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### FEATURE COMMENT: An Analysis Of GAO's 2019 Bid Protest Statistics—Together With Last Year's Top Protest Decisions And Developments

The Government Accountability Office has released its bid protest statistics for fiscal year 2019. *GAO Bid Protest Annual Report to Congress for Fiscal Year 2019* (GAO-20-220SP) is available at [www.gao.gov/products/GAO-20-220SP](http://www.gao.gov/products/GAO-20-220SP); 61 GC ¶ 328. In the past half-decade, the major statistical theme has been the prevalence of agency voluntary corrective action, and that did not change much. But protest filings and sustain rates were off, with filings down substantially—good news, we suppose, for those who believe there are “too many protests.”

**GAO's Reported Statistics**—GAO received 2,071 and closed out 2,080 bid protests in FY 2019. (As many readers know, GAO counts protests by docket number, or “B-numbers,” not by the number of procurements challenged; multiple B-numbers in one proceeding are common, especially for more complex or hotly contested procurements.) In FY 2018, GAO received 2,474 protests, so the FY 2019 protest filings decreased 16.2 percent, following a modest downturn the year before.

For FY 2019, GAO reported 40 cases in which alternative dispute resolution was employed, 36 times successfully (for a success rate of 90 percent). This compares to totals of 86 and 81 ADR attempts in the preceding two years, so there was a substantial drop-off in ADR cases last year. Hearings were held in 21 cases, up markedly from an historical low of five in the preceding year. There were 64 requests for reconsideration, down some but still a remarkably high number given the super-long odds of success.

GAO also reported that 373 (up from 356) or nearly 17 percent (up from 13.4 percent) of all cases closed in FY 2019 involved task or delivery order procurements under indefinite-delivery, indefinite-quantity (IDIQ) contracts. The steady march of IDIQ contracting, and protests, continues.

Of GAO's 587 protest cases that went all the way to a sustain-or-deny decision in FY 2019 (about 28.2 percent of protests closed out), 77 or 13 percent resulted in a sustained protest. This compares to the 92 sustained protests in FY 2018, or a sustain rate of 15 percent. Plainly, the 139 sustained protests in FY 2016, for a sustain rate of 23 percent, were the anomaly.

As it does every year, GAO provided a list of the most frequent grounds for sustaining a protest. The top reason in FY 2019 (also first each of the past three years) was “unreasonable technical evaluation.” The second-ranked reason in FY 2019 was “inadequate documentation of the record.” Coming in third was “flawed selection decision”—also third in FY 2018. Fourth in order was “unequal treatment.” The fifth-ranked reason in FY 2019 was “unreasonable cost or price evaluation”—which was the second-ranked reason in FY 2018 and third-ranked in both FY 2017 and 2016.

GAO's reasons for sustaining protests show remarkable consistency over the years, and provide useful guidance for would-be protesters in what arguments do and do not find traction. GAO also confirmed, as in the last three years, that there were *no* instances in FY 2019 in which the agency did not fully implement GAO's recommendation in a sustained protest.

Each year, GAO's report includes some version of the caveat from this year's report:

a significant number of protests filed with our Office do not reach a decision on the merits because agencies voluntarily take corrective action in response to the protest rather than defend the protest on the merits. Agencies need not, and do not, report any of the myriad reasons they decide to take voluntary corrective action.

Most readers will be familiar with the phrase, but, for those who are not, this refers to an agency voluntarily deciding to reopen and redo at least some part of a procurement before GAO issues any decision in a protest, and usually before GAO has given any indication of the likely outcome.

For FY 2019, GAO again reported an “effectiveness rate” of 44 percent, that is, of the 2,080 protests closed out, 44 percent (or 915 protests) resulted in either a sustain by GAO or voluntary corrective action by the agency. Given the number of sustained protests (77), that means the rate of voluntary corrective action was 40.3 percent. Agencies elected to take voluntary corrective action in a total of 838 protests. The preceding-year voluntary corrective action totals were 1,010 in FY 2018, 1,062 in FY 2017, 1,051 in FY 2016, and 1,067 in FY 2015, so the most recent year saw a volume-based decrease of 20 percent off the average of the previous four years. As we have noted in years past, these effectiveness percentages may understate the likelihood of a particular protested procurement resulting in voluntary corrective action because of how GAO counts protests: Most voluntary corrective action occurs within the first 30 days after a protest is filed and is assigned a single B-number but before the agency report is filed, as agency counsel examine the record and evaluate their chances of prevailing. Most supplemental protests, giving rise to additional B-numbers, are filed shortly after receipt of the agency report. GAO’s own focus during the first 30 days of the 100-day protest lifecycle is generally more procedural than substantive, as the agencies themselves are pulling together their procurement records and assessing their own odds of a successful defense.

