

Bid Protests in 2025

An Overview of Early Results and Lessons Learned

Om Jahagirdar (Amtrak)

Deputy General Counsel | +1 202.906.3895 | om.jahagirdar@Amtrak.com

Paul Debolt (Venable)

Partner | +1 202.344.8384 | padebolt@Venable.com

Chris Griesedieck (Venable)

Counsel | +1 202.344.4771 | cgriesedieck@Venable.com

Allison Siegel (Venable)

Associate | +1 703.760.1656 | amsiegel@Venable.com

VENABLE LLP



Panel



Om Jahagirdar (Amtrak)

Deputy General Counsel

+1 202.906.3895

om.jahagirdar@Amtrak.com

Om Jahagirdar is Deputy General Counsel (Real Estate & Infrastructure) at Amtrak. He is a business savvy and results-oriented legal executive leading (with Amtrak's DT partners) Amtrak's Gen-AI rollout. Om provides strategic advice to senior management to drive revenue growth and reduce risk, with expertise across a wide portfolio of areas, including people management, corporate governance, risk management, infrastructure, and insurance. Before joining Amtrak, Om was previously an Associate General Counsel at Freddie Mac.



Paul Debolt (Venable)

Partner

+1 202.344.8384

padebolt@Venable.com

Paul Debolt counsels government contractors in navigating the requirements for conducting business with the federal government. Whether consulting on day-to-day issues or bet-the-company litigation, Paul brings deep understanding and meaningful experience. He tackles competitive source selection problems; defends and prosecutes bid protests; advises on regulatory issues, technical data rights, and Foreign Ownership Control and Influence (FOCI); and addresses performance and termination-related claims. Paul advises on internal investigations, conducts due diligence in connection with the merger and acquisition of government contractors, and manages novations and post-transactional matters.

VENABLE LLP



Panel (cont.)



Chris Griesedieck (Venable)

Counsel

+1 202.344.4771

cggriesedieck@venable.com

Chris Griesedieck's practice encompasses a wide range of government contract and grant-related matters—such as claims, requests for equitable adjustment, and bid protests. Chris's clients include large corporations and small and minority-owned companies doing business with defense and civilian agencies. Chris has advised and represented clients on cost and pricing issues, including the Federal Acquisition Regulation Cost Principles and Procedures and the Cost Accounting Standards. He also helps clients understand the Service Contract Labor Standards (formerly the Service Contract Act of 1965) and address the ratification of unauthorized commitments, organizational conflicts of interest, and post-employment restrictions on former federal officials.



Allison Siegel (Venable)

Associate

+1 703.760.1656

amsiegel@Venable.com

Allison Siegel is an experienced analyst and advisor on federal regulatory matters. Allison assists clients with government contracts and federal grant matters, including federal investigations, bid protests, claims, litigation, regulatory compliance, mergers and acquisitions, and grant funding disallowances. She represents clients in bid protests and interventions before the Government Accountability Office (GAO) and the U.S. Court of Federal Claims. In her time as a trial attorney with the U.S. Department of Justice (DOJ), Allison managed and investigated civil False Claims Act (FCA) cases originating from qui tam relators, disclosures, and government sources alleging federal procurement, international trade, and healthcare fraud.

Agenda

- The Times They Are A-Changin’
 - GAO’s New Pleading Standard; Perils of AI in Briefing Writing
 - Equitable Tolling of CICA Stay Deadline
- Oldies but Goodies
 - Timeliness Troubles
 - Dogs That Still Won’t Hunt—And Some That Might
- Practice Points
 - In-House Counsel under the Protective Order
 - Chief Judge Solomson’s “Three Buckets” of Protests
 - Data Integrity Bites Back
- There but for the Grace of God...
 - Ignore the Intervenor at Your Own Risk
 - GAO/COFC Splits and Prejudice Problems
- The Winner Takes It All, or Them’s the Breaks

The Times They Are A-Changin’

