

## OTA Today Takeaways

DAU greatly appreciates the time and effort that our panelists put into a well-received OTA Today webinar last week! While time will tell what the actual impact of the *Hydraulics* decision will have on bid protest jurisdiction, there were a few thoughts/questions that are good takeaways in the short term:

- The issue of bid protest jurisdiction for other transactions (OTs) is not settled.
- The language that is used to document other transactions does matter. Avoid terms used in the Federal Acquisition Regulation if your intent is to leverage 10 U.S.C. 4022 as the authority for award.
- OTs are not a way to avoid competition. Rather, they provide an opportunity to define competition so that it meets the mission needs.
- Once the competition requirement has been met, the move to a follow-on production award is not a sole source award (a FAR-based term that implies an exception to competition). Rather, a follow-on production award is simply the result of a successful prototype that was already competed.
- File documentation should explain the decision. One panelist recommended frequent use of the word “because” as it signals that the next portion of the sentence will explain why the decision was made, which is persuasive when showing the decision the Government made was reasonable.
- The Government should expect to see more bid protests of OTs as the Department of Defense increases the amount of money it spends on these types of contracts. To the extent that the follow-on production contract is of a greater dollar value or unseats an incumbent, there is greater risk of a protest.

We look forward to having you attend the next OTA Today in January!