concern about the cost of the protest system relates to what might be called its indirect impact. *Fear of protests* is often given as the explanation for Contracting Officers’ preference for certain courses of action over others.”


“*Fear of a protest* could also prompt officials to try to structure a contract in a manner they deem less likely to be protested, such as using lowest price technically acceptable as an award criteria instead of a best-value competition.”


“Gordon's article is okay, but he understates the cost of *fear of protests*. Such fear is very real…and retards process innovation.”

Purpose:

• Quantify the magnitude of protest fear, and
• Explore the antecedents and consequences of protest fear

Research Questions:

• Do bid protests lead to sub-optimal acquisition strategy decisions?
• Do bid protests affect source selections?
• If yes, does contractor performance suffer?
• How is contracting officers authority affected?
Public Value Framework

- **Strategic Triangle** (Heymann, 1987; Moore, 1995)
  - public value,
  - legitimacy support,
  - operational capability
Results – Conceptual Model

- Sufficiency of Planned PALT
- Competence
- Control
  - Requirement Criticality
  - Protest Risk
- Fear of Protest
  - Compromised Technical Evaluation
  - Contracting Officer Authority
  - Source Selection Method Appropriateness
  - Added PALT
  - Transaction Costs
- H1 (-)
- H2 (-)
- H3 (+)
- H4 (-)
- H5 (+)
- H6 (-)
- H7 (+)
- H8 (-)
- H9 (-)
- H10 (+)
- H11 (+)
Methodology

Qualitative

- Interviewed 18 KOs ($\bar{x}_{\text{exp}} = 15$ yrs)
- Validated conceptual model & measures

Quantitative

- Online Survey
- Sample:
  - 350 civ & mil contracting personnel experienced in FAR Part 15 source selections
  - $\text{RR} = 17\%$ (9% usable)
  - $\bar{x}_{\text{exp}} = 13.6$ yrs
  - $\bar{x}_{\text{protests}} = 2$
  - 15.4% exp a sustained protest
- Structural Equation Modeling + multivariate models
Results

- Magnitude of Fear:
  - Combined avg score = 16.33 (scale range 4 - 20).
Results

- Sufficiency of Planned PALT
- Competence
- Requirement Criticality
- Protest Risk
- Fear of Protest
  - H1 (-)
  - H2 (-)
  - H3 (+)
  - H4 (-)
  - H5 (+)
  - H6 (-)
  - H7 (+)
  - H8 (-)
  - H9 (-)
  - H10 (+)
  - H11 (+)

- Compromised Technical Evaluation
  - Supported in SEM Model
  - H11 (+)

- Contracting Officer Authority
  - Supported outside of SEM Model
  - H8 (-)

- Source Selection Method Appropriateness
  - Supported in SEM Model
  - H9 (-)

- Added PALT
  - Supported in SEM Model
  - H10 (+)

- Transaction Costs
  -Supported in SEM Model
  - H7 (+)

Legend:
- Supported in SEM Model
- Supported outside of SEM Model
- Not Supported
Results

• Source Selection Method Appropriateness (SSMA):
  • 13/133 respondents used LPTA though inappropriate
  • 10/174 respondents used full trade-off though inappropriate.
  • ~ 7.5% of the 307 respondents

• Logistic regression with SSMA scored high/low (binary DV) related significantly to Fear of Protest (also scored high/low) for those source selections using LPTA method, but low R-Sq

• 84 respondents used task orders to avoid a protest (avg 47x)
• 67 respondents used sole source to avoid a protest (avg 15x)
• 64 used modifications to avoid a protest (avg 17x)

• Fear of Protest not related to increase in # contracts awarded
• H7: Fear of Protest ➔ Transaction Costs (TC)
  • Tested outside of SEM model via regression due to missing data ($n=270$)
  • $\Sigma(salary)*(\#\ people)*(fraction\ of\ allocated\ time)$
  • Avg 9 different people worked on a given source selection team in the various roles (avg 3.5 FTEs).
  • TC range: $700 - $3.5M
  • Avg TC per source selection = $235K
  • As a % of the total contract price, the transaction costs averaged 7.7%
• Acquisitions should not be hastened short of the time thought to be adequate by the KO.
  • Publish standard lead times
• Increase the # of source selections experienced by contracting officers.
  • Source selection simulations and scenario-based training vs. only OJT
• Source selection costs are not trivial
  • Time sunk in SS is time not invested elsewhere
  • Drives manning
• Compare against common industry metrics (e.g., total spend per sourcing FTE (CAPS Research, 2011))
For contractors: When a buying office builds an acq strategy ill-suited to the buying situation, it may be due to the fear of a bid protest.

- Prospective offerors may misinterpret the use of LPTA as an added emphasis on price. Their bid strategy, then, may be influenced by reducing costs and price, potentially putting high performance at risk.

- But, the agency may not be terribly concerned about price.

- Need to counter compromised technical evaluations
  - In-depth SS training to tech evaluators
  - Tech evaluators write SOW/specs should be on SSET
Implications

• Better training is needed for contracting personnel and technical evaluators to develop the requisite competence in source selections.
  • oversight/reviews could be curtailed.
  • Some protest risk could be accepted for the sake of efficiency and better decision making (i.e., plan to hold discussions but limit technical leveling)

• If not capable, trusted and empowered to make the necessary decisions, procurement clerks (series 1105) would be much less costly than contracting professionals (series 1102).
The fear of protest was empirically validated.

Fear of protests affects:
- Source selection method
- KO authority
- Tech evaluation effectiveness
- Transaction costs & lead time

Future research:
- Expand the sample Fed-wide
- Seek higher RR
- Explore means to increase SS efficiency w/o compromising fairness
- Explain LPTA inappropriate use (factors other than fear of protest)