GAO’s New Pleading Standard

- FY25 NDAA, § 885(a): GAO to submit proposal for process under which GAO will apply enhanced pleading standard to DoD protests and potential “loser pays” rule.
- GAO [Response](#): Will clarify pleading standard, but don’t think “loser pays” is practical or needed.
- *Warfighter Focused Logistics, Inc.*, B-423546, B-423546.2, Aug. 5, 2025, 2025 CPD ¶ 169:
 - “[O]ur stated pleading standard provides that protesters must allege, at a minimum, **either** allegations **or** evidence sufficient, if uncontradicted, to establish the likelihood of the protester’s claim of improper agency action. This formulation may have created a perception that allegations standing alone are sufficient to meet our pleading standards. In practice, our decisions have explained that ‘bare allegations’ or allegations based upon ‘information and belief’ are not sufficient to meet our pleading standards.”
 - “In order to make it clear that only protests meeting the standards of legal and factual sufficiency will survive dismissal, we proposed to replace our existing formulation with a requirement that protesters must provide, at a minimum, **credible** allegations that are supported by evidence **and** are sufficient, if uncontradicted, to establish the likelihood of the protester’s claim of improper agency action ... We adopt this formulation of our pleading standard here and in future decisions.”

The Times They Are A-Changin' (cont.)

Perils of Artificial Intelligence (AI) in Briefing

- Series of cases in which GAO addressed incorrect legal citations appearing in briefing.
- GAO noted that COFC and other courts have already been dealing with this via sanctions.
- GAO asserts an “inherent right” to impose sanctions as well, including by dismissing protest.
- These cases did not involve counsel, but GAO will sanction *pro se* parties.
 - *Raven Investigations & Sec. Consulting, LLC*, B-423447, May 7, 2025, 2025 CPD ¶ 81
 - “We do, however, advise the protester—and future parties that appear before this forum—that after a review of the totality of the circumstances surrounding the submission and content of pleadings submitted to our Office, the submission of filings with citations to non-existent authority may result in the imposition of appropriate sanctions.”
 - *Helgen Indus. d/b/a Desantis Gunhide*, B-423635, Aug. 26, 2025, 2025 CPD ¶ 201 (warning)
 - *Oready, LLC*, B-423649 *et al.*, Sept. 25, 2025, 2025 CPD ¶ 228
 - Sanction (dismissal) imposed for “repeated submission of non-existent citations or decisions, as evidenced in the multiple protests” and because “misconduct continued after GAO explicitly warned the protester of the potential for sanctions”

The Times They Are A-Changin' (cont.)

Equitable Tolling of Competition in Contracting Act of 1984 (CICA) Stay Deadline

- *Starside Sec. & Investigation, Inc. v. United States*, 177 Fed. Cl. 28 (2025) (Wolski, J.)
 - GSA refused to implement CICA stay because protest filed at GAO >10 days after award
 - But agency system apparently did not alert protester to award, and posting to public Federal Procurement Data System (FPDS) was delayed until 11 days after award.
 - COFC addresses “novel legal question” of whether the 10-day deadline to file a protest at GAO and obtain the CICA stay could be equitably tolled.
 - Answer: YES.
 - Equitable tolling is presumptively available for statutory time limits unless there is a good reason to believe Congress did not want the doctrine to apply.
 - No such evidence here with respect to CICA.
 - Court also found equitable tolling was warranted under these circumstances because protester pursued its rights diligently and extraordinary circumstances stood in its way.

Oldies but Goodies

Timeliness Troubles

- Quotations, Proposals, Capability Statements
 - *Competitive Innovations, LLC v. United States*, 177 Fed. Cl. 717 (2025) (appeal filed)
 - Applied “late is late” rule to uphold rejection of quote because vendor failed to modify its Federal Supply Schedule labor category to match the quote until 3 hours after the submission deadline.
 - *La Playa, Inc. of Virginia - d/b/a Lpi Tech. Servs.*, B-423379, June 12, 2025, 2025 CPD ¶ 149
 - Proposal reasonably rejected as late where attempt to submit 30 minutes before deadline was unsuccessful and no showing that any malfunction in government system was systemic
 - *ConnectUp et al.*, B-423557 *et al.*, Aug. 12, 2025, 2025 CPD ¶ 193
 - Sending product demonstration models (via overnight) four days before the deadline did not meet obligation to “not significantly contribute to the late delivery by not allowing enough time to permit a timely submission”
 - *Econ. Sys., Inc.*, B-423747, B-423747.2, Aug. 22, 2025, 2025 CPD ¶ 199
 - Company not an interested party to protest a sole-source award because it did not submit a timely capability statement in response to the agency’s Request for Information.

Oldies but Goodies (cont.)

