

THE NASH & CIBINIC REPORT

government contract analysis and advice monthly
from professors ralph c. nash and john cibinic

Author: Ralph C. Nash, Professor Emeritus of Law, The George Washington University
Contributing Authors: Vernon J. Edwards and James F. Nagle

JANUARY 2022 | VOLUME 36 | ISSUE 1

¶ 6 POSTSCRIPT: *HARMONIA* BETTER LATE THAN NEVER

A special column by Nathaniel E. Castellano, a senior associate in the Government contracts and national security practice group at Arnold & Porter; the ideas presented herein, particularly those that may prove to be in error, are his own.

My guest contribution to the October 2021 REPORT discussed a tricky issue of bid protest timeliness that had been pending without decision for nearly a full year after oral argument before the U.S. Court of Appeals for the Federal Circuit. *Harmonia Delayed: Anticipating the Federal Circuit's Next Decision on Bid Protest Timeliness*, 35 NCRNL ¶ 61. About two months later, the Federal Circuit issued a clean, unanimous decision authored by Judge Jimmie V. Reyna. *Harmonia Holdings Group, LLC v. United States*, ___ F.4th ___, 2021 WL 5816288 (Fed. Cir. Dec. 7, 2021), 63 GC ¶ 376. In short, filing a preaward agency-level protest satisfies the *Blue & Gold* Rule, preserving the challenge for an eventual postaward protest at the Court of Federal Claims. See *Blue & Gold Fleet, L.P. v. United States*, 492 F.3d 1308 (Fed. Cir. 2007), 49 GC ¶ 320. But, to the extent there is significant delay between the time that the agency denies the initial protest and the time that the protester files at Court of Federal Claims, the Federal Circuit cautioned that the court should take that delay into account when deciding the scope of appropriate relief. It will be very interesting to see what the court does on remand. In the meantime, we can all breathe a sigh of relief that the merits panel has avoided, for now, any serious disruption to the *Blue & Gold* rule. *Nathaniel E. Castellano*

