

Florida Bid Protests



Overview and Statistical Analysis

Introduction

- Overview of Florida Bid Protests at State Level
- Statistical Analysis
- Joseph M. Goldstein
- Shutts & Bowen, www.shutts.com
- Federal, State, and Local Government Contracting
- Business Litigation

Procurement Law in Florida

- State – Florida Statutes, Chapter 287 and Chapter 120
 - Florida Department of Transportation, Chapter 337
 - Lottery, Chapter 24
- County and Municipality
 - Limited Statutes, § 287.055 Professional Services, and § 255.20
 - Ordinance
 - Policy or Manual

Bid Protests - State Agencies

- State Executive Agencies
- Not Counties or Municipalities
- Not Special Districts
- School Districts – optional

Similarities Among Jurisdictions

- Standing
- Specification Challenges (*)
- Award Challenges
- Reject All (*)
- Stay of Procurement or Award (*)
- Standard of Review (*)
- Bonds or Filing Fee

Differences Among Jurisdictions

- Fact Finder
- Discovery
- Amendments
- Hearing

State – Governing Statutes

- Florida Administrative Procedure Act
- Chapter 120, Florida Statutes
 - Fla. Stat. § 120.57(3) – bid protests
 - Fla. Stat. § 120.569 - generally

State - Regulations

- Florida Administrative Code
 - Fla. Admin. Code Chapter 28-110 (protests)
 - Fla. Admin. Code Chapter 28-106 (general)
 - Check Agency's FAC
- Division of Administrative Hearings (DOAH)

State Bid Protests - Timeliness

- Trigger – Electronic Posting of Decision or Intended Decision
- Notice of Protest – 72 hours
 - Specification - from posting of solicitation
 - Award – from posting of award
- Formal Protest – 10 days from Notice
 - Exceptions – Lottery (72 hours)
- Stay commences upon filing Formal Protest

State Bid Protests - Format

- Notice – one page
- Formal – like complaint or summary judgment motion
- Amendments – freely given

State Bid Protests – Settlement

- Settlement Meeting Mandatory
 - Informal
 - Within 7 days for filing formal protest
 - Notice – one page
- If not settled
 - Informal hearing – no facts in dispute
 - Formal hearing – facts in dispute

State Bid Protests – Hearings

- Division of Administrative Hearings (DOAH)
- Administrative Law Judges
 - Like Federal Magistrates
 - All FL APA Matters

State Bid Protests – Time Period

- Expedited Hearings
 - Within 30 days
 - Like informal bench trial
- Decision
 - 30 days after hearing or transcript
- Exceptions – 10 days
- Final Order – 30 days

State Bid Protests – Standard of Review

- De Novo Proceeding - violation of statute, rule, policy or solicitation
- High Burden
 - Clearly Erroneous
 - Contrary to Competition
 - Arbitrary
 - Capricious
 - Reject All - illegal, arbitrary, dishonest, or fraudulent

State Protests - Bond

- Generally with Formal Protest
 - 1 percent of the estimated contract amount
 - Based on protester's submission
 - Fla. Stat. § 287.042(2)(c)
 - Goods or Services
- Agency specific rules – FDOT
 - Qualification
 - Specification - \$5,000
 - Others – 1% of lowest bid or \$5,000 (greater)
 - No Pre-qualification - \$2,500

State Protests – Bond Conditions

- Payment of all costs, including on appeal
 - Transcripts
 - Others
- Excludes attorney's fees

State Protests – School Districts

- Fla. Stat. § 255.0516
- May require
 - \$25,000 or 2 percent of the lowest accepted bid, whichever is greater, for projects valued over \$500,000
 - 5% of the lowest accepted bid for others
- Includes attorney's fees
- Prevailing party

State Protests – Discovery

- Public Records
- Full Discovery
 - Written
 - Oral
- Motion Practice
- Protective Orders
- Conduct of Hearings

Non-State Protests

- Multi-steps
 - Procurement Director/Manager/Attorney
 - Hearing Officer
 - Elected Officials
 - Judicial
- Limited Discovery
- Limited Hearing Rights

Broward County, Florida

- \$4.84 Billion Budget
- Population 2 Million (MD is \$2.7 Million)
- Ordinance
- Administrative Code
- “Policy”

