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Federal Circuit Clarifies Bid Protest Standing: Must Be Actual or Prospective Bidder

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On August 28, 2025, the Federal Circuit issued an important *en banc* decision in *Percipient.ai, Inc. v. United States* that notably clarifies who qualifies as an “interested party” with standing to bring a bid protest under the Tucker Act. The 7-4 decision rejected Percipient.ai, Inc.’s (“Percipient”) argument that it had standing to object to an alleged violation of statute or regulation in connection with a procurement, because Percipient did not actually submit a proposal in response to the solicitation. As a consequence, the Federal Circuit concluded that Percipient was not an “interested party” and affirmed dismissal of its bid protest complaint.

Percipient’s bid protest alleged that the National Geospatial-Intelligence Agency (the “Agency”) violated its obligations to acquire commercial products and services to the maximum extent practicable under 10 U.S.C. § 3453. But the procurement in question was a task order under a single-award indefinite delivery/indefinite quantity contract which the Agency previously awarded to CACI, Inc. and for which Percipient did not submit a proposal because it could not meet all of the Agency’s requirements.

Below we highlight three important takeaways from this decision:

1. Definition of “Interested Party”

Under the Tucker Act, 28 U.S.C. § 1491(b)(1), an “interested party” may object “to a solicitation by a Federal Agency for bids or proposals for a proposed contract a proposed award or the award of a contract or an alleged violation of statute or regulation in connection with a procurement or proposed procurement.” Percipient argued that the definition of “interested party” varies depending on whether the objection is to (i) a solicitation for bids, (ii) a proposed award, or (iii) an alleged violation of statute or regulation in connection with a procurement or proposed procurement.

The Federal Circuit rejected this argument, holding instead that § 1491(b)(1) does not have three distinct “prongs” and “is not written with multiple interested party provisions, it has one singular interested party.” The Court was unwilling to accept Percipient’s statutory construction, which “would have the same term mean different things in the same sentence” and would contravene the statutory history.

2. The Term “Interested Party” has a Specific Understood Meaning in

Federal Procurement

Although the Tucker Act does not define the term “interested party,” the Federal Circuit relied on statutory history and prior precedent to explain that the term “interested party” has had a specific understood meaning in the context of Federal procurements. The opinion reasoned that, in an earlier decision, the Federal Circuit previously found that other relevant Federal procurement statutes in effect when Congress enacted § 1491(b)(1) relied on the same definition of an “interested party,” to mean: “actual or prospective bidders or offerors whose direct economic interest would be affected by the award of the contract or by failure to award the contract.” See *Am. Fed’n. of Gov’t. Emps., AFL-CIO v. United States*, 258 F.3d 1294, 1301-1302 (Fed. Cir. 2001)

3. Third “Prong” of 28 U.S.C. § 1491(b)(1) Still Has Independent Force and Effect

Percipient's bid protest focused on the so-called “third-prong” of § 1491(b)(1), i.e., an “interested party” may object to a violation of law or regulation in connection with a procurement or a proposed procurement. It argued that limiting standing to actual or prospective bidders or offerors rendered this statutory language “superfluous in violation of basic canons of statutory interpretation.”

The Federal Circuit similarly rejected this argument. The opinion held that the authority to challenge an alleged violation of statute or regulation in connection with a procurement is not rendered meaningless by limiting standing to actual or prospective bidders. The Federal Circuit explained that this language clarifies that bid protest jurisdiction extends beyond just objections to the solicitation or the award and listed examples of such objections having been taken up by the courts in the past.

Looking Ahead

This decision clarifies a key statutory term in the Tucker Act and confirms that subcontractors do not maintain standing to lodge protest actions with the Court of Federal Claims. However, the dissenting opinion shows that the Court of Appeals for the Federal Circuit is sharply divided on this issue. There is the very real potential that Percipient will appeal this decision to the Supreme Court.

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