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The Nation's Combat Logistics Support Agency



Agency Counsel Perspective on Protest Procedures and Fraud Prevention

Anita Doran
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DLA Supply Chain Alliance
Conference & Exhibition
April 24, 2024





AGENDA

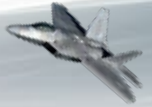
- Agency and Contracting Officer Protests
- Insights into DLA's Fraud Prevention Program



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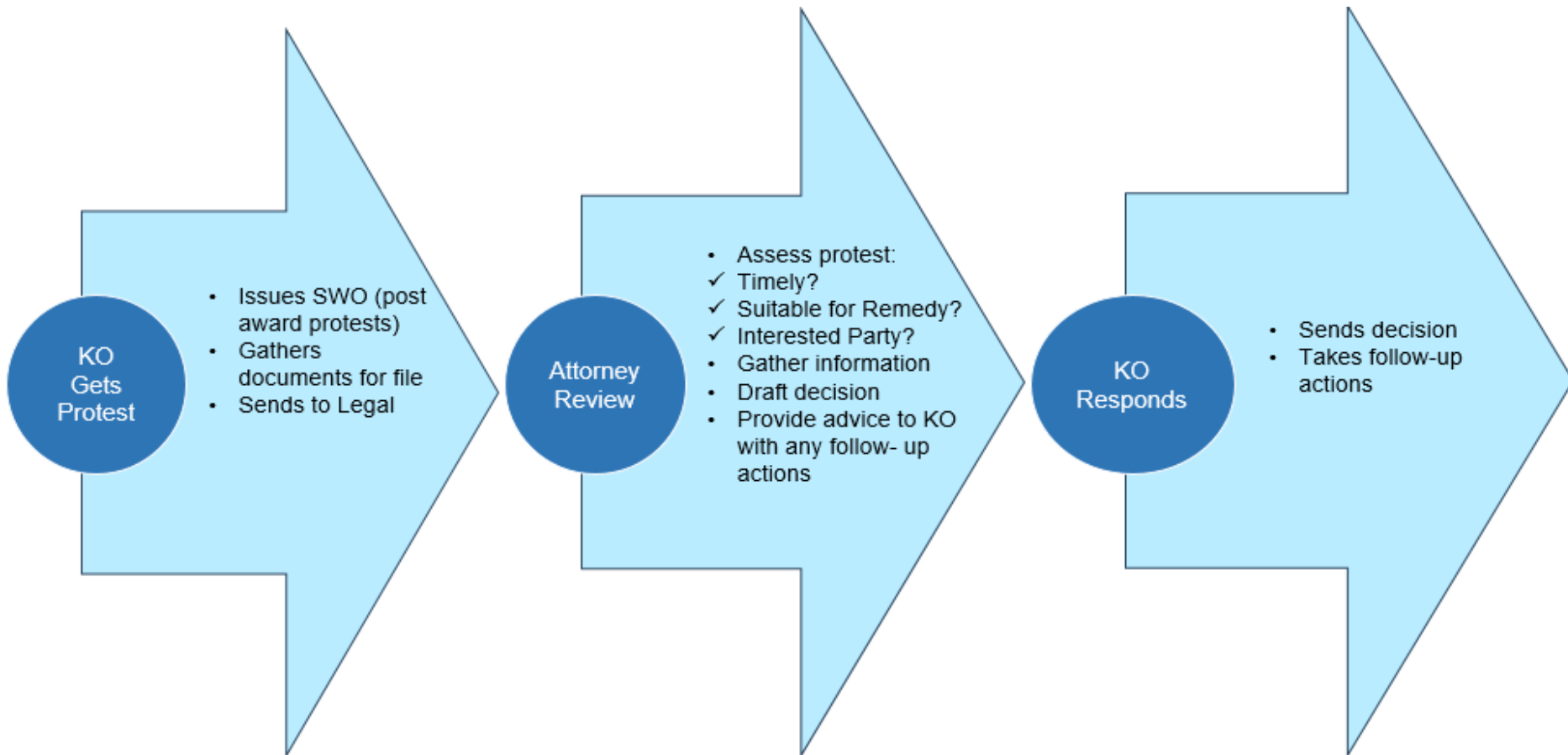
Agency and Contracting Officer Protests

Ty McDonald, Acquisition Attorney
DLA Land and Maritime



Protests

What happens to your protest?





Protest Decisions

- **Dismissed** = Procedural Ground
- **Denied** = Facts or law does not support the protester's argument
- **Sustained** = Protest is Valid
- **Corrective Action**



Dismissals

Why Might a Protest Be Dismissed?

- Untimely
- Contract Administration
- Not Interested Party/Standing
- Not Protestable Issue
- Corrective Action – Academic

We follow GAO rules



Value of Protests

- Upholds the integrity of the solicitation, evaluation and award process
- Patterns may identify
 - Training Opportunities
 - Indicators of Fraudulent Activity



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Supplier Fraud Awareness Brief

Anita Doran, Senior Fraud Counsel
DLA Land and Maritime





What is the Land and Maritime Fraud Program?



Mission: Protect the supply chain from fraudulent contractors

Purpose: Identifying intentionally supplied nonconforming parts



Land and Maritime Fraud Program

Our program coordinates the tools of Contracting, Business Integrity, and Law Enforcement to protect the supply chain, hold bad actors accountable, and improve operational readiness, by:

- Advising Contracting Officers
- Supporting DCIS & other Investigative Organizations
- Pursuing Suspension/Debarment Actions
- Supporting DOJ in criminal prosecutions and civil litigation





Suppliers Beware

- Criminal organizations continue to target DLA's supply chains, particularly the industrial hardware supply chain.
- They are increasingly inserting themselves in DLA's supply chains as subcontractors.
- Product substitution is a perennial problem for items bought from approved sources ("code & p/n").