Broward County - Process

- Purchasing Director
- Multiple carve outs
 - Decision of E/SC limited to deviations from procedures and guidelines
 - Cannot protest vendor misconduct or misrepresentation
- Timeliness
 - 7 days – specifications
 - 5 days – award

Broward County - Process

- Filing Fee - nonrefundable
 - Up to \$500 to \$5,000
- No Stay
- Public Records
- No Amendments
- No Discovery
- Weeks or Months
- Written Decision

Broward County – Second Level

- Appeal - 10 days
- Bond
 - 1% of the contract amount
 - Costs and fees, not attorney's fees
 - Returned if prevail
- Stay
- Hearing Officer
 - Limited discovery
 - Witnesses

Miami-Dade County, Florida

- \$7.4 Billion Budget
- Population 2.7 Million
- Ordinance
- Implementing Order

Miami-Dade County - Process

- Hearing Officer
- Timeliness
 - 48 hours before due date– specifications
 - Cannot challenge weight or method
 - 3 days – award
- Supplementation
 - 3 days
 - 48 hours from receipt of public records
 - No other amendments

Miami-Dade County - Process

- Filing Fee - refundable
 - Up to \$500 to \$5,000
- Hearing within 10 business days
 - May extend 5 business days
- Public Records
- No Discovery
- Witnesses
- 2 Hour Presentation
- Written Decision within 5 days

Miami-Dade – Appeal

- Denial by Hearing Officer
 - No presentations to Commission
 - 2/3 to override decision except reject all
- Grant by Hearing Officer
 - Presentations
 - Majority Vote

Tallahassee – Capital City

- Nothing in Ordinance
- Purchasing Manual
- Timeliness
 - Specification – 72 hours before due date
 - Award – 72 hours after award
- Bond
 - 1% of Contract or \$5,000, whichever less

Tallahassee – Capital City

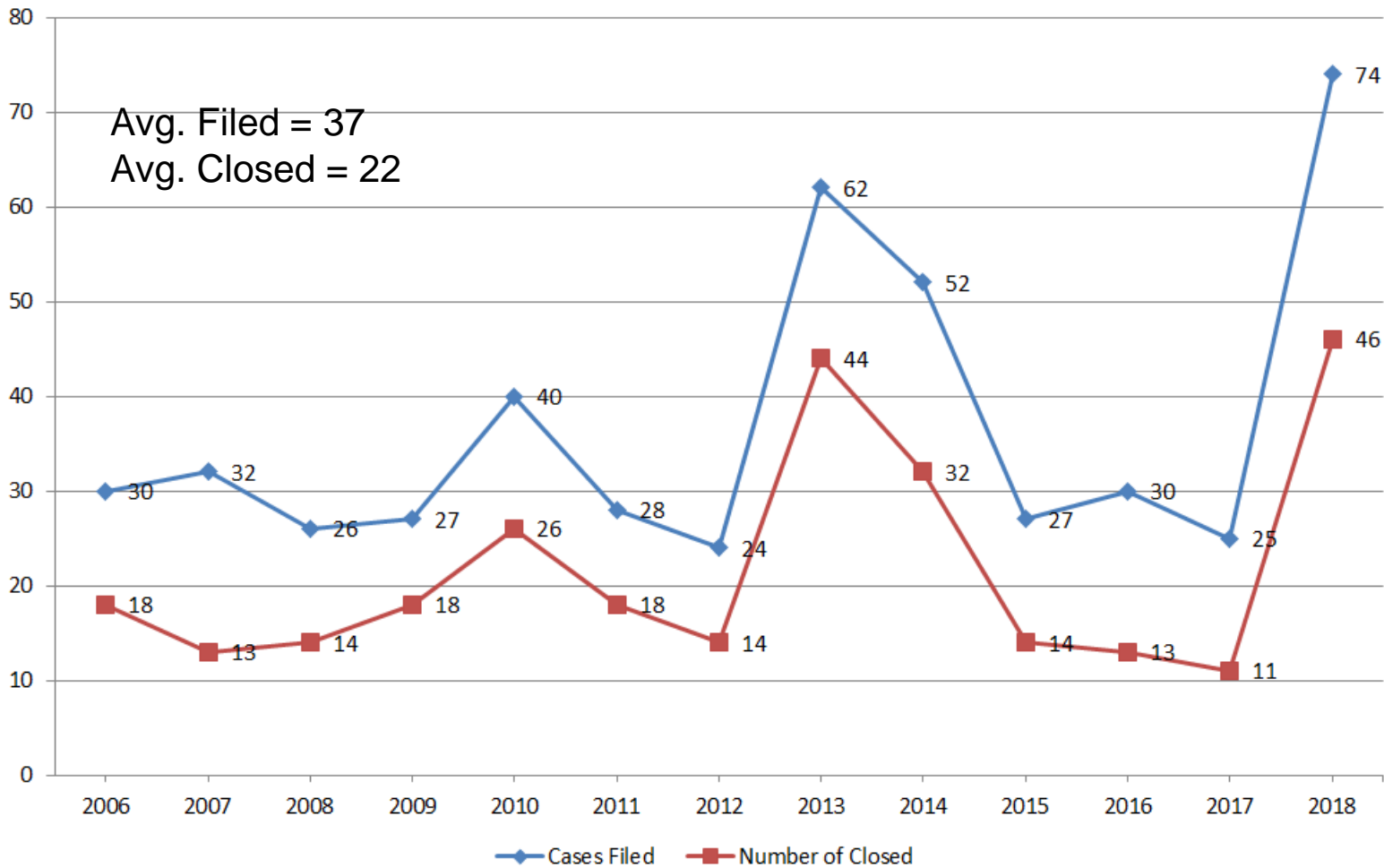
- City Attorney
- Stay
- Informal Hearing
- No Discovery
- Witnesses
- Written Decision

