

GOVERNMENT CONTRACTS PRACTICE

BID PROTESTS

WINNING PROTEST EXPERIENCE

Our *Chambers*-ranked Government Contracts Practice Group has decades of bid protest experience representing protesters and intervenors at both the Government Accountability Office (GAO) and the Court of Federal Claims (CFC). Together, we have handled well over 100 protests representing both large and small businesses, and, while many bid protest actions are resolved by corrective action, are counsel of record in dozens of reported decisions.

OUR TEAM



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REPRESENTATIVE MATTERS (PROTESTER)

Successful Bid Protest at GAO and CFC

We represented FavorTech, a Service-Disabled Veteran-Owned small business, in a successful bid protest that required multiple filings at both the GAO and the CFC. Following the filing of a GAO protest, which challenged the award of three Blanket Purchase Agreements (BPAs) made to three separate awardees by the government, the VA announced that it would not implement a stay of performance as required by Competition in Contracting Act (CICA). We then filed a separate protest action at the CFC to enforce the automatic stay. The court ruled that the VA's actions were arbitrary and capricious, and the government was ordered to implement a stay of performance pending the resolution of the GAO protest. Ultimately, the protests before GAO and the CFC led to the company receiving an award of a BPA from the VA.

Successful Bid Protest of Satellite Procurement

On behalf of our client Airbus U.S. Space and Defense, Inc., the U.S. subsidiary of a global aerospace and defense company we filed a post-award bid protest at the GAO that resulted in corrective action in our client's favor. The protest challenged the Space Development Agency's (Agency) initial selection of SpaceX and L3Harris based on information Airbus received during its post-award debriefing. After defeating a motion to dismiss filed by the intervenor and joined by the Agency, the Agency elected to take corrective action and re-evaluate proposals providing our client another chance at a contract award.

Favorable Corrective Action Awarded for HID Global

We represented and secured a significant victory for HID in December 2022. Following a solicitation issued in June 2021, HID was one of four companies to submit a bid to the U.S. Department of State (DOS) to manufacture passport cards. Before making an award, the DOS unexpectedly issued a notice cancelling the solicitation. Our team drafted and filed a complaint and motion for preliminary injunction at the CFC that caused the government to change course. Recognizing how compelling our position was, the DOS issued a corrective action before even responding to the complaint. As a result, DOS will reinstate the solicitation, evaluate the four proposals, and make an award.

Successful Bid Protest for \$188 Million Task Order

After an unsuccessful protest at the GAO, we filed a protest at the CFC on behalf of The Green Technology Group, a company specializing in information technology solutions and services, challenging the Department of Defense, Defense Health Agency (DHA) award of a contract to Lintech Global. The protest argued that the DHA improperly awarded a contract for code maintenance and data processing operations support based on a flawed evaluation and quotation analysis. After full briefing and oral argument, the CFC ruled in our client's favor and commented in a decision on fees that, "the legal issue on which the plaintiff prevailed on the merits was 'novel or difficult' with little precedent.

Immediate Corrective Action After Competitive Range Exclusion Protest

On behalf of an 8(a) small business client, we filed a pre-award protest at the GAO after it was excluded from the competitive range in a small-business set-aside competition for a dorm maintenance contract valued at more than \$100 million in support of the Federal Law Enforcement Training Center (FLETC) facility at Glynco, Georgia. Less than a week after the protest was filed, FLETC took corrective action reversing its exclusion decision and providing our client another opportunity to compete for the contract.

ABOUT BASS, BERRY & SIMS

The Bass, Berry & Sims Government Contracts Practice Group provides counseling, litigation and transactional support for companies that contract with federal, state and local governments and was named a Highly Regarded practice by *Chambers USA 2024*. Our clients include public and private businesses ranging from Fortune 500 companies with complex government contracting issues to small and emerging businesses just entering government markets in a wide variety of industries spanning aerospace, information technology, management consulting, defense, biotechnology, electronics, healthcare, construction, logistics support and cyber security. Whether we are guiding companies through their bid protests or government claims, or assisting clients to ensure compliance and manage risk that comes with doing business with the federal government, our team is intimately familiar with the full spectrum of issues that impact government contractors. In addition, we have the requisite security clearances to assist on most classified matters.

