

Government Contractors Obtain Relief in More than Half of GAO Bid Protests

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In late December, the Government Accountability Office (GAO) published its *Bid Protest Annual Report to Congress for Fiscal Year 2020*. The statutorily mandated report contains an array of information about GAO's bid protest forum over the prior fiscal year, including the most prevalent reasons GAO sustained protests along with a variety of statistical data.

Most notably, GAO reports an "Effectiveness Rate" of 51% for fiscal year 2020, which is the highest rate since GAO began reporting this metric in 2001. The Effectiveness Rate reflects the percentage of protest matters in which the protester obtained some form of relief, either due to voluntary agency corrective action or a GAO decision sustaining the protest. *In other words, in more than half of the cases GAO resolved in fiscal year 2020, the bid protest forum was an effective avenue for the protester.*

The Annual Report further highlights that last year 2,149 protests, cost claims, and requests for reconsideration were filed; 545 cases were resolved on the merits; and GAO sustained 15% of the merits cases. While GAO only held a hearing in nine cases—likely due to the coronavirus pandemic—GAO used alternative dispute resolution (ADR) in 124 protest matters, a 210% increase over the prior fiscal year. For more on ADR at GAO, please review our recent article on the topic published by *Law360*.

GAO reports that the most prevalent reasons for sustaining bid protests during fiscal year 2020 were: (1) unreasonable technical evaluation; (2) flawed solicitation; (3) unreasonable cost or price evaluation; and (4) unreasonable past performance evaluation. This is the first time GAO cited improprieties in solicitations as a frequent basis for sustaining protests. It is also noteworthy that flawed selection decision, unequal treatment, and inadequate documentation of the record did not make the list this year despite being popular bases for sustain decisions during the past several years.

Jenner & Block's Government Contracts and Grants lawyers have extensive bid protest experience, including prior service as a supervising bid protest hearing officer at GAO, and stand ready to support any challenges to the award of a government