Fort Lauderdale – Bid Protest

- Ordinance
- No mandatory stay
- Director of Procurement Services
- Timeliness
 - No mention specification challenge
 - 5 days from award
- Filing Fee of \$50 to \$200
- Written Decision within 7 days
- Appeal to City Commission

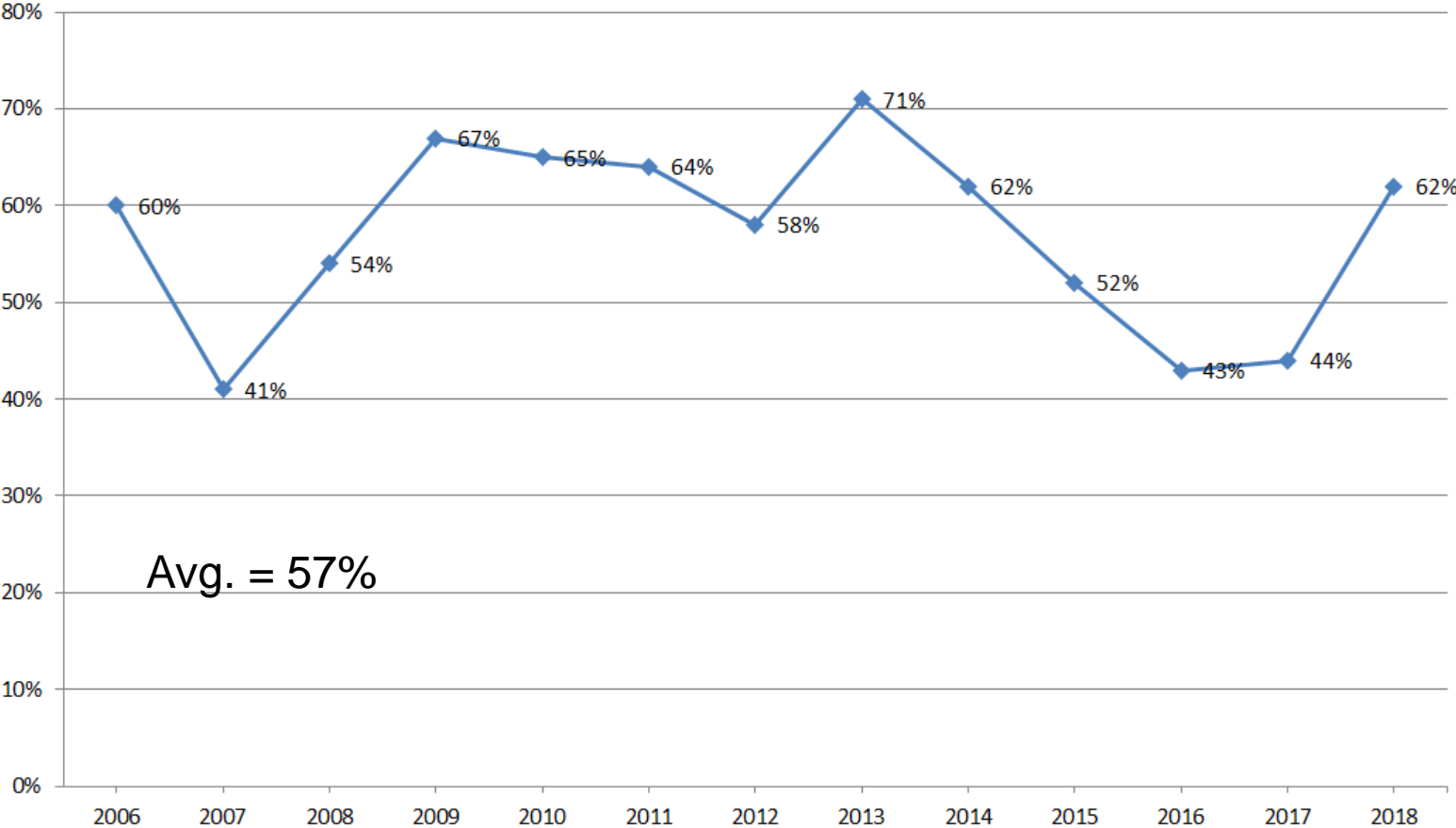
Bid Protests Filed and Closed

Florida DOAH Bid Protest Cases Filed and Closed