We were able to tease some additional statistical observations from GAO’s report. Given that the 21 cases in which a hearing was held were two percent of all “fully developed cases,” that latter set of cases must have been about half of all protests. Conversely, of course, about half of protests never reached the stage of full development. Further, we can deduce that only about 56 percent of all fully developed cases resulted in a full sustain/deny decision on the merits (587/1,050). The other protests are being dismissed on procedural grounds or withdrawn.

**Sustained GAO Protests**—For FY 2019, we conducted an additional statistical inquiry: a “deep dive” into GAO’s *sustained* protests. As reported above, there were 77 sustains during this most recent fiscal year. But our first insight of note was that

those 77 sustains were encapsulated in only 41 decisions; the balance of 36 were additional B-numbers adjudicated along with the first ones. Viewed differently, GAO’s decisions sustaining protests averaged 1.87 B-numbers, approaching a 2:1 ratio.

In the 41 sustain decisions, we counted 56 sustained grounds of protests, which indicates that many—and indeed most—sustains are based on a single ground of protest. This we found somewhat surprising, as anecdotal wisdom has suggested that the best way for a protester to prevail all the way to a sustained protest is to lodge multiple, interlocking and mutually reinforcing grounds of protest. Of the 56 sustained grounds of protest, 49 were initial grounds, and only seven were identified as supplemental grounds. This ratio was unexpected, as the landmark RAND Study several years ago referenced prior research that supplemental protests succeed more often than initial protests. See *Assessing Bid Protests of U.S. Department of Defense Procurements* (RAND Corp. 2018), available at [www.rand.org/content/dam/rand/pubs/research\\_reports/RR2300/RR2356/RAND\\_RR2356.pdf](http://www.rand.org/content/dam/rand/pubs/research_reports/RR2300/RR2356/RAND_RR2356.pdf) (the “RAND Study”). That research finding made sense to many observers, because most supplemental grounds of protest are filed after receipt of the agency report and thus benefit from knowledge of a much fuller record of the competing proposals and how they were evaluated by the procuring agency. In addition, we found it notable that, of the 41 sustained protest decisions, only four benefited more than a single protester.

In terms of procurement size for sustained protests, the statistics reflected a bell curve, with the greatest number falling between \$10 million and \$100 million in size. Of the 41 sustain decisions, almost half (20) came in negotiated (Federal Acquisition Regulation pt. 15) procurements. General Services Administration Federal Supply Schedule (FAR subpt. 8.4) and task/delivery order (FAR pt. 16) procurements combined for a similar number, with 10 and eight respectively. The balance were either sealed bid (FAR subpt. 14.2) or commercial off-the-shelf (FAR subpt. 12.1) procurements, or indeterminable. Of the 41 sustains, seven resulted from pre-award protests and 34 from post-award protests, about the ratio we would have expected. In contrast, we found it surprising that small businesses were winners more often than large businesses, over one-third more (noting that this is a comparison of absolute numbers for sustains, rather than relative sustain rates, which were beyond the

scope of our analysis). The RAND Study had found a much higher sustain rate for protests filed by large as opposed to small businesses. See RAND Study at 35.

The last component of our deep dive was into GAO's recommended corrective actions for sustained protests. Of the 34 sustain decisions in post-award protests, 25 called for simply the re-evaluation of proposals, consistent with GAO's leading reasons for sustaining protests. Seven called for the reopening of discussions and solicitation of proposal revisions, two fell into an "other" category—and *none* recommended award of a contract to protester. These figures should prompt caution in corporate executives and in-house counsel contemplating protests: in an entire fiscal year with over 2,000 protests, none of the sustains resulted directly in a contract award for the protester, and only a few even got the protesters "another bite at the apple" with an additional round of proposals.