Timeliness Troubles

- Quotations, Proposals, Capability Statements (cont.)
 - *Strategic All., Inc.*, B-423359, May 30, 2025, 2025 CPD ¶ 119
 - Offeror bears burden that Small Business Administration's Dynamic Small Business Search (DSBS) database will not show submitted application for Woman-Owned Small Business (WOSB) status as "pending" by the time of proposal submission.
 - FAR 52.204-7 SAM registration lapse cases continue to have varying outcomes but should hopefully end now that FAR Council fixed rule. *See, e.g., Zolon PCS II, LLC v. United States*, 176 Fed. Cl. 279 (2025); *Metris LLC*, B-422996.2, Jan. 13, 2025, 2025 CPD ¶ 27; *Analysis, Stud., & Training Int'l, LLC v. United States*, 175 Fed. Cl. 523 (2025).

Oldies but Goodies (cont.)

Timeliness Troubles

- Protests
 - *Wright Bros. Aero, Inc.*, B-423326.2, July 7, 2025, 2025 CPD ¶ 154
 - Debriefing exception to 10-day protest filing deadline not available where debriefing request was not timely made (within 3 days)
 - *Jude & L Constr., LLC*, B-423425, July 3, 2025, 2025 CPD ¶ 153
 - Protest untimely—protester should not have relied on contracting officer email stating agency would reach out if no past performance questionnaire was received. That statement was inconsistent with the solicitation, creating a patent ambiguity that should have been protested before proposal submission.
 - *SOFITC3, LLC v. United States*, 178 Fed. Cl. 194 (2025)
 - Protester waived protest of agency’s decision to treat awardee’s two prior task orders as a single “engagement” for evaluation purposes by not protesting that term’s lack of definition pre-award.

Oldies but Goodies (cont.)

Dogs That Still Won't Hunt—And Some That Might

- *Subsidium, Inc.*, B-423708, Sept. 11, 2025, 2025 CPD ¶ 215
 - “[T]he adequacy of a debriefing—or, in this instance, a brief explanation of award—concerns an agency’s post-award conduct when providing information to competitors, which generally has no bearing on the propriety of the agency’s contemporaneous evaluation and source selection decision.”
- *Centuria Corp.*, B-422245.6, Aug. 1, 2025, 2025 CPD ¶ 183
 - Denying protest that agency should have provided protester opportunity to submit a final proposal revision on basis that it held discussions with awardee because procurement was subject to FAR Part 16, not FAR Part 15.307(b).
- *C4CJV, LLC*, B-423512.2, July 31, 2025, 2025 CPD ¶ 179
 - Agency reasonably found protester’s proposal deficient because one of its subcontractors failed to submit a required cost workbook. Agency’s ability to pull some of same information from cost narrative did not relieve protester of its obligation.
- *Integral Fed., Inc.*, B-423672, Aug. 1, 2025, 2025 CPD ¶ 185
 - No jurisdiction because awarded value of task order was below \$35M. Did not matter that protester alleged agency should have amended RFP to be higher value based on its true needs.

Oldies but Goodies (cont.)

Dogs That Still Won't Hunt—And Some That Might

- *Red River Sci. & Tech., LLC v. United States*, 176 Fed. Cl. 641 (2025)
 - Army had authority to take corrective action on an untimely GAO protest. “The GAO’s rule does not purport to preclude either the GAO or the procuring agency from taking action when a technically forfeited argument is substantively meritorious. The GAO retains discretion to consider untimely arguments and grant relief ... And even if the GAO would have rejected Gemini’s argument as untimely, that does not mean the Army was compelled to *assert* the defense rather than taking action to improve the procurement.”
- *I. M. Sys. Grp., Inc.—Recon.*, B-422727.4, May 28, 2025, 2025 CPD ¶ 129
 - Reconsideration not available merely because GAO’s decision did not discuss a particular argument. GAO justifies this practice based on CICA’s requirement to provide for the “inexpensive and expeditious resolution of protests.” GAO rejected the argument that this rationale does not apply to supplemental protests.
 - “We likewise affirm the principle that the absence of a specific discussion of a protest ground or argument is not indicative of an error of fact or law, and does not, by itself, serve as a foundational basis for requests for reconsideration.”

Oldies but Goodies (cont.)

