



# BID PROTEST

*WINNING THE BATTLE  
WITHOUT LOSING THE WAR*

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*June 18, 2015*



*BID PROTEST: WINNING THE BATTLE WITHOUT  
LOSING THE WAR*

# ABOUT FLUET HUBER + HOANG PLLC



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**ABOUT FH+H**

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# Fluet Huber + Hoang PLLC

- FH+H is a veteran owned law firm focused on helping corporate clients thrive
- FH+H lawyers have a deep understanding of government contracting, corporate governance, and international business
- FH+H lawyers include:
  - Former federal law clerks
  - Former White House counsel
  - Former Supreme Court law clerk
  - Former public company General Counsel
  - Combat veterans with top security clearance
- Accolades:
  - Virginia Chamber 6th ranked Fastest Growing Company in Virginia 2014
  - Inc. 5000 Number 1 ranked fastest growing law firm in America in 2013



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## ABOUT FH+H

# Milt C. Johns, Esq.

- Private practice for over 17 years.
- Almost 30 years experience in government and defense contracting arenas in a variety of roles.
- Primary areas of practice are in business litigation, corporate law and formation, government contracts and serving as counsel for government contracting companies.





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**THE WHO,  
WHAT,  
WHEN,  
WHERE,  
WHY  
(AND HOW)  
OF GOVERNMENT CONTRACTS BID PROTEST**



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**WHO, WHAT, WHEN, WHERE, WHY (AND HOW)**

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## Who Can Protest?

- **Interested Party:**
  - “An actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.”  
(4 CFR § 21.0(a))
- Interested party has to be in line for contract award.
- Subcontractor remedies? (4 CFR § 21.5(h))



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## **What Can Be Protested?**

- Can protest a solicitation or cancellation of a solicitation, an award or proposed award, or the termination or cancellation of a contract award if termination was based on improprieties in the award. (FAR 33.101; 4 CFR § 21.1)
- Cannot protest just because you were not awarded the contract or the government made a bad decision.



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### **WHO, WHAT, WHEN, WHERE, WHY (AND HOW)**

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# When to File?

- **Pre-award:**
  - Before time of submission for responses to RFP (4 CFR § 21.2(a)(1); FAR 33.103(e))
  - Pre-award offeror excluded from competitive range must request a debriefing in writing within 3 days after notice of exclusion (FAR 15.505(a)(1)); then file within 10 days after debriefing (4 CFR § 21.2(a)(2))
- **Post-award:**
  - Within 10 days after basis of protest is known or should have been known (4 CFR § 21.2(a)(2); FAR 33.103(e))
  - Within 5 days of debriefing (to stay award) or otherwise within 10 days of debriefing (if offered) (4 CFR § 21.2(a)(2))





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## **Where to File?**

### **1. The procuring agency**

- Generally faster, less expensive and the least formal.

### **2. Government Accountability Office (GAO)**

- Somewhat less formal and generally less costly than COFC.

### **3. U.S. Court of Federal Claims (COFC)**

- More formal, no deadline for filing a post-award protest other than statute of limitations.



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## Why File?

- Strategic considerations
- Succeed versus Sustain
  - You can succeed with pre-award protests without having it sustained



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## **How to File?**

- Work with an experienced government contracts firm
- Work with professionals that understand the bid protest process
- Short timelines – need professionals that can quickly assist you in making the best decision for your company (i.e., whether to file, where to file, on what grounds, etc.)



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COMMENTS  
&  
QUESTIONS



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