

# Closing the Bid Protest Case Law Knowledge Gap

## Contract Protest Diagnostic Tool (CPDT)<sup>TM</sup>

Developed by

**MITRE**

A Data-Driven Application to *Proactively Identify* Contracting Errors and  
*Mitigate Protest Exposure*

In partnership with



The Office of the  
Director of National  
Intelligence (ODNI)



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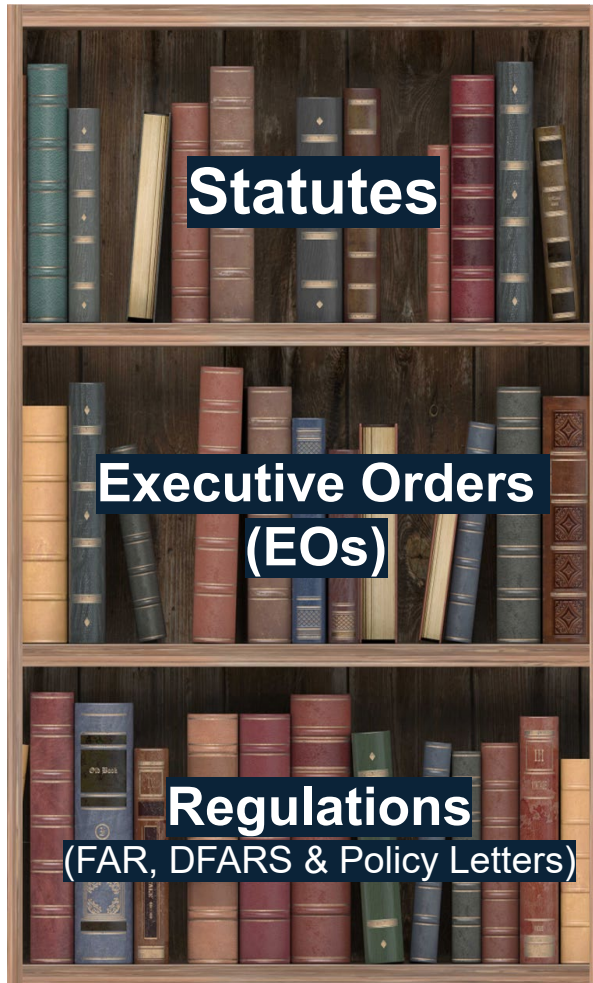
May 8, 2024

# Research Question

- Contract Formation is governed by Statutes, Executive Orders, Regulations, and **Decisional Authorities (i.e., Protest Case Law)**
- The Federal Acquisition Workforce has easy access to the first three sources of law—but not decisional authorities
- How can we provide the workforce access to (and understanding of) these decisions to reduce the agency's protest risk?



# Statutes, Regulations, Executive Orders, & Decisional Authorities



- » Static & Clear
- » Organized



- » Continuously Changing
- » Not Easily Accessible
- » Not Organized

## Why Decisional Authorities are Challenging:

- » New decisions published every day:  
(FY23 Alone: 392 Decisions)
- » Decisions are complex and opaque
- » New Rules/Precedents are often buried in lengthy protest decisions (some > 100 pages)
- » Protest decisions are difficult to access without expensive subscriptions (e.g., Westlaw or Lexis Nexis)

## Why Decisional Authorities are Important:

These cases Create new rules which agencies must follow [FAR 1.602-1(b)]. Examples:

- » Application of GSA Schedule Labor Categories
- » Self-Scoring Source Selection
- » Oral Presentations and Demonstrations
- » Multi-Step Evaluations
- » Acceptance of Late Proposals

# Why do we need to Fix this Problem?

Not having access Increases Protest Risk Exposure and results in:

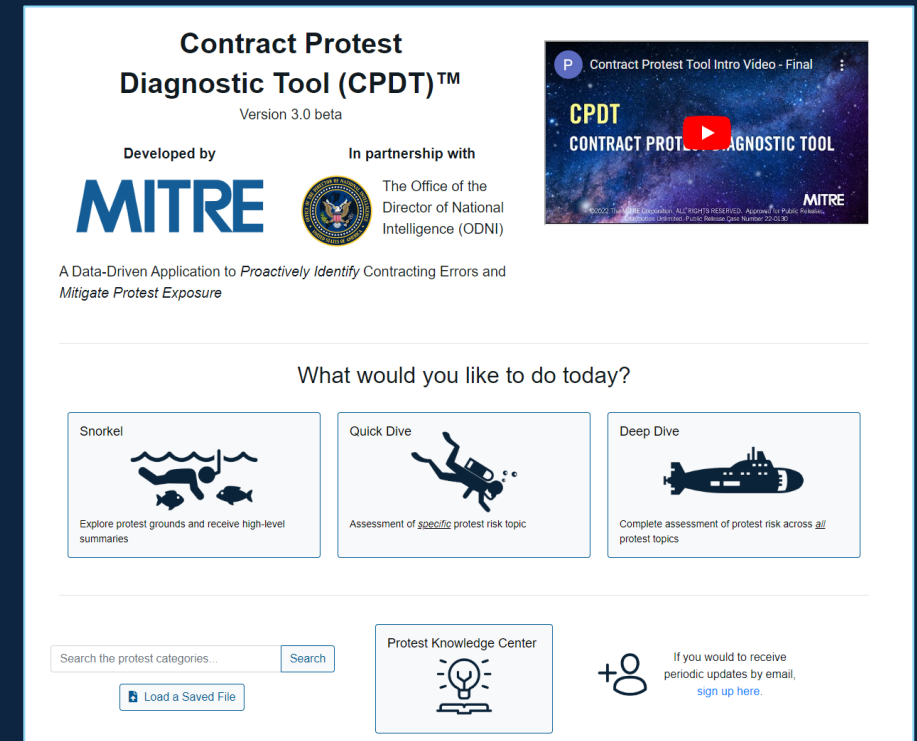
- » Unnecessary Protests Due to Blind Spots
- » Contract Work Stoppage
- » Protracted Schedule Delays
- » Funding Complications
- » Costly Bridge Contracts
- » Diversion of Contracting Office Resources
- » Risk-Averse Procurement Decisions Due to Fear of Protests
- » Disruption to Mission