Dogs That Still Won't Hunt—And Some That Might

- *Advanced Tech. Sys. Co. v. United States*, 177 Fed. Cl. 443 (2025)
 - Navy irrationally treated Satisfactory and Neutral Confidence past performance ratings equally, apparently based on the erroneous belief that it was required to do so.
- *Sancorp Consulting, LLC*, B-422985.4, B-422985.5, June 11, 2025, 2025 CPD ¶ 138
 - Protest dismissed because protester had actual knowledge of key personnel's unavailability but failed to notify agency. Key factor was that personnel resigned from employment directly with protester. Protester could not rely on signed letter of commitment to assume he would be rehired upon award.
- *Taylor Made Transp. Servs., Inc.*, B-423117.3, May 28, 2025, 2025 CPD ¶ 121
 - GAO will adjudicate challenge to contract termination “where the agency’s decision to terminate the contract flows from a defect the contracting agency perceived in the award process.”
 - “In cases such as these, we will examine the award procedures that underlie the termination action for the limited purpose of determining whether the initial award was improper, and, if so, whether the corrective action [the termination] taken is proper.”

Practice Points

In-House Counsel under the Protective Order

- *Pac. Eng'g Inc. v. United States*, 177 Fed. Cl. 576 (2025)
 - COFC granted in-house counsel's request for admission under the protective order in a bid protest, even though company had outside counsel under PO as well.
 - Reasoning:
 - Undisputed that in-house counsel did not provide advice or counsel on competitive decision making or other business decisions for intervenor.
 - Instead, in-house counsel's work involved oversight of the conduct of civil litigation initiated against and by company in federal and state courts.
 - Risk of inadvertent disclosure of protected information was negligible, given lack of participation in competitive decision making and agreement to undertake protective measures.

Practice Points (cont.)

Chief Judge Solomson's "Three Buckets" of Protests

- *Golden IT, LLC v. United States*, 177 Fed. Cl. 118 (2025) (Solomson, C.J.)
 - "Given the APA's standard of review applied in post-award procurement challenges, 28 U.S.C. § 1491(b)(4), government procurement challenges may generally be categorized into three buckets:"
 - Statute/regulation/solicitation requires agency action and protester argues non-compliance.
 - Statute/regulation/solicitation provides discretion and protester argues arbitrary exercise.
 - Hybrid: statute/regulation/solicitation requires analysis based on specified factors, but ultimate decision based on agency's sound judgment.
 - Why do the buckets matter?
 - First bucket is de novo review. Second and third are deferential (arbitrary, capricious, abuse of discretion standard).
 - Type of error also informs prejudice analysis and scope of relief.
- *TISTA Sci. & Tech. Corp. v. United States*, 177 Fed. Cl. 600 (2025) (Solomson, C.J.)
 - Second and third buckets are "precisely the sort of uphill battle protest that seldom prevails" due to "twin layers of deference" to agency.

Practice Points (cont.)

Data Integrity Bites Back

- *Marathon Targets, Inc. v. United States*, 175 Fed. Cl. 725 (2025)
 - Offeror properly disqualified from competition for retaining source selection information (regarding awardee’s intended subcontractor and evaluated strengths) inadvertently shared by agency—even though it was used to file a protest in coordination with counsel.
 - COFC held appearance of impropriety justified disqualification, based on: “(1) Plaintiff’s misrepresentation of [awardee’s] press release as a basis for its knowledge of the identity of [awardee’s] subcontractor; (2) Plaintiff’s apparently contrived use of an employee’s post-protest communication as a basis for that knowledge; and (3) Plaintiff’s distribution of protected material to non-attorneys working inside and outside the company and, following notification of the inadvertent disclosure, its legally unjustified attempts to retain the information.”
 - “Given that the parties agree the inadvertent disclosure was improper, the investigator reasonably concluded that Plaintiff’s attorney, ‘who has decades of experience in bid protests’ and ‘possessed an ethical and legal obligation to report the disclosure to the Government’ and other experienced Marathon employees ‘should have been fully aware that they had received improperly provided, protected source selection information.’”

Practice Points (cont.)