**Statistical Trends**—Why were fewer protests filed in FY 2019 than in preceding years, down about one-sixth from just the year before? For the most part, we would cite the same explanations we have advanced in prior years for more modest decreases in protest filings. First, the FY 2017 National Defense Authorization Act (NDAA) increased the dollar threshold for Department of Defense task/delivery order protests from \$10 million to \$25 million, eliminating a substantial cohort of potential protests, and the effects of that change are still being felt. Second, the FY 2018 NDAA instituted the "enhanced debriefing" procedures for DOD procurements; similar non-statutory initiatives are being implemented by various agencies to improve the quality and depth of debriefings and are also taking root and having an impact. With more information provided to disappointed offerors, it is likely that fewer protests are being filed "just to find out why we lost"—and with longer timelines in which to consider and file a protest, cooler heads may be prevailing in some instances. Third, of course, the one former "power protester" who was banned by GAO from filing any more protests remained in the penalty box until late November 2019. See *Latvian Connection LLC—Recon.*, Comp. Gen. Dec. B-415043.3, 2017 CPD ¶ 354 (suspending company and its principal for two years); 59 GC ¶ 379.

So what was new and different in FY 2019? Some have speculated that the institution of GAO's electronic filing system (the "Electronic Protest Docketing System"), with its \$350 filing fee and registration requirement, may have dissuaded some would-be

protesters. But we are skeptical that the new filing fees (about the amount of annual car registration in many states) or the need to fill out an on-line form have deterred many protests. One might also speculate that the Government's increased use of "other transaction agreements," which are subject to more limited GAO protest jurisdiction than traditional procurement contracts, could be putting a dent into protest filings—but we think it is too early to tell on that hypothesis. One might hypothesize that the 35-day partial shutdown of the Government in December 2018 and January 2019 might have resulted in fewer protests being filed, but GAO tolled any deadlines involving agencies impacted by the shutdown, so we do not see why the shutdown would prompt disappointed bidders to forgo a protest they otherwise would have filed had there been no shutdown. Another explanation, admittedly also somewhat speculative, and coming from more of a business than legal perspective, strikes us as more convincing. The overall fiscal and spending environment in 2019 was the best in a long time, with the Budget Control Act caps lifted and robust appropriations in place. Perhaps good times spawn fewer protests: With more alternative opportunities to chase, maybe losers are more willing to move on from disappointing procurements and re-focus their time and treasure on future ones.

The sustain rate fell in the most recent fiscal year, as in each of the prior three years. The 13-percent sustain rate registered in FY 2019 was a full 10 percent below the high of 23 percent notched in FY 2016. As in prior years, though, we believe the more important statistic is the effectiveness rate, which was 44 percent in FY 2019 versus the trailing five-year average of 45.5 percent—not much of a drop-off. While there were fewer sustained protests in the past year, the level of voluntary agency corrective action remained quite high. Protesters were almost 11 times more likely to obtain relief by voluntary corrective action (838 times) than by a sustained protest (77 times, in only 41 decisions). Sustained protests may perhaps be best thought of as the residual of problematic procurement decisions that have not been corrected by the defending agencies themselves.

Our overall assessment from these statistics is that the GAO protest system is working very well. Protests are statistically rare as a percentage of all procurements, sustains are infrequent, GAO is essentially never recommending a contract award should be made to a protester, and agencies are respecting

and following GAO recommendations essentially all the time. Yet, the relatively high rate of voluntary corrective action means the GAO protest system is prompting agencies to re-examine and correct their own errors and omissions. The tight timelines and document production requirements embedded in GAO's rules are, in effect, creating a regime of enhanced agency-level protests, in which the agency promptly reconsiders its own procurement decisions in response to a protest and takes voluntary corrective action, if and as appropriate. In our view, things are working as they should, and drastic changes of the type that have been advanced by some would-be "bid protest reformers" in recent years are unnecessary and would likely be counterproductive to robust competition—which is, after all, a fundamental objective of the entire federal procurement system.

**Top Decisions and Developments of 2019**—As in prior years, we once again offer a qualitative assessment of what we see as the most impactful bid protest decisions (and developments) of the past year. For clarity, this compilation is for calendar year 2019 (not FY 2019) and covers both GAO and court protest decisions. In reverse order, here are our "top 10" bid protest decisions and developments of 2019:

*10. NDAA Acquisition Reforms That Have Not Happened:* Again this year, we begin our list with developments—or, more precisely, non-developments—in "bid protest reform." Based on the FY 2018 and FY 2019 NDAs, significant reforms were supposed to be implemented in 2019, e.g., § 827 of the FY 2018 NDAA required a bid protest "loser pays" pilot program to be implemented on Oct. 1, 2019, and § 822 of the FY 2019 NDAA required a new DOD expedited protest process for procurements valued under \$100,000 to be completed in December 2019. Neither of these "reforms" saw the light of day. Moreover, the Jan. 15, 2019 Final Report of the FY 2016 NDAA § 809 Panel (see 61 GC ¶ 29) included at least four significant protest reform recommendations, but, again, none of these recommendations have been adopted or implemented. In short, protest reform in 2019 was a non-starter.