**Contracting Officers need this information to be Successful!**

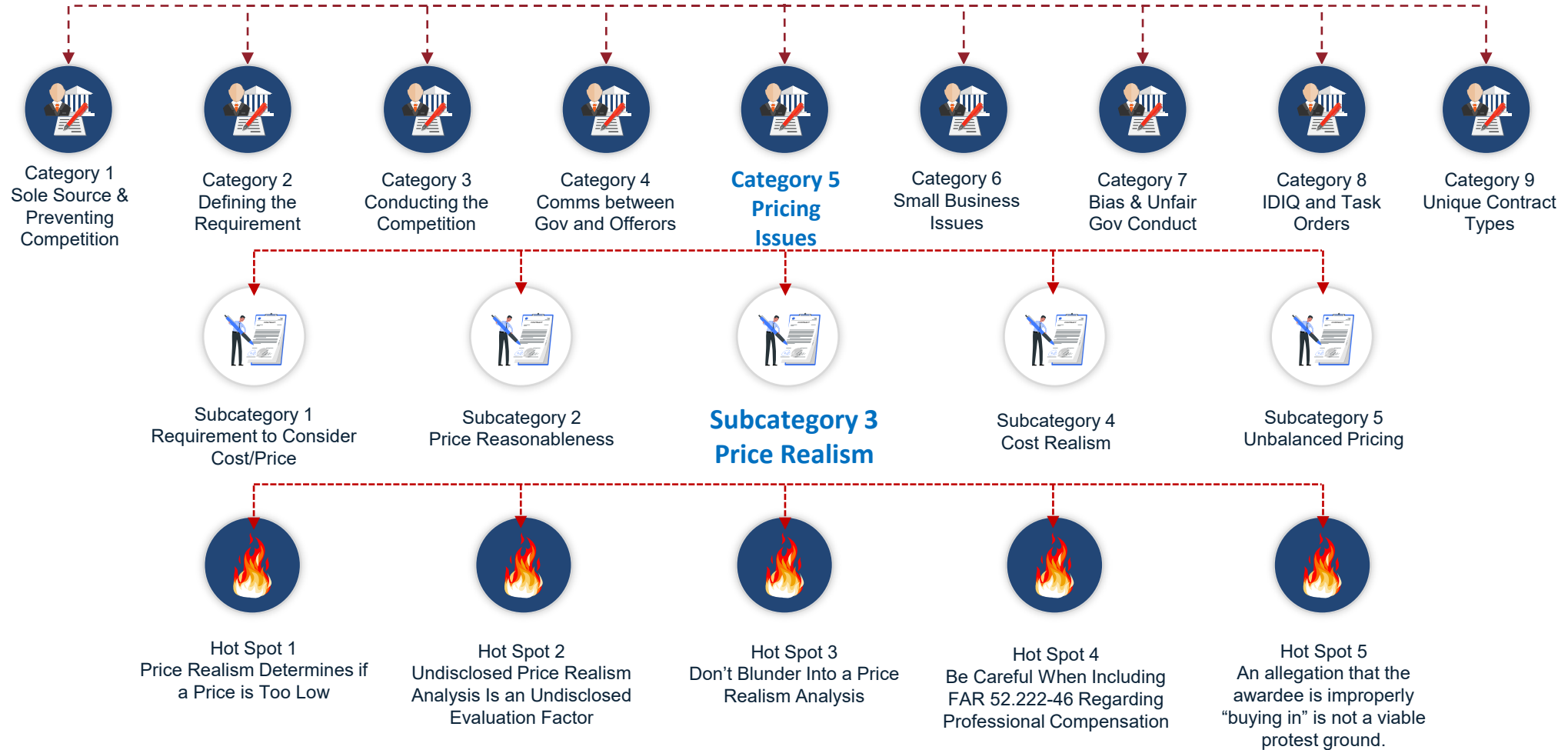


# Contract Protest Diagnostic Tool (CPDT)<sup>TM</sup>

- Initiated under MITRE's IR&D program in support of the FFRDC mission (FAR 35.017).
- Development collaboration with Naval Postgraduate School via a Cooperative Research and Development Agreement (CRADA)
- Refined via a Pilot Program with Intelligence Community (IC) contracting and legal communities
- Operationalized under contract with Office of the Director of National Intelligence (ODNI) for the IC Acquisition Workforce
- Government Purpose Rights
- 3-Minute Introductory Video:  
[https://www.youtube.com/watch?v=tFWG-n\\_qlpw](https://www.youtube.com/watch?v=tFWG-n_qlpw)
- Available free for public use at  
<https://aida.mitre.org/protest-tool>



# Method for Decoding Protest Decisions



# Quick Access to Protest Decisions in “Plain English”

Category 1 - Sole Source & Preventing Competition	Category 2 - Defining of the Requirement	Category 3 - Conduct of the Competition	Category 4 - Communications Between the Government & Offerors	Category 5 - Pricing Issues	Category 6 - Small Business Issues	Category 7 - Bias & Unfair Government Conduct	Category 8 - IDIQ and Task Orders	Category 9 - Unique Contract Types or Procedures
1.1 Lack of Advance Planning	2.1 Writing the Specifications	3.1 Commercial Products and Services	4.1 Clarifications	5.1 Requirement to Consider Cost or Price	6.1 Bundling and Consolidation (Research Ongoing)	7.1 Availability of Solicitations (Research Ongoing)	8.1 Protests against base IDIQ contract awards	9.1 GSA Federal Supply Schedule (FSS) Ordering
1.2.1 Sole Source - Only One Responsible Source Exception	2.2 Improper Use of "Brand Name or Equal" Descriptions	3.2 Responsibility Determinations	4.2 Discussions	5.2 Price Reasonableness	6.2 Limitations on Subcontracting	7.2 Organizational Conflicts of Interest (OCIs)	8.2 Protestability of Task/Delivery Orders	9.2 Reserved
1.2.2 Sole Source - Unusual and Compelling Urgency	2.3 Ambiguities in the Solicitation	3.3 Negotiated Procurements Tradeoff Process	4.3 Debriefings	5.3 Price Realism	6.3 HUBZone Contracting Procedures (Research Ongoing)	7.3 Offeror's Responsibility to Obtain Solicitation Documents (Research Ongoing)	8.3 Pre Award Protests of IDIQ Task/Delivery Orders	9.4 Simplified Acquisition Procedures (SAPs) (Research Ongoing)
1.2.3 Sole Source - Other Exceptions to Competition	2.4 Unduly Restrictive Specifications	3.4 Competitive Range	4.4 Oral Presentations and Demonstrations	5.4 Cost Realism	6.4 Certificate of Competency	7.4 Government Independence and Alleged Bias	8.4 Post-Award Protests of IDIQ Task/Delivery Orders	9.5 Other Transaction Authority (OTA)
1.3 Contract Was Modified Beyond the Scope	2.5 Changed Requirements & Solicitation Amendments	3.5 Evaluation in Strict Accordance with the Solicitation		5.5 Unbalanced Pricing	6.5 SBAs (8(a) Program) (Research Ongoing)	7.5 Proposal Compliance with the Terms of the Solicitation	8.5 Self-Scoring	9.6 Basic Ordering Agreements (BOAs) (Research Ongoing)