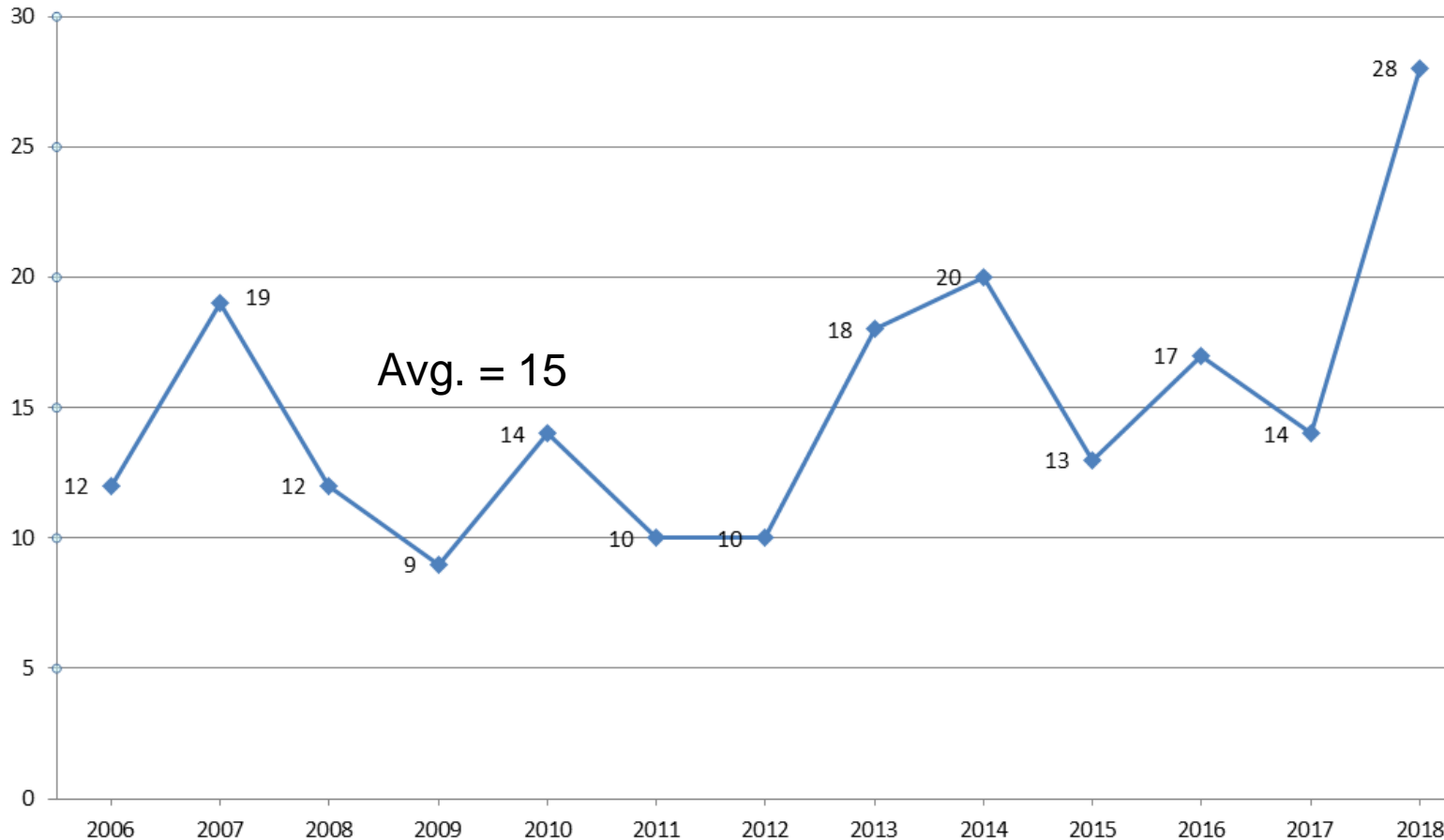
% of Cases Closed without Decision

Florida DOAH Bid Protests - Closed Rates



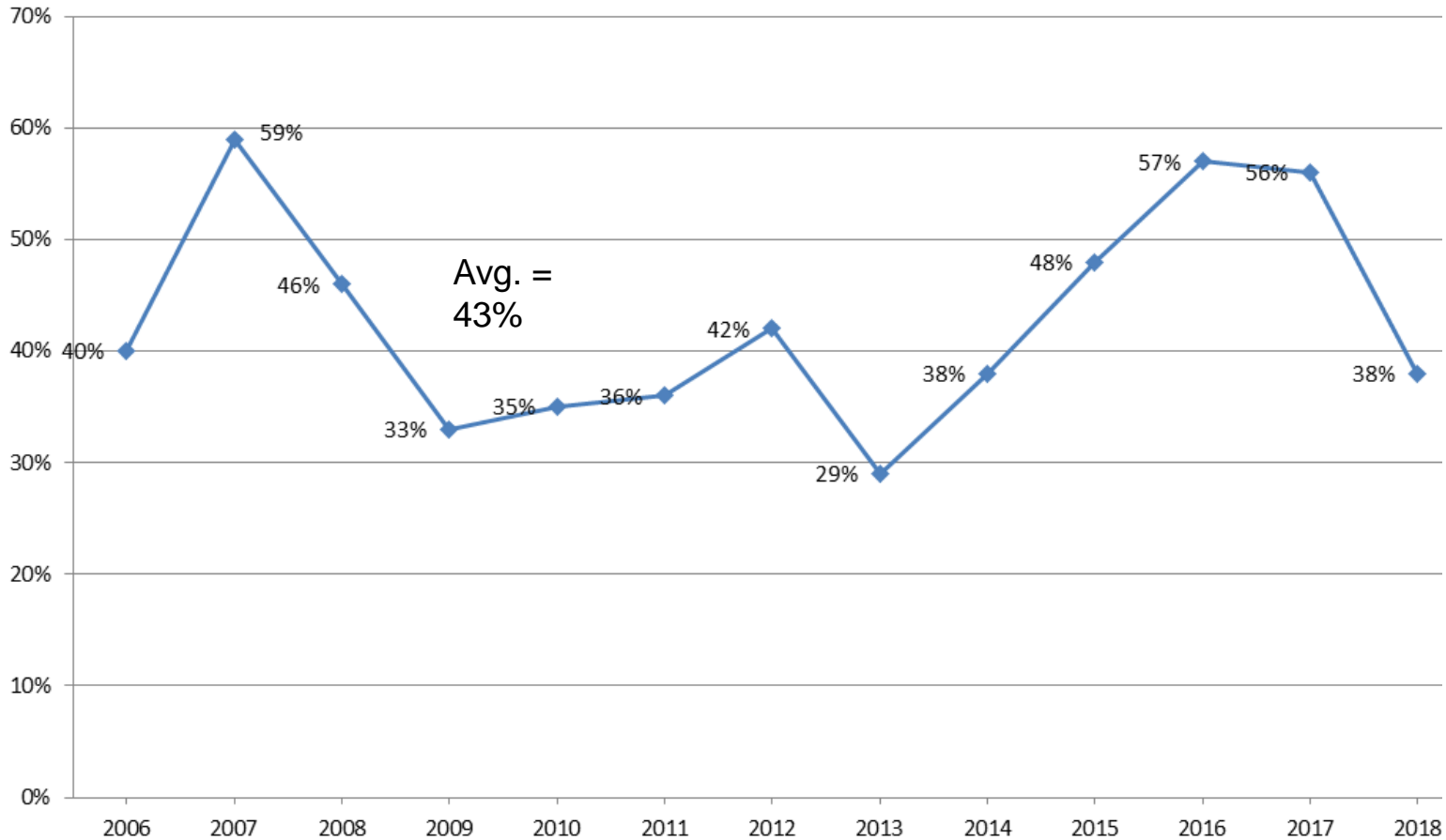
Cases Decided on the Merits