*9. Procurement Integrity Act Case Law Clarified:* In *IBM Corp.*, Comp. Gen. Dec. B-415798.2, 2019 CPD ¶ 82, GAO expanded upon its prior decisions holding that the Procurement Integrity Act (PIA) does not apply to private party disputes involving confidential information being obtained by an offeror from competitor employees. IBM asserted that the awardee

had improperly obtained information from a subcontractor's former employee in violation of the PIA's prohibition on obtaining contractor bid and proposal information. In ruling against the protester on its PIA claim, GAO affirmatively adopted the U.S. Court of Federal Claims' analysis in *The GEO Grp. v. U.S.*, 100 Fed. Cl. 223 (2011). The court in that case had relied upon the legislative history of the PIA to conclude that the statute's "unlawful obtaining" language is limited to transmission of information involving a Government nexus (i.e., Government personnel) because "the PIA was enacted to mitigate against the corrosive impacts on the procurement system arising from improper conduct on the part of government officials or those acting on the government's behalf, as well as those who would induce or otherwise benefit from such improper government conduct." Because there was no Government involvement in the PIA violation alleged by IBM, GAO dismissed the allegation. As for IBM's alternative argument challenging the agency's affirmative responsibility determination for the awardee, GAO reaffirmed its position that alleged PIA violations fall short of the "very serious matters" threshold for a viable affirmative responsibility challenge, at least so long as the alleged PIA violation has not resulted in a criminal charge.

*8. Corporate Restructuring Protests:* The decision in *VSE Corp.*, Comp. Gen. Dec. B-417908, B-417908.2, 2019 CPD ¶ 413, is the latest "corporate re-organization" protest in a long line of such protests. Here, the awardee apparently had not mentioned in its proposal its imminent spin-off from its corporate parent. In response to a protest arguing that the impact of that transaction should have been considered, the agency conducted extensive, post-award communications with the awardee in which the awardee asserted that there would be no material changes in resources, and the task order contract would be performed by the same people and assets. GAO rejected the protester's claim that those communications represented unequal discussions, concluding that they were in connection with the agency's responsibility determination—not the evaluation of the awardee's proposal. When, mid-protest and two months after contract award, the corporate transaction changed to be a stock purchase by two private equity firms instead of the spin-off, GAO concluded that the new transaction "appear[ed] to raise matters of contract administration." GAO reasoned that, even if the new transaction were to be considered, the result of the

stock transaction would be only a change in ownership, and there would be no change in the underlying assets that would be used to perform the contract. The analytical flexibility in this decision appears to be a softening of GAO's approach to protests involving corporate transaction issues.

7. *Contract Modification Scope Protests*: In *Leupold Stevens, Inc., Comp. Gen. Dec. B-417796*, 2019 CPD ¶ 397; 61 GC ¶ 371, GAO sustained a protest challenging a contract modification as being outside the scope of the contract. Although GAO generally does not consider protests challenging allegedly improper contract modifications (because such matters pertain to contract administration), GAO will consider a protest where it is alleged that the contract modification exceeds the scope of the original contract and, therefore, should have been the subject of a new procurement. The agency's proposed contract modification here would have changed the underlying design of the product, and GAO found that the terms of the original contract precluded the design changes contemplated by the modification. GAO also found that the proposed modification was material in terms of contract value.

6. *Cybersecurity Protests*: Cybersecurity requirements are about to become a significant evaluation factor in federal procurements, and compliance with cybersecurity requirements and qualifications are now among the technical matters being raised by protesters and addressed by GAO. Thus, for example, in the denied protest of *Sys. Analysis & Integration, Inc., Comp. Gen. Dec. B416899.2, B-416899.3*, 2019 CPD ¶ 15, the protester asserted that the agency had misevaluated its proposal under the solicitation's cybersecurity factor when it assigned deficiencies to its proposal for failing to meet solicitation requirements. To date there have been no published sustained cyber-related protests, but filings of such protests are nonetheless expected to continue, particularly as DOD rolls out its new Cybersecurity Maturity Model Certification system this year, the latest version of which was released on Jan. 31, 2020.