Data Integrity Bites Back

- *BBGSRO Constr. S.R.L.*, B-423091, B-423091.2, Jan. 21, 2025, 2025 CPD ¶ 40
 - GAO dismissed supplemental protest as abuse of process because it was based on information gleaned from faulty redactions in agency report.
 - “Upon discovering that it could copy the information contained under the black redactions and thereby discover the information the agency had attempted to redact, **the protester’s counsel did not alert the agency or our Office to the issue**. Rather, the protester’s counsel took affirmative steps to electronically manipulate the file for the purpose of obtaining access to information the agency clearly intended to redact. Moreover, the redacted information obtained included source selection sensitive and potentially proprietary information about not only the awardee but also a third offeror that is not a party to the protest. **Private parties and agencies whose information, whether proprietary or source selection sensitive, is provided under the aegis of our protective orders must have the assurance that our Office will be vigilant in protecting that information**, to the extent that we are able to do so. Accordingly, **we dismiss in their entirety the supplemental protest grounds** identified above.”

There but for the Grace of God...

Ignore the Intervenor at Your Own Risk

- *Amentum Parsons Logistics Servs. LLC—Recon.*, B-422697.14, Sept. 18, 2025, 2025 CPD ¶ 224
 - Agency responded to protest on the merits and did not raise interested party status.
 - Intervenor's comments on agency report argued protester's proposal failed to comply with solicitation's material requirements for small business participation, rendering it ineligible for award and not an interested party to protest.
 - Protester filed comments and supplemental protest minutes later, not addressing interested party status.
 - Agency's supplemental agency report did not address interested party issue.
 - Intervenor reasserted this argument in its supplemental comments. Protester didn't address it.
 - GAO dismissed protest for lack of interested party status and denied request for reconsideration. Protester argued that the discussions it received were flawed because they did not raise this deficiency. GAO held protester waived opportunity to make that argument by not raising it during the briefing.

There but for the Grace of God... (cont.)

GAO/COFC Splits

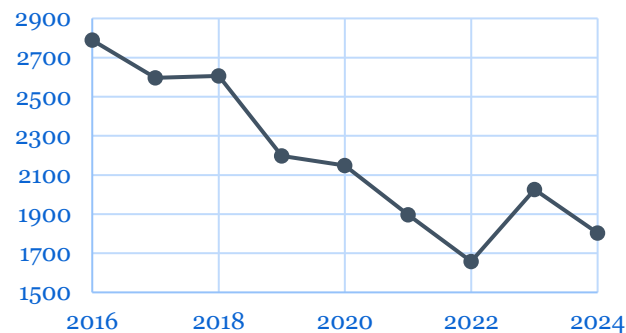
- *Kropp Holdings, Inc. v. United States*, 176 Fed. Cl. 512 (2025)
 - Although GAO cases have been read to mean firewalls are irrelevant to mitigating impaired objectivity organizational conflicts of interest (OCI), COFC reasoned that GAO precedent “does not stand for the proposition that internal firewalls can *never* mitigate impaired objectivity OCIs, but instead suggests that internal firewalls may be insufficient to mitigate such OCIs where the awardee retains the ability to subjectively benefit itself as it performs the contract.”
- *Loyal Source Gov’t Servs., LLC v. United States*, 176 Fed. Cl. 170 (2025)
 - Protester challenged a solicitation requirement to provide wage and health & welfare rates as inconsistent with customary commercial practice under FAR 12.301 and 12.302.
 - COFC parsed FAR Subpart 12.3 (including extent to which it applies to “provisions” vs. “clauses”) more closely than GAO decisions in this area (*see, e.g., Orleans PC*, B-420905, Oct. 25, 2022, 2022 CPD ¶ 269).
- *Gemini Tech Servs., LLC v. United States*, No. 25-1337, 2025 WL 2674585 (Fed. Cl. Sept. 8, 2025)
 - Agency overrode CICA stay on 3-month contract. COFC denied PI motion, but “wonder[ed] why the GAO did not expedite its decision-making” given that “if the stay override is not removed, the contract here will be completed before the GAO reaches its decision.”

There but for the Grace of God... (cont.)

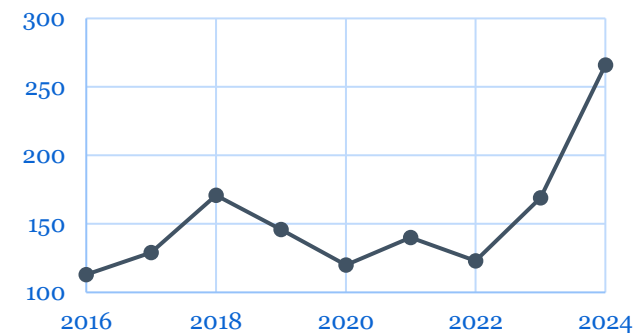
GAO/COFC Splits (cont.)

