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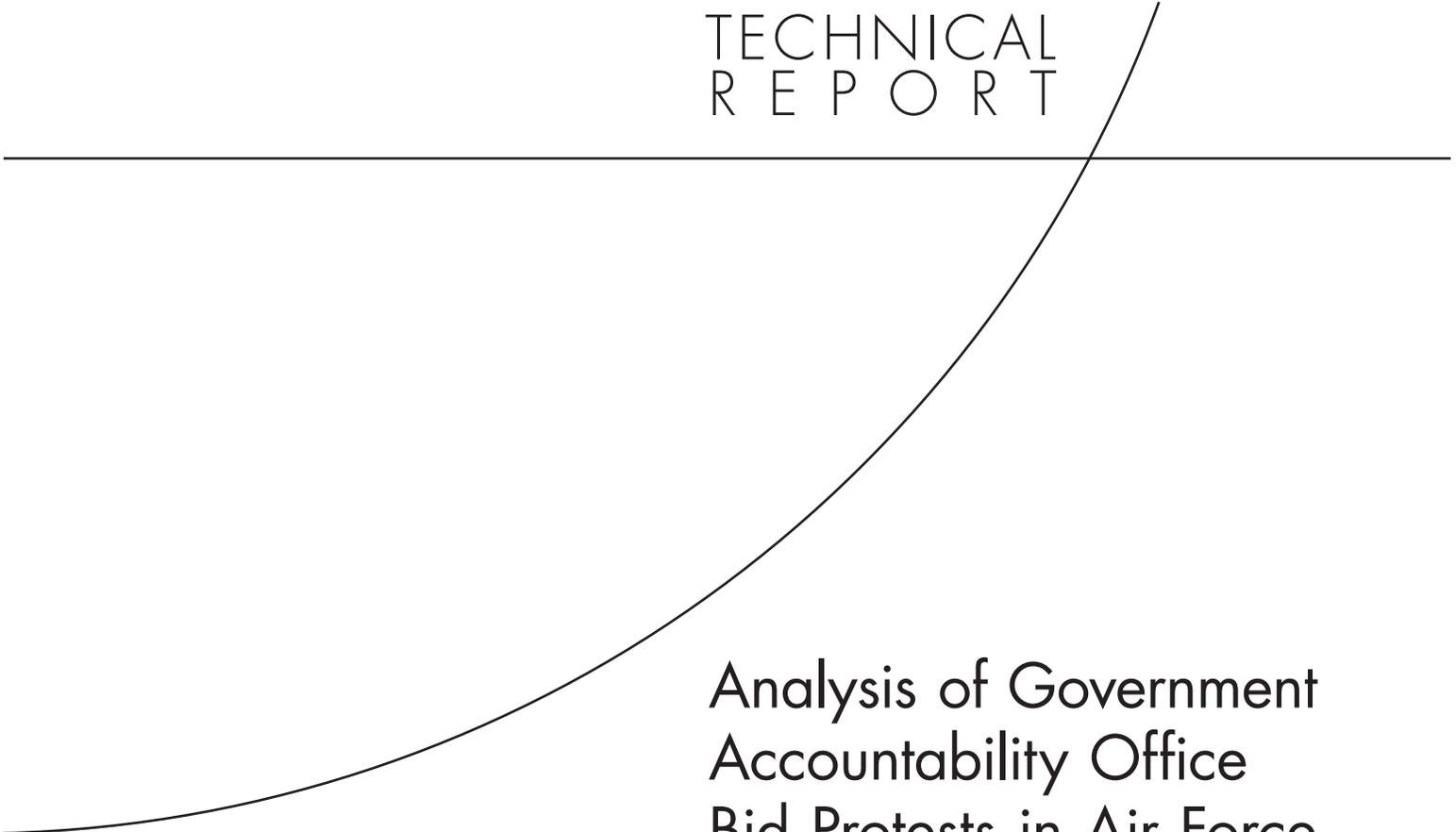
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TECHNICAL
R E P O R T



Analysis of Government
Accountability Office
Bid Protests in Air Force
Source Selections over
the Past Two Decades

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Prepared for the United States Air Force

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Summary

When an offeror in an Air Force source selection believes that the Air Force has made an error that is large enough to change the outcome of the source selection, the offeror can file a protest with the Office of General Counsel of GAO. Following its review, GAO can suggest a course of remediation to the Air Force, if it agrees that a significant error has occurred and that the error has the potential to change the source selection outcome. GAO cannot compel the Air Force to follow its suggestion, but if the Air Force fails to do so, GAO must report this non-compliance to Congress. However, the Air Force almost always follows GAO suggestions when it sustains a bid protest.

The Air Force experienced an average of 93 protests a year on contract awards between FY 2000 and FY 2008. GAO sustained on average three of these protests each fiscal year, recommending that the Air Force make significant changes in how it had conducted the source selections associated with these contract awards. However, simultaneously, the Air Force addressed 30 protests per year by preemptively engaging in corrective action. Corrective actions can involve such steps as reevaluating proposals, reopening evaluations and giving offerors an opportunity to adjust their proposals, changing the offerors included in the source selection, rewriting the request for proposals and starting the source selection from scratch, or even canceling the acquisition as a whole. If a protester accepts such action, there is no further need for the GAO to review the protest. If the protester rejects the corrective action, the protest continues through the GAO review process.

During the summer of 2008, the Military Deputy, SAF/AQ and SAF/AQC, asked PAF to analyze the Air Force's performance in GAO bid protests. Using federal administrative databases, PAF conducted detailed analyses of Air Force protest activity and outcomes over the past two decades. The aim was to determine which factors are correlated with increased protest activity across Air Force contracting units as well as to identify characteristics associated with particular protest outcomes. This technical report describes these analyses and supports another PAF report, Camm et al. (2011a), *Government Accountability Office Bid Protests in Air Force Source Selections: Evidence and Options*, which places the findings reported here in a broader policy setting.

Research Approach

To inform our sponsors about Air Force experience with GAO bid protests, RAND researchers undertook the following analytic tasks:

1. reviewed documents on general Air Force source selection policies and processes, comparable policies and processes elsewhere in the Department of Defense, and others elsewhere in the federal government
2. reviewed other studies of bid protest activity, including analyses conducted by the Air Force itself, the Congressional Research Service, and GAO
3. assembled data on Air Force protests contained in the Protest and Congressional Tracking System (PACTS) database; as part of an effort to understand these data better, we spoke with the personnel responsible for updating and maintaining PACTS
4. gathered and assembled for analysis information on Air Force procurements contained in the Individual Contracting Action Report (form DD350) and the Federal Procurement Data System–Next Generation (FPDS-NG)
5. performed tabulations to characterize the Air Force’s experience with bid protests both over time and across different contracting units
6. estimated statistical models that rely on the PACTS, DD350, and FPDS-NG databases and that control for a variety of factors to draw inferences about the determinants of Air Force protest activity and outcomes.

Findings

Although broad criticism of the Air Force has focused on a few recent protests sustained by GAO, these incidents represent only a small portion of the protests that the Air Force has experienced. Between FY 2000 and FY 2008, the Air Force awarded over 133,000 contracts and experienced 836 protests. It offered corrective action in 273 cases, or 33 percent of all protests. Meanwhile, it ultimately suffered sustained protests in only 29 cases, or just 3 percent of all protests.

Presumably, the Air Force offers a corrective action when it believes that GAO will sustain a protest and suggest a corrective action at least as onerous as the one the Air Force itself could proffer. Conversely, a protester accepts a corrective action early when it believes that GAO will offer nothing significantly better. Therefore, an early corrective action is likely to prevail if both the Air Force and the protestor believe they will derive greater value from avoiding a full-fledged intervention.

To put protests in perspective, it is useful to express them in terms of the total number of contract awards the Air Force makes. The number of protests as a percentage of total contract awards has fallen fairly steadily from about 1.7 percent in FY 1995 to 0.5 percent in FY 2008. Sustained protests are so unusual that they hardly register relative to the total number or value of contract awards. In fact, so few sustained protests have occurred that it is impossible to discern any meaningful trend in them. On the other hand, the Air Force has offered corrective actions in noticeable numbers. Throughout the 1990s, it offered corrective actions in about 0.3 percent of contract awards. Yet, from FY 2001 to FY 2008, the percentage fell fairly steadily, ending well under 0.2 percent of contract awards. On the whole, all of these trends point to improvement over time.

Conclusions derived from simple tabulations of the protest and procurement data provide important insights into the Air Force’s performance with bid protests. However, formal statistical analysis that accounts simultaneously for multiple factors affecting protest activity can provide greater clarity into protest activity. Our statistical analysis led us to find that the likeli-

hood of bidders pursuing protests with GAO has been declining over time at a rate of between 8 and 9 percent per year, after controlling for other factors. This further supports the finding that the Air Force's experience with bid protests has been improving over time.

Looking across the Air Force, we found that contracting centers having technical activities, with about 5 percent of the total spending, had substantially better experience than the Air Force as a whole, with 45 percent fewer protests than normal for the Air Force after controlling for other factors. This finding is consistent with simple tabulations of protest and procurement activity across Air Force contracting centers. Contracting centers having technical activities may have qualitatively different types of contracts, with lower baseline protest risk. Alternatively, they may have contracting cultures more attuned to conducting complex source selection evaluations.

Our statistical analysis also suggested that the number of protests tends to increase less than proportionately when the number of contract awards rises (holding all other factors, including spending, constant).

A second line of statistical analysis, which sought to identify factors correlated with different protest outcomes, yielded additional insights. Namely, our statistical analysis of the determinants of protest outcomes supported the general observation that, over the 1990s, there was a steady increase in the probability that a protest would lead to the Air Force offering a corrective action, while simultaneously controlling for other trends that were occurring at that time. We did not find a significant correlation between protest outcomes and the commodity or service being acquired by the Air Force. We found some evidence that different types of contracting centers as well as the basis for protest are associated with different probabilities of engaging in corrective action or facing a sustained protest; however, it is difficult to statistically differentiate between any two types of contracting centers or causes of protest.