Florida DOAH Decisions Decided on the Merits



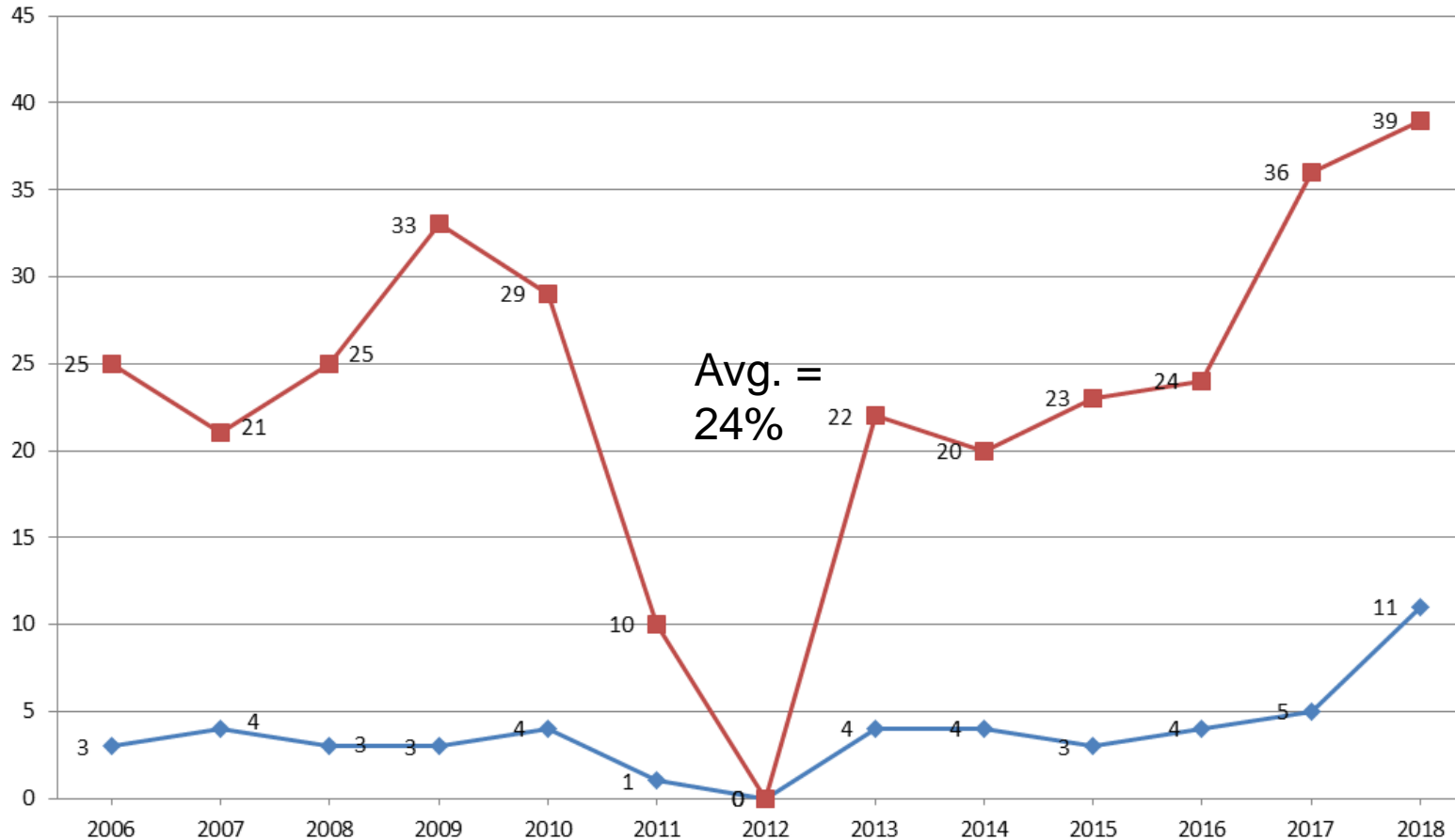
% of Cases Decided on the Merits

Florida DOAH Bid Protest Cases Decided on the Merits Rate



