

Top 10 Ways to Vanquish a Protest Troll

1. *Steer the procurement to vehicles that lend themselves less to protests*
2. *Shape past performance requirements to combine technical and customer domain knowledge*
3. *Encourage high technical certifications and process maturity*
4. *Support the customer's efforts to do pre-award vetting to weed out non-qualified bidders*
5. *Recommend evaluation criteria that give the source selection committee flexibility to make subjective award decisions*
6. *Consider orals, coding challenges, and other evaluation elements that are much more difficult to protest*
7. *Ensure that your approach exceeds all technical and key personnel requirements*
8. *Embrace price realism and demonstrate how lower bidders could not deliver what the customer wants*
9. *Validate that your proposal is compliant*
10. *Report settlement overtures to the appropriate authorities*

Beware the Protest Troll

- 🐾 Growing acceptance and increased economic incentives have enabled protests to become commonplace in the procurement process
- 🐾 Incumbents continue to use protests as a delaying mechanism to extend their period of performance on existing contracts
- 🐾 Protest effectiveness rates are on the rise as well, from a historic trough in the low forties in 2018-2019 to now over 50%
- 🐾 The so-called "protest troll" is akin to the "patent troll" seen in technology circles, extorting competitors in hopes of a settlement
- 🐾 Protest trolls often lack credibility or customer intimacy, but leverage a compliant proposal to bully other bidders into giving up workshare
- 🐾 Contracting officers are more receptive than ever to working with bidders on procurement strategies that minimize protest risks

Crossing the Solicitation Bridge

Protestors have roamed the village of government contracting for ages, though the nature of the threat they pose continues to evolve. Ten years ago, contractors avoided protesting due to precarious conditions on solicitation bridges. They feared upsetting their customers by publicly denouncing them. Protests were reserved for only the most egregious examples of government error or malfeasance. Today, lack of negative consequences has eroded that social contract, making protests commonplace. Incumbents protest to extend their work, and new bidders protest large awards because they have even odds of success. While protest effectiveness rates returned to historic averages of ~40% from 2018-2019, they are on the rise, with over 50% of protests proving effective.

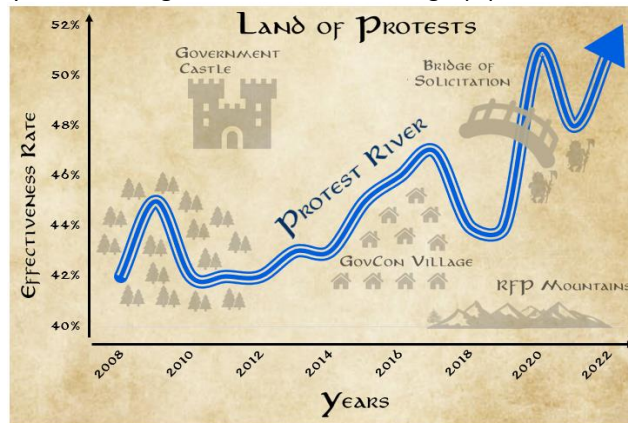
It Pays to Protest

With the taboo around protesting awards removed, there is now strong economic motive for and little downside to protesting. The GAO bid protest annual report data shows that almost every losing incumbent is now protesting and has been for several years. Incumbents who protest early enough can get a stay of execution and continue performing their existing work as the protest winds through the 100-day review window. The profits from continuing this work more than make up for any legal costs associated with the protest. On large ID-IOs, losing bidders pile up protest filings, like plaintiffs on a class action lawsuit, in hopes of overwhelming the procurement staff and bullying them into awarding everyone (see CIO-SP4). With virtually nothing to lose and significant profits to gain, protestors feel empowered to abuse the very mechanism that was intended to preserve procurement integrity.

Beware the Protest Troll

Against this backdrop of increased protesting, a new variant of protestor has evolved – one that is neither an incumbent, nor a well-qualified bidder. The "protest troll" has emerged from its cave and settled under the bridges of the GovCon village. These greedy trolls use protests as a means of extortion, much like the "patent trolls" who wreak havoc on technology companies by snatching up patents and suing for hefty settlements.

Protest trolls, lacking customer intimacy or credibility, throw in compliant bids to block the winner from crossing the solicitation bridge. They only allow the winner to cross once they pay a troll toll, usually in the form of workshare on the contract. Beware of these trolls, who threaten the GovCon village, using legal fees as a cheaper alternative to B&P.



After a brief pullback in 2018-2019, protest effectiveness rate is back over 50%, essentially inviting bid protests.

Turn the Trolls into Stone

The government has made some strides to limit protest abuse. The village has increased the use of orals as a requirement to cross solicitation bridges. Trolls are infamous for their lack of wit and poor speaking skills and are thus dissuaded from approaching these bridges. GovCon has also hired the expertise of troll hunters known as FedSim, who stop trolls in their tracks before they can collect a toll. Despite these actions, contractors can do more to protect themselves from protests. They can help shape requirements for past performance, technical capabilities, and specific certifications to prevent trolls from bidding. Furthermore, bidders can ensure that they are compliant with all standards and mandates to ward off protest attacks. Lastly, winning bidders can fight back against protest trolls by reporting them to GAO. Following these guidelines, you can trap the trolls in sunlight and turn them into stone for good.