CLIENT FEEDBACK

"Bass, Berry & Sims PLC has a respected practice, noted for its aptitude in advising clients on a host of issues, including bid protests, contract formation and transactions. The law firm draws clients from a range of sectors including defense and national security."

"The Bass Berry & Sims team is extremely knowledgeable in government contracts and in practical application in the business environment."

"The firm knows the value of providing a competitive solution."

From *Chambers USA 2024*



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REPRESENTATIVE MATTERS (INTERVENOR)

Bid Protest Win for AM General on Multi-Billion Dollar Contract

We represented AM General (AMG) in defending against a bid protest involving a \$9.7 billion contract for the U.S. Army to build and deliver a new generation of the "JLTV," which is a light tactical military vehicle. Among other things, Oshkosh Defense LLC, the incumbent on the predecessor contract, protested the Army's evaluation of both its and AMG's technical proposals, as well as the Army's evaluation of AMG's price and cost proposal. This was a complicated effort that required multiple rounds of voluminous briefing, often under very tight deadlines. The GAO ultimately denied the protest, and in doing so, it adopted our team's and the government's arguments that the Army reasonably evaluated proposals in accordance with the RFP's evaluation criteria. This is a major win for our team, not to mention the client, who of course was ecstatic with the result our team helped deliver.

Successful Defense of Federal Law Enforcement Training Center Award at SBA, GAO, CFC, and Federal Circuit

We successfully defended the award to B&O JV, an 8(a) joint venture, of a \$78 million 8(a) competitive set-aside contract by FLETC for dorm maintenance and other services against a Small Business Administration (SBA) size protest, multiple GAO bid protests, both pre- and post-award, two CFC suits, and an appeal to the Federal Circuit, all brought by the same disappointed offeror. In the CFC suits, we intervened successfully in a bid protest and in an action that challenged FLETC's determination to override the stay of performance imposed by the Competition and Contracting Act after the second GAO post-award bid protest. CFC denied the protester's requests for a preliminary injunction in both CFC actions, the second time in a 48-page published decision. The protestor appealed the second denial and on March 4, 2021, and the Court of Appeals for the Federal Circuit affirmed the decision thereby resolving an important jurisdictional issue that was an issue of first impression. That decision, which was widely reported, concluded for the first time that after the passage of the Administrative Dispute Resolution Act of 1996 the CFC retained jurisdiction over implied-in-fact contracts to fairly and honestly consider an offeror's proposal in the procurement context under 28 U.S.C. § 1491(b)(1), clarifying that 28 U.S.C. § 1491(a) governs all other implied-in-fact contract claims.

Successful Defense of \$143 Million Department of the Army Task Order in GAO Bid Protest

We successfully defended a \$143 million task order award to CWU, a Service-Disabled, Veteran-Owned small business. The Army Intelligence and Security Command awarded the task order under the \$10 billion Defense Language Interpretation and Translation Enterprise (DLITE) program to CWU for 422 linguists with requisite security clearances in support of ongoing mission requirements for U.S. Central Command, United States European Command and United States Africa Command geographic areas. After two rounds of protests by the incumbent and multiple rounds of briefings, the GAO denied the incumbent's protest in its entirety; within hours of the decision, our client assumed control of the contract.

Contract Secured for Performant Financial After Successful Defense

We defended Performant Financial in a protest from an incumbent contractor, Cotiviti GOV Services, allowing our client to secure its contract in the Region 2 Recovery Audit Contractor (RAC). We were victorious round after round with the incumbent eventually withdrawing. Performant was ultimately awarded an 8.5 year contract to perform post-payment reviews of Medicare Part A and B fee-for service claims. Performant will identify and support the recoupment of claims paid improperly.

Successful Defense of Golden SVCS in Bid Protest of \$65 Million Security Guard Services Award

We successfully represented Golden SVCS LLC in a bid protest involving security guard services for several Department of Energy facilities in Oak Ridge, Tennessee. Golden SVCS is a Service-Disabled Veteran-Owned small business based in Oak Ridge, Tennessee. We intervened on the company's behalf, and joined the government in convincing the GAO to deny the protest and allow our client to proceed with the \$65 million contract.