

# Supreme Court Declines Review in Percipient.ai, Leaving Bid Protest Interested Party Status Unchanged

## Client Alerts

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On January 12, 2026, the US Supreme Court denied Percipient.ai, Inc.'s petition for a writ of certiorari, ending a closely watched case that tested the boundaries of bid protest standing at the Court of Federal Claims. The decision leaves intact the Federal Circuit's *en banc* ruling that contractors must be actual or prospective bidders to challenge agency procurement decisions, regardless of the nature of the alleged statutory violation.

Percipient, a commercial provider of advanced analytics and artificial intelligence products, filed a 2023 bid protest challenging the National Geospatial-Intelligence Agency's (NGA) decision to issue an order to CACI, Inc.—Federal for custom “computer vision” technology—a form of artificial intelligence that uses and trains computers to interpret visual information—rather than procure commercially available solutions. Percipient alleged that NGA violated the commercial item procurement preference under 10 U.S.C. § 3453, which requires agencies to acquire commercial products and services “to the maximum extent practicable.” *Percipient.ai, Inc. v. United States*, No. 23-28C, 2023 WL 3563093, (Fed. Cl. May 17, 2023).

Notably, Percipient had not bid on the underlying “SAFFIRE” contract—a single-award IDIQ contract for visual intelligence data collection and computer vision capabilities—because it lacked the capability to meet all solicitation requirements. Instead, Percipient awaited post-award market research where it expected to demonstrate that its commercial computer vision product could meet NGA's needs and be incorporated into the procurement.

## Procedural History

**Court of Federal Claims (2023):** The Court of Federal Claims dismissed the complaint for lack of subject matter jurisdiction, finding the challenge barred under the Federal Acquisition Streamlining Act's (FASA) task order protest prohibition because NGA's development decision was “directly and causally related” to the issuance of a task order. *Percipient.ai, Inc. v. United States*, No. 23-28C, 2023 WL 3563093 (Fed. Cl. May 17, 2023). Percipient appealed.

**Federal Circuit Panel (June 2024):** A divided panel (2-1) reversed, holding that (1) Percipient’s allegations were not barred under the FASA task order bar because Percipient was not challenging the issuance of a task order, but rather the post-award failure to comply with section 3453; (2) the Tucker Act conferred jurisdiction because Percipient’s alleged section 3453 violation was “in connection with a procurement or a proposed procurement” under the so-called prong three of section 1491(b)(1); and (3) Percipient had standing to bring its claim challenging NGA’s decision to develop the software. *See Percipient.ai, Inc. v. United States*, 104 F.4th 839 (Fed. Cir. 2024).

Differentiating between challenges “in connection with” a procurement, and either solicitation challenges or award decisions, the Court concluded that interested party standing for alleged violations of 10 U.S.C. § 3453 without challenging the contract award, “includes an offeror of commercial or nondevelopmental services or items whose direct economic interest would be affected by the alleged violation of the statute.” *Id.*

**En Banc Rehearing (August 2025):** The Government successfully petitioned for *en banc* review. The full court vacated the panel decision and ordered briefing on the question of “[w]ho can be ‘an interested party objecting to . . . any alleged violation of a statute or regulation in connection with a procurement or a proposed procurement under 28 U.S.C. § 1491(b)(1).’” *See Percipient.ai, Inc. v. United States*, 153 F.4th 1226 (Fed. Cir. 2025).

In its resulting 7-4 decision, authored by Circuit Judge Hughes, the Court of Appeals affirmed the trial court dismissal holding that “an interested party is an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract, regardless of the type of challenge brought[.]” *Id.* Therefore, Percipient lost its challenge. Because Percipient never bid (and could not have bid) on the SAFFIRE contract, it lacked standing.

### **Key takeaways:**

- **The commercial item procurement preference does not confer a separate bid protest right of action outside the parameters of the Tucker Act.** Contractors cannot invoke 10 U.S.C. § 3453 to establish standing absent status as an actual or prospective bidder on the procurement at issue.
- **Contractors must establish their “interested party” status under the Tucker Act.** Regardless of whether a protester challenges a solicitation, an award, or an alleged statutory violation, standing requires that the protester be an actual or prospective bidder whose direct economic interest would be affected by the award or failure to award the contract.
- For traditional post-award bid protests, contractors must be an actual or prospective offeror with a direct economic interest. *Am. Fed’n of Gov’t Employees v. United States*, 258 F.3d 1294, 1302 (Fed. Cir. 2001).

- In pre-award bid protests, contractors must demonstrate a “non-trivial competitive injury which can be addressed by judicial relief.” *Weeks Marine, Inc. v. United States*, 575 F.3d 1352, 1362 (Fed. Cir. 2009).
- **Where a solicitation restricts a contractor from participating in a competition, prospective bidders should consider challenging the terms of a solicitation or submitting a proposal or quote.** If a solicitation contains improper or unduly restrictive requirements, contractors should consider filing a protest before quotes or proposals are due.

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