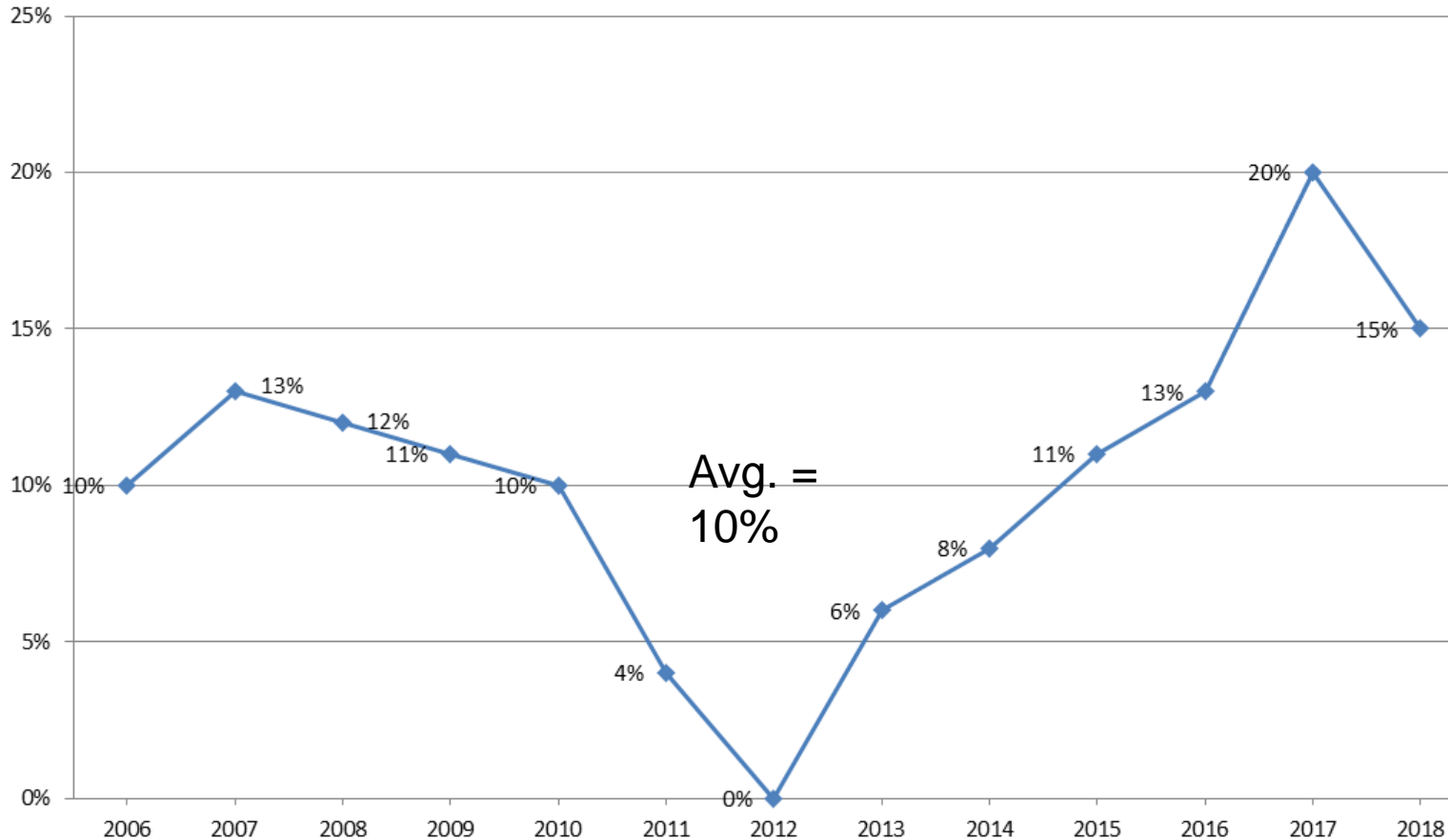
Florida DOAH Bid Protests - Sustains

Number of Sustains / % of Sustain Merit Cases



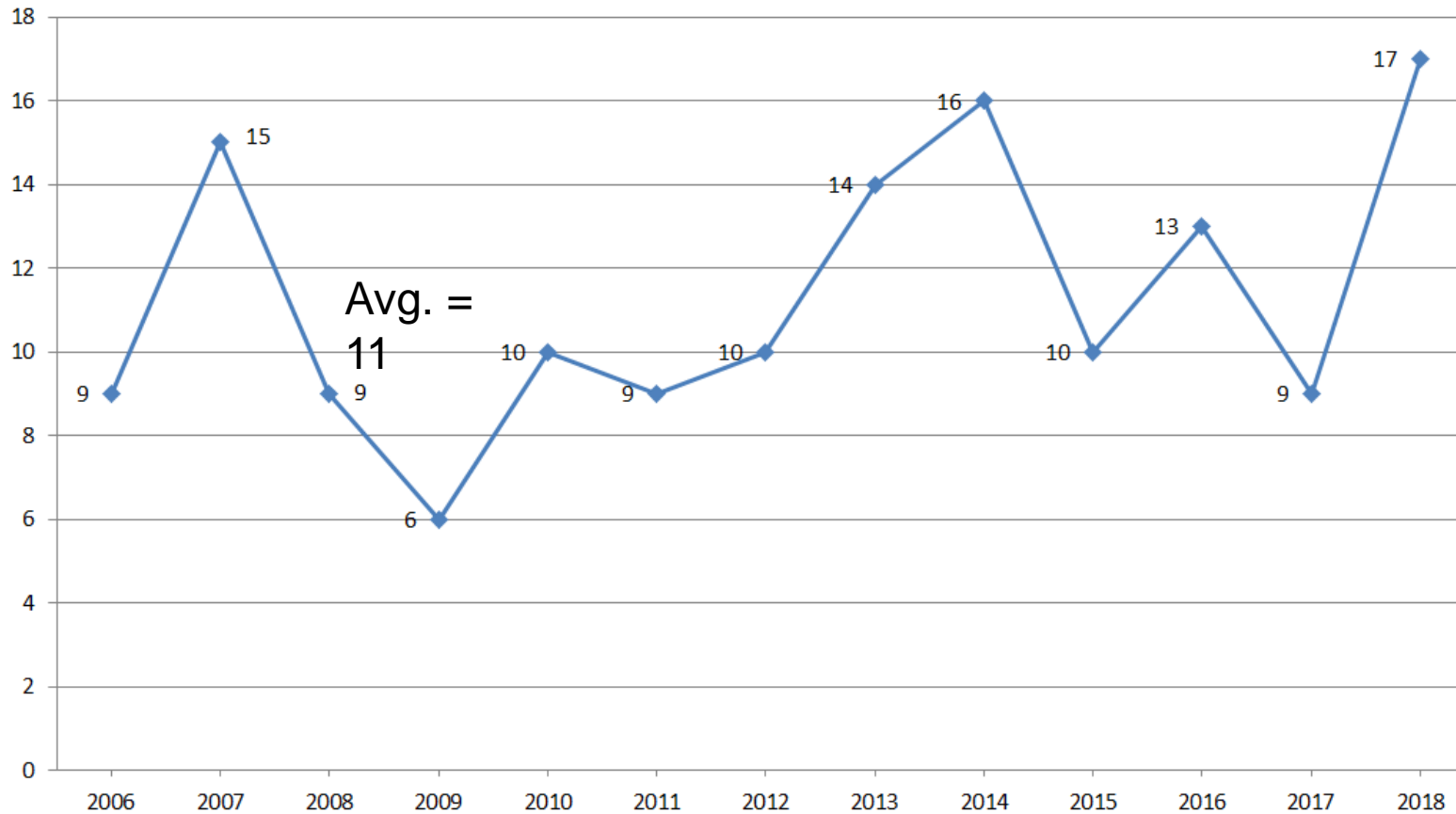
Florida Bid Protests - % Sustained

Florida DOAH Sustain Rate All



Florida DOAH Bid Protests Denied

Number of Denies



Florida DOAH Bid Cases Denied %

Deny Rates All / Deny Rates Merit Cases