Subcontractor Scheme

- Sham domestic businesses set up as front companies for foreign manufacturers
- They approach prime contractors (typically small business dealer/distributors) or 3rd party consultants with offers to supply items under DLA awards at very low prices.
- They ultimately deliver non-conforming, foreign-manufactured goods, rather than conforming, domestically manufactured goods.
- Typically, the material looks correct upon casual observation. It may pass a kind, count, and condition visual inspection, but fail any sort of rigorous testing.

DEFECTIVE



Bad Subcontractor Indicators

- Initial contact by email
- Relatively new company with little past performance history
- Unwilling to meet in person or to allow you to visit their manufacturing facility and consistently unavailable when you call or request updates
- Constantly miss deadlines on some contracts (when they must manufacture something), while shipping impossibly early on others (when something on hand will suffice)
- Don't seem to understand the product they are selling or basic contract requirements



More Indicators



- Broken English (Bad Grammar, Spelling Mistakes)
- Principals are frequently out of the country
- Lag in voice communications
- Documentation clearly indicates the material was manufactured overseas or shipped from overseas
- Unable to verify authenticity of various certificates (e.g., ISO-9001)



The Payoff

- Tender cheap, non-conforming goods at a substantial markup
- Circumvent Export Controls on Technical Data
- Defeat various domestic preference programs





Not Legal Advice, Just Advice

- Perform your own due diligence of your suppliers
- Do not rely upon the fact that the company may hold a CAGE code or Joint Certification Program certificate
- Implement your own quality controls
- Never surrender your SAM, DIBBS, or cFolders credentials to anyone





Typical Product Substitution Scenario

- Small business dealer
- Quotes “exact product”
- Provides parts from non-approved source aka cheapest source possible
- KO requests traceability and dealer gets tripped up either by providing false trace or their actual invoices that show they didn’t provide parts from approved source
- Pictures of part clearly show it’s not from approved source (packaging or part markings)
- Sometimes crosses line into counterfeit
- Other problematic situations – no traceability to approved sources because purchased on Amazon, eBay, etc.



Notice to Vendors in DIBBS Quote

Notices:

You have stated that the part number offered for NSN/Part # 8465016301303 is an "exact product". **Exact product means CAGE 04TLO P/N 94B-3-22: manufactured by, under the direction of, or under agreement with CAGE 04TLO.** Any product not meeting these criteria is considered an alternate product even though it may be manufactured in accordance with the drawings and/or specifications of CAGE 04TLO. (see Procurement Note L04). To confirm the technical acceptability of your exact product quote, we may request documents (e.g., invoice, quote, agreement) to show traceability to CAGE 04TLO. Failure to provide adequate traceability upon request may result in the rejection of your quote as technically unacceptable. Any indication that you have misrepresented the product offered shall result in the Government considering rescission of any resultant contract and all other sanctions, contract penalties, and remedies established under any other law or regulation. **NOTE:** It is possible for an item description to change between issuance of the solicitation and the resulting order. If an order is issued by the Government in response to this quotation that does not cite CAGE 04TLO P/N 94B-3-22, you should not commence performance but should promptly notify the administrative contracting officer of the discrepancy.



Contract Requirement - DLAD Procurement Note L04, Offers for Part Numbered Items (SEP 2016)

(a) For part numbered items, identified in the item description only by the name of an approved source (CAGE code), a part number, and a brief description.

Exact product – applies to contract line-item(s) (CLIN(s)): _____
CAGE code _____ part number _____

Alternate product – applies to CLIN(s): CAGE code _____ part number _____

Superseding part number – applies to CLIN(s):
CAGE code _____ part number _____ Identify reason for superseding part number:

...

(b) **Exact product means** a product described by the name of an approved source and its corresponding part number cited in the item description; and manufactured by, or under the direction of, that approved source.

An offeror of an exact product must meet one of the descriptions below.

(1) An approved source offering its part number cited in the item description; 42 Defense Logistics Acquisition Directive (DLAD) Procurement Notes Effective March 13, 2024

(2) A **dealer/distributor offering the product of an approved source and part number cited** in the item description;

(3) A manufacturer who produces the offered item under the direction of an approved source; and **has authorization from that approved source to manufacture the item, identify it as that approved source's name and part number, and sell the item directly to the Government.**

(4) A dealer/distributor offering the product of a manufacturer that meets the description in subparagraph (3) above.

...



Recent Product Sub Criminal Cases



D&D Logistics LLC (CAGE 7VKT9) and DCB Defense Group LLC (CAGE 870R8) of Dayton, Ohio

- Owner Devon Hayes pled guilty last year to charges related to intentionally providing non-OEM parts (Caterpillar, Cummins, GE and others)
- Hayes sentenced in March 2024 to 6 months imprisonment and payment of \$655,714 in restitution



Recent Product Sub Criminal Cases



WM Industries, LLC dba Turbo Source (CAGE 87PR5)
of Beaumont, Texas

- Owners Gregory Gotreaux and Phillip Huddleston (former DCMA QAR) pled guilty last year to charges related to intentionally providing non-OEM parts (Caterpillar, MTU America and others)
- Gotreaux sentenced in November 2023 to 21 months imprisonment and payment of \$706,775 restitution
- Huddleston sentencing scheduled for late April



Questions?

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QUESTIONS?