- [Law360](#): “Claims Court Becoming More Attractive For Bid Protests” (Sept. 19, 2025)
 - Factors discussed in article:
 - Broader administrative record
 - Availability of oral argument
 - Court decision that is binding on agency
 - Increase in large procurements in which one party can “remove” all protests to COFC
 - DOJ’s willingness to voluntarily stay awardee’s performance during accelerated briefing
- Protest filing data from GAO [Annual Reports](#) and COFC [Statistical Reports](#):

Cases Filed (GAO)



Cases Filed (COFC)



There but for the Grace of God... (cont.)

Prejudice Problems

- *KL3, LLC v. United States*, 176 Fed. Cl. 657 (2025)
 - “In order to successfully protest a government procurement, a protestor must demonstrate that the government agency committed an error in conducting the procurement at issue and that the error prejudiced the protestor. Although both of these requirements must be met, protestors regularly focus (sometimes exclusively) their protest pleadings and briefing on the former requirement, ignoring the equally important prejudice requirement. Many times, this strategy works as the prejudice created by an agency’s error is readily apparent ... But in instances in which the alleged prejudice caused by the error is not obvious, failure to allege in the complaint and then prove prejudice on the merits is fatal to a protestor’s case.”
 - Protest of 8(a) set-aside denied because protester failed to plausibly allege it could compete for award if the set-aside were removed. It did “nothing more than baldly assert that it was capable of performing and, but for the alleged errors, would have been awarded a contract.”

There but for the Grace of God... (cont.)

Prejudice Problems

- Continuing inconsistency on prejudice standard for waived requirements at GAO:
 - *1st SBC Sols., LLC*, B-423172.4, B-423172.5, Aug. 1, 2025, 2025 CPD ¶ 168
 - “To demonstrate prejudice from the waiver or relaxation of solicitation requirements, a protester must show that it would have altered its proposal to its competitive advantage, or that the agency did not apply a similar waiver to the protester’s proposal.”
 - “In cases where the protester argues that an agency waived a certain requirement, **prejudice does not mean, had the agency failed to waive the requirement, the awardee would have been unsuccessful.**”
 - *Kako’o Spectrum Healthcare Sols., LLC*, B-421127.5, B-421127.6, May 28, 2025, 2025 CPD ¶ 118 (similar)
- *Island Peer Rev. Org., Inc.*, B-417297.2, Sept. 12, 2025, 2025 CPD ¶ 218
 - “We find that IPRO was prejudiced by the agency’s actions ... **If the agency were to reevaluate proposals and find that Superior Health’s proposal does not satisfy the QIO eligibility assessment, Superior Health would be ineligible for award, putting IPRO in line for issuance of the task order. This demonstrates competitive prejudice.**”

The Winner Takes It All, or Them's the Breaks

- *Rivernorth, Inc.*, B-423274.2, B-423274.3, Apr. 18, 2025, 2025 CPD ¶ 100
 - Upholding rejection of quote for wrong font size in some page numbering (RFQ said “[vendors] that do not comply with the detailed instructions for the format and content of the quot[ation] will be considered nonresponsive or deficient and will be considered ineligible for award.”)
- *Beacon Indus., Inc.*, B-423103, Jan. 15, 2025, 2025 CPD ¶ 30
 - Agency properly downgraded proposal based on stop-work order issued on prior contract for non-confirming deliveries. It did not matter that protester disputed validity of the stop-work order: “an agency may base its evaluation of a protester’s past performance upon a reasonable perception of inadequate past performance, without regard to the firm’s efforts to dispute it.”
- *Logmet LLC*, B-423188.2, June 10, 2025, 2025 CPD ¶ 123
 - In \$2.3B procurement, deficiency and unacceptable rating were reasonably assigned for parroting the Statement of Work (SOW) (“entire sections of the protester’s proposal were verbatim or near-verbatim recitations of the SOW”)
- *Percipient.AI, Inc. v. United States*, 153 F.4th 1226 (Fed. Cir. 2025) (appeal filed)
 - A would-be commercial subcontractor lacks standing to protest an agency’s failure to force prime contractors to purchase from the subcontractor. Must be actual/prospective bidder.

Questions?

Don't be shy!

VENABLE_{LLP}



© 2025 Venable LLP.

This document is published by the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.

VENABLE_{LLP}

