

Bid Protests

Repeatedly recognized by *Chambers USA*, Wiley has one of the most well-respected bid protest practices in the nation. Whether representing a successful awardee or disappointed offeror, we help clients navigate the bid protest process to successfully defend their own contract awards or to vindicate their rights to full and fair competition as a protester. With collective participation in more than 100 bid protests every year at the U.S. Government Accountability Office (GAO), the U.S. Court of Federal Claims (COFC), and on appeal to the U.S. Court of Appeals for the Federal Circuit, our Government Contracts lawyers are prepared for issues of first impression and out-of-the box arguments.

Our successes include:

- Successfully represented M.C. Dean, Inc., in a GAO bid protest following the award to a competitor of one of its flagship incumbent contracts supporting an intelligence community agency. After GAO sustained the protest and found that the awardee misrepresented the availability of one of its key personnel, the agency conducted a new evaluation and awarded the contract back to our client. (*M.C. Dean, Inc.*, B-418553.2, 2020 CPD ¶ 206).
- Successfully represented Guidehouse protesting and defending contract awards with a total value in excess of \$1 billion at both GAO and COFC, including twice protesting a U.S. Food and Drug Administration blanket purchase agreement (BPA) valued over \$100 million, resulting in the eventual award of the contract to Guidehouse, which we went on to defend in another GAO protest (*Deloitte Consulting, LLP*, B-416882.4, 2020 CPD ¶ 21); and successfully defended the incumbent contractor's protests of the strategically important award of a single award IDIQ contract to Guidehouse for the worldwide deployment of the U.S. Department of State's modernized identity and credential management system. (*XTec, Inc.*, B-418619, 2020 CPD ¶ 253, and *XTec v. United States*, 2021 WL 1186862 (Fed. Cl. Mar. 1, 2021)).
- Successfully defended Central Plateau Cleanup Company, LLC in challenges to the award of a contract worth up to \$10 billion for remediation services at the U.S. Department of Energy's Hanford site, including defending against allegations related to corporate reorganization of entity now known as Amentum. (*Project W Restoration, LLC*, B-418419, 2020 CPD ¶ 162).
- Retained to handle a follow-on protest at COFC after a GAO protest, Wiley quickly absorbed the record and successfully defended the award to DynCorp of a U.S. Navy contract for maintenance and logistics support services for the Navy's TH-57 training helicopters, an award that unseated a longtime incumbent. Shortly after joining the case, the COFC granted the government's and DynCorp's motions to

dismiss one count of the protester's complaint as untimely and then granted the government and DynCorp judgment on the administrative record on the remaining counts. (*Vertex AeroSpace, LLC v. United States*, 142 Fed. Cl. 755 (2019)).

- Successfully represented URS Federal Services (an AECOM Company) in consecutive bid protests by PAE Applied Technologies LLC before the GAO and COFC challenging the U.S. Air Force's \$3.6 billion award for Range Support Services at the Nevada Test and Training Range. After GAO denied PAE's protest, PAE filed another protest at the COFC, which the Court dismissed.
- Successfully represented Crowley Logistics, Inc., in a GAO protest of a multibillion-dollar USTRANSCOM award. After corrective action, the agency awarded the contract to our client. We then successfully defended the award at the COFC and the Federal Circuit. (*XPO Logistics Worldwide Gov't Services, LLC v. United States*, 134 Fed. Cl. 783 (2017), *aff'd*, 713 Fed. Appx. 1008 (Fed. Cir. 2018), and *XPO Logistics Worldwide Gov't Services, LLC v. United States*, 133 Fed. Cl. 162 (2017), *aff'd*, 713 Fed. Appx. 1009 (Fed. Cir. 2018); *Crowley Logistics, Inc.*, B-412628, 2016 CPD ¶ 120).
- Successfully challenged agency attempts to procure commercial products and services on terms and conditions that were inconsistent with customary commercial practice, the Federal Acquisition Streamlining Act, and FAR Part 12, making new law on challenges to solicitations at GAO and then COFC and the Federal Circuit. (*CGI Fed. Inc. v. United States*, 779 F.3d 1346 (Fed. Cir. 2015)).
- Successfully challenged the Army Corps of Engineers' decision to follow GAO's recommendation that Turner Construction Co., Inc., be excluded from a competition because of an alleged organizational conflict of interest related to merger discussions involving one of Turner's subcontractors. In a landmark decision, the COFC and the Federal Circuit agreed that the agency acted arbitrarily in following GAO's recommendation, as the agency had conducted a reasonable OCI investigation, and ordered the contract be reinstated to Turner. (*Turner Constr. Co. v. United States*, 94 Fed. Cl. 561 (2010), *aff'd*, 645 F.3d 1377 (Fed. Cir. 2011)).
- 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 The Boeing Company*, B-311344, 2008 CPD ¶ 114. Boeing was subsequently awarded the contract following a new competition.

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