5. *IDIQ Contract/Task and Delivery Award Jurisdiction*: In *PAE-Parsons Glob. Logistics Servs., LLC v. U.S.*, 145 Fed. Cl. 194 (2019); 61 GC ¶ 300, the court faced a matter of first impression—whether the limitation on task and delivery order jurisdiction in the Federal Acquisition Streamlining Act of 1994 (FASA), 41 USCA § 4106(f), divested the COFC of bid protest jurisdiction over a procurement where

the agency had merged the award of an IDIQ contract with the award of a task order into one process. The protester challenged its evaluation in the IDIQ contract competition, and the Government moved to dismiss the protest as a challenge to a task order award over which the COFC has no jurisdiction pursuant to FASA. The COFC denied the motion, reasoning that the court retains jurisdiction over protests challenging the award of IDIQ contracts, and the Government's position would preclude judicial review whenever the Government simultaneously awarded an IDIQ contract and a task order.

4. *Bait & Switch Protests*: In *NetCentrics Corp. v. U.S.*, 145 Fed. Cl. 158 (2019), appeal filed No. 20-1395 (Fed. Cir. Jan. 6, 2020), the court, departing from previous COFC decisions, held that an agency has the discretion to disqualify a proposal on material misrepresentation grounds when the agency relied on the misrepresentation in making its award decision, even if the misrepresentation was inadvertent. In *NetCentrics*, the protester represented that a particular key personnel was immediately available when in fact he had recently left the company, and the protester's proposal had been originally selected for award in part due to its proposed use of incumbent personnel and a one-year commitment from key personnel. Therefore, the protester's misrepresentation of the availability of its key personnel was material. This decision is in line with GAO's position that "bait and switch" material misrepresentations can result from either knowing or negligent representations about the availability of proposed personnel where the misrepresentation was relied upon by the agency in making the award decision. See *T3I Solutions, LLC*, Comp. Gen. Dec. B-418034, 418034.2, 2019 CPD ¶ 428; 62 GC ¶ 13.

3. *Pre-Award LPTA Protests*: In *Insero Corp.*, Comp. Gen. Dec. B-417791, B-417791.3, 2019 CPD ¶ 370; 61 GC ¶ 336, the protester alleged that the solicitation violated the prohibition adopted in § 813(c) of the FY 2017 NDAA (and codified at 10 USCA § 2305 note) against the use of lowest-priced, technically acceptable (LPTA) award criteria in defense procurements for certain information technology and cybersecurity services. The solicitation had stated that technical factors would be evaluated on a pass/fail basis and that a tradeoff would be conducted by comparing price versus past performance. According to the protester, this violated the regulatory prohibition because price was not being traded off against technical factors. GAO, however, concluded that the

plain language of the statute did not prohibit a price/past performance tradeoff, as opposed to a price/technical factors tradeoff, and denied the protest.

Equally significant 2019 developments concerning LPTA were the Defense FAR Supplement implementation of the FY 2017 and FY 2018 NDAA restrictions on DOD's use of LPTA and the FAR Council's proposed rule implementing the FY 2019 NDAA restrictions on civilian agency use of LPTA. Taken together, these regulatory provisions establish extremely high thresholds that should curtail the use of this much maligned procurement approach. See 84 Fed. Reg. 50,785 (Sept. 26, 2019) (final DFARS LPTA regulations implementing FY 2017 and FY 2018 NDAA statutory restrictions on DOD's use of LPTA) and 84 Fed. Reg. 82,425 (Oct. 2, 2019) (proposed FAR LPTA regulations implementing FY 2019 statutory restrictions on civilian agency use of LPTA).

2. *DOD JEDI Cloud Procurement Protests*: The COFC's decision in *Oracle Am., Inc. v. U.S.*, 144 Fed. Cl. 88 (2019); 61 GC ¶¶ 230, 340, appeal filed, No. 19-2326 (Fed. Cir. Aug. 26, 2019), involving DOD's \$10 billion Joint Enterprise Defense Infrastructure (JEDI) cloud procurement is noteworthy for many reasons. On the question of standing, the court held that, because the protester's proposal failed to meet the solicitation's "gate criteria," the protester suffered no prejudice from other alleged procurement errors and thus lacked standing to protest these errors in a pre-award protest. Not the least among Oracle's other alleged procurement issues were allegations about rampant individual and organizational conflicts of interest involving multiple Government personnel and employees of Amazon Web Services, one of the competing offerors. In the end, the court refused to find that these alleged errors, even if established, could have been prejudicial because Oracle could not meet the gate criteria. More recently, Amazon Web Services itself filed a protest at the COFC against DOD's JEDI contract award to Microsoft Corp. See *Amazon Web Servs., Inc. v. U.S.*, No. 19-1796C (Fed. Cl.). Although Amazon's complaint raises a litany of typical bid protest arguments about the reasonableness of the evaluation process, it also raises the extraordinary allegation that the president had interfered with the contract award process, allegedly out of personal animus towards Amazon's CEO. We will all be following with interest how the parties present evidence about these allegations and how the court will resolve them.

1. *Other Transaction Agreement Protests*: Once again, other transaction agreement (OTA) developments and decisions have captured the top spot on our 2019 list. In November 2019, GAO issued a report entitled *Defense Acquisitions: DOD's Use of Other Transactions For Prototype Projects Has Increased* (GAO-20-84), available at [www.gao.gov/assets/710/702861.pdf](http://www.gao.gov/assets/710/702861.pdf); 61 GC ¶ 356, noting that from FY 2016 to FY 2018 the number of OTAs awarded by DOD increased significantly and that the amount obligated for prototype other transactions nearly tripled from \$1.4 billion to \$3.7 billion. Perhaps reflecting this upsurge in agency use of OTAs, the number of OTA protests and the expansion of the protest venues considering such protests appears to have increased in 2019. Consistent with its 2018 decision in *Oracle Am., Inc.*, Comp. Gen. Dec. B-416061, 2018 CPD ¶ 180; 60 GC ¶¶ 195, 340, 362, in *ACI Techs., Inc.*, Comp. Gen. Dec. B-417011, 2019 CPD ¶ 24; 61 GC ¶ 42, GAO concluded that it had jurisdiction to consider the protester's allegation that the Navy was improperly seeking to use its other transaction authority under 10 USCA § 2371b for prototype projects.

On the other hand, in *MD Helicopters, Inc.*, Comp. Gen. Dec. B-417379, 2019 CPD ¶ 120; 61 GC ¶ 126, GAO again relied on *Oracle Am., Inc.* to dismiss a protest challenging the protester's evaluation and the agency's alleged failure to promote small business participation in connection with an OTA procurement. Thereafter, the protester filed a new action in federal district court in Arizona challenging the award, and the Department of Justice conceded district court jurisdiction under the Administrative Procedure Act, 5 USCA § 701, based upon the conclusion that the Administrative Dispute Resolution Act did not repeal district court jurisdiction over nonprocurement protests. Despite DOJ's concession that the district court had jurisdiction, on Jan. 24, 2020, the district court dismissed the protest for lack of jurisdiction based on arguments made by the intervenors. See *MD Helicopters, Inc. v. U.S.*, No. 2:19-CV-02236-JAT (D. Ariz. Jan. 24, 2020). In *Space Expl. Techs. Corp. v. U.S.*, 144 Fed. Cl. 433 (2019); 61 GC ¶ 262, the COFC held that it lacked bid protest jurisdiction to resolve a post-award protest against the Air Force's evaluation and "portfolio award decisions" for Launch Services Agreements (or LSAs) issued pursuant to DOD's other transaction authority under 10 USCA § 2371b. Because the LSAs issued under the Air Force's other transaction authority were not, in the court's view, "procurement contracts" and were not

issued “in connection with a procurement or proposed procurement,” as required for bid protest jurisdiction under the Tucker Act, 28 USCA § 1491(b)(1), the court held that the case must be dismissed. Nonetheless, the court granted the protester’s motion to transfer the case to the U.S. District Court for the Central District of California in the interest of justice under 28 USCA § 1631. See *Space Expl. Techs. Corp. v. U.S.*, No. 2:19-CV-7927-ODW-GJS (C.D. Cal.). Remaining to be seen is whether such OTA challenges

represent the dawn of a new era of U.S. district court involvement in federal contracting.



***This Feature Comment was written for THE GOVERNMENT CONTRACTOR by Jerald S. Howe, Jr. and Stephen S. Kaye, of Leidos, and James J. McCullough and Michael J. Anstett of Fried Frank Harris Shriver & Jacobson LLP. The views expressed herein are those of the individual authors and not their firms.***