## Category 9 - Unique Contract Types or Procedures

### 9.1 GSA Federal Supply Schedule (FSS) Ordering

➤ **Hot Spot #1:** GSA FSS protests based on common protest grounds covered elsewhere within the CPDT

➤ **Hot Spot #2:** Award is outside of the scope of the FSS schedule - Type of Service or Product

➤ **Hot Spot #3:** Award is outside of the scope of the FSS schedule - Labor Categories do not Map to Awardee's Quote or RFQ

➤ **Hot Spot #4:** Award is outside of the scope of the FSS schedule - Improper adding of "Open Market Items" to the FSS Award

**GAO@100**

U.S. GOVERNMENT ACCOUNTABILITY OFFICE  
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Washington, DC 20548

Comptroller General  
of the United States

DOCUMENT FOR PUBLIC RELEASE

The decision issued on the date below was subject to a GAO Protective Order. This redacted version has been approved for public release.

### Decision

**Matter of:** Guidehouse LLP

**File:** B-419336; B-419336.3; B-419336.5

**Date:** January 21, 2021

Brian G. Walsh, Esq., Samantha S. Lee, Esq., Moshe B. Broder, Esq., Sarah B. Hansen, Esq., Lindy C. Bathurst, Esq., and Adam R. Briscoe, Esq., Wiley Rein LLP, for the protester.  
Alexander J. Brittin, Esq., Brittin Law Group, PLLC, and Mary Pat Buckenmeyer, Dunlap Bennett & Ludwig PLLC, for Grant Thornton Public Sector LLC, the intervenor.  
Michael Kiffney, Esq., Christopher Reames, Esq., and Thomas McGivern, Esq., Department of Homeland Security, for the agency.  
April Y. Shields, Esq., and Christina Sklarew, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

**DIGEST**  
  
1. Protest challenging agency's evaluation of the protester's and awardee's quotations under the non-price factors is denied where the record shows that the agency's evaluation was reasonable and consistent with the terms of the solicitation and applicable procurement law and regulation.

FAR/Statute References

FAR 8.4

Key GAO Decisions

[Collapse](#)

- [Spatial Front, Inc., B-420921.2, B-420921.3, December 21, 2022](#)
- [Async-Nu Microsystems, Inc., B-419614.5, B-419614.6, September 30, 2022](#)
- [Guidehouse LLP, B-419336 et al., January 21, 2021](#)
- [Deloitte Consulting, LLP, B-419508, B-419508.2, April 15, 2021](#)
- [D&G Support Services, LLC, B-419245, B-419245.3, January 6, 2021](#)
- [DOD's Request for Reconsideration of the Grant Thornton decision, B-416733.2, March 18, 2019](#)
- [Grant Thornton, LLC, B-416733, November 29, 2018](#)
- [AlliWorld Language Consultants, Inc., B-411481.3, January 6, 2016](#)

▼ **Hot Spot #3:** Award is outside of the scope of the FSS schedule - Labor Categories do not Map to Awardee's Quote or RFQ

**Discussion** Over the years, a fair number of protests have been filed against FSS procurements, arguing that the agency is not staying within the bounds of the FSS program. This section focuses on the issue of **the awardee's FSS schedule labor categories** not reasonably mapping to the awardee's quotation and/or the RFQ.

Contracting officers cannot just assume that an FSS vendor will provide employees with the minimum education/experience requirements set out in the RFQ if it maps to lower minimum requirements in the vendor's FSS schedule. Instead, vendors must "affirmatively state" that they will provide contractor employees that meet the minimum requirements of the RFQ if the corresponding labor category in their FSS has lower minimum requirements.

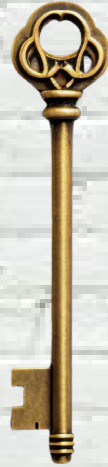
Over the last few years, several protest decisions have focused on whether or not the awardee's proposed labor categories (LCATs) in their FSS contract correctly "map" to



# Key Takeaways



**The DoD  
Acquisition  
Workforce  
does not  
have  
adequate  
access to  
Protest  
Case Law**



**Lack of  
Access to  
Protest  
Case Law  
Impacts  
Mission**



**The CPDT  
provides a  
solution to  
this Problem**



**Please  
support the  
CPDT to  
avoid  
Early  
Extinction**



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