Bid Protests

Wiley Rein has one of the most active and well-respected bid protest practices in the nation, one that is widely regarded as the Government Contracts Group's “forte” (Chambers USA). Whether as a successful awardee or disappointed bidder, all companies must understand the realities of the bid protest process to successfully defend their own contract awards from protest or to vindicate their rights to full and open competition as a protester. With collective participation in thousands of bid protests, there is little—if anything—that our Government Contracts lawyers have not seen before, which is critical in bid protest litigation where there is no “ramp-up” time or room for “on-the-job training.”

We regularly represent companies either challenging or defending procurement procedures or contract awards in bid protests before contracting agencies, the U.S. Government Accountability Office (GAO), the U.S. Court of Federal Claims (COFC), and the U.S. Court of Appeals for the Federal Circuit.

Our successes span the range of protest bases and include many issues of first impression:

- Successfully protested award of a multibillion-dollar defense freight transportation contract at GAO, forcing the agency to reopen the competition, and then defended the agency's subsequent favorable award decision through appeal to the Federal Circuit. See COFC Decision and two separate Federal Circuit Appeals—XPO Logistics Worldwide Services, LLC v. United States, 135 Fed. Cl. 551 (2017), XPO Logistics Worldwide Gov't Servs., LLC v. United States, 713 F. App'x 1009 (Fed. Cir. 2018) and XPO Logistics Worldwide Gov't Servs., LLC v. United States, 713 F. App'x 1008 (Fed. Cir. 2018).


- Successfully protested on behalf of Verizon Wireless the terms of a GSA solicitation that would have impacted more than $1.6 billion in government-wide purchases of wireless services. See Decision—Verizon Wireless, B-406854, Sept. 17, 2012, 2012 CPD ¶ 260. Verizon Wireless was subsequently awarded one of the contracts issued under the solicitation.

- Successfully defended protest of Medicare Recovery Audit Contract award potentially worth hundreds of millions of dollars against allegations that the awardee (our client) had an impaired objectivity organizational conflict of interest (OCI) See Decision—Diversified Collection Services, Inc., B-406958, Jan. 8, 2013, 2013 ¶ 23.

- Successfully defended protest challenging the Centers for Medicare & Medicaid Services (CMS) award to Novitas Solutions, Inc. of a Medicare and Medicaid claims processing contract valued at over $400 million. See Decision—TrailBlazer Health Centers, LLC, B-407486.2, Apr. 16, 2013, 2013 CPD ¶ 103.
Successfully defended protest alleging that our client, the contract awardee, had an unmitigable impaired objectivity OCI. See Decision--Pragmatics Inc., B-407320.2, Mar. 26, 2013, 2013 CPD ¶ 83.

Successfully challenged before the COFC, the Army's nonresponsibility determination and its decision to exclude our client from the competitive range. See Decision--Afghan American Army Servs. Corp. v. United States, 106 Fed. Cl. 714 (Oct. 15, 2012).

Successfully protested on behalf of The Boeing Company the U.S. Air Force award of a $35 billion contract for the next generation of aerial refueling tankers, prevailing on several protest grounds in one of the most prominent GAO protests in recent history. See Decision--The Boeing Company, B-311344, June 18, 2008, 2008 CPD ¶ 114. Boeing was subsequently awarded the contract following a new competition.

Successfully defended protests brought by two disappointed offerors challenging CMS award to Noridian Administrative Services of a large Medicare and Medicaid claims processing contract valued at almost $400 million before the GAO and the follow-on protest filed at the COFC. See Decision, GAO--Palmetto GBA, LLC, B-407668, Jan. 18, 2013, 2013 CPD ¶ 53, and COFC Decision CGS Administrators, LLC v. United States, 110 Fed. Cl. 431 (2013).

Successfully defended the award of a $1.1 billion Air Force operations and maintenance contract in a bid protest filed at the GAO. After the protester obtained injunctive relief at the COFC on a single issue, Wiley Rein secured a reversal on appeal to the Federal Circuit, dissolving the injunction and affirming the award to our client. See Second PEMCO GAO Decision, PEMCO COFC Decision, and PEMCO Federal Circuit Decision--Pemco Aeroplex, Inc., B-310372.3, June 13, 2008, 2008 CPD ¶ 126; Alabama Aircraft Industries, Inc.-Birmingham v. United States, 586 F.3d 1372 (Fed. Cir. 2009).

In addition to these and other reported decisions, Wiley Rein has represented clients in numerous other bid protest matters that yielded successful results without a written decision, including matters in which the procuring agency has voluntarily adopted early corrective action or a protest has resulted in early outcome prediction.