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Understanding the new bid protest threshold for DoD, Coast Guard, NASA task orders

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Generally speaking, the U.S. procurement system allows companies competing for U.S. government contracts broad rights to challenge contract awards, as well as the terms of solicitations. There are, however, restrictions applicable to challenging task orders awarded under indefinite-delivery/indefinite-quantity contracts that limit where such challenges may be filed and prohibit challenges below a certain threshold.

The inability to challenge task orders below the $35 million/$10 million threshold should be considered when pursuing opportunities below those amounts.

Congress recently raised the threshold applicable to certain task orders, and it is important that any company competing for government task orders as part of a business capture strategy understand those rights and limitations.

DoD/Coast Guard/NASA threshold increased to $35 million

Specifically, the Fiscal Year (FY) 2025 National Defense Authorization Act (NDAA) (https://bit.ly/3QpP2nd) raised the protest threshold for Department of Defense (DoD), Coast Guard, and NASA task orders issued under Indefinite Delivery Indefinite Quantity (IDIQ) contracts from $25 million to $35 million. The threshold for civilian task order protests remains at $10 million.

Congress originally established minimum dollar thresholds for task orders when it gave the Government Accountability Office (GAO) exclusive jurisdiction over protests of task orders in the Federal Acquisition Streamlining Act. While the Court of Federal Claims (COFC) still has jurisdiction to hear protests involving orders that increase the scope, period, or maximum value of the contract under which the order is issued, such COFC protests are rare.

The inability to challenge task orders below the $35 million/$10 million threshold should be considered when pursuing opportunities below those amounts. Contractors, for example, devote fewer resources to pursuing task orders where there is no right to protest a seemingly improper award or may focus more time and attention and ensure the terms of underlying IDIQ contracts will result in fair task order competitions.

GAO's application of the threshold

In addition, while it may seem that the applicability of this threshold is easy to apply, a protest decision from last year shows it may not always be straightforward. In *ELS, Inc.*, a decision we previously discussed on this blog (https://bit.ly/4gSkSUv), the GAO dismissed (https://bit.ly/418nY0L) a protest by ELS, an unsuccessful bidder on a DoD task order opportunity, concluding that it did not have jurisdiction.

The protester argued that the task order was "valued in excess of" the $25 million threshold asserting that "when determining the value of a task order for jurisdictional purposes, the focus [should be] on the total anticipated funds to be paid to the contractor, regardless of what the awarded value of the task order is."

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The contractor contended that the value cannot be solely determined by the offeror's proposed costs, "but rather based on the total anticipated funds expected to be paid to the contractor."

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Because the intervenor's total evaluated price exceeded the $25 million threshold — and the Navy expected to pay more than $25 million — ELS maintained that the GAO had jurisdiction to hear the protest.

In contrast, the Navy took the position that the intervenor's proposed price of $24.8 million, which was the awarded amount

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and not the evaluated price of $25.1 million, was the relevant number to be used for GAO's jurisdiction determination. Under the government's interpretation, the GAO should look to the actual value of the awarded task order rather than the total anticipated funds expected to be paid.

The GAO agreed with the Navy explaining that "the determining factor in this protest is the amount of the contract award, which is below our jurisdictional threshold." Pointing to FAR 52.232-20, GAO pushed back on the protestor's argument that the figure GAO should use is the total evaluated cost by pointing out that the government is not obligated to reimburse the contractor for costs incurred in excess of the contract amount.

The heightened threshold further limits contractors protest rights when pursuing DoD/Coast Guard/NASA task orders.

"In short, the usual rule is that contract value, for the purpose of determining jurisdiction, will be determined by the amount of contract award, and the facts of this case provide no rationale for departing from this general rule."

However, GAO did note that "unusual circumstances" may require GAO deviate from the general rule when procurements involve "unconventional methods for compensating the contractor or an unusual price evaluation technique." However, those circumstances were not present.

Strategic insights for government contractors and procurement specialists

The heightened threshold further limits contractors protest rights when pursuing DoD/Coast Guard/NASA task orders. It is part of a long-held belief among some policymakers that protests are costly and should be limited where possible and reflects the understanding that a robust, competitive process for the underlying IDIQ awards means that it is appropriate to apply a more streamlined process to task order awards under those agreements.

Other related proposals include making unsuccessful protesters pay the costs the government must bear when defending against protests.

In fact, the FY2025 NDAA also includes language asking the GAO and DoD to research processes that may make it harder to protest DoD awards going forward, including enhanced pleading standards, and submit a report detailing a proposal to force unsuccessful protestors to reimburse the government and awardees for costs and lost profits. The report is due by June 21, 2025.

Companies competing for task orders should take note of the increased threshold and the lessons learned from the ELS decision when considering whether to pursue or to protest a task order award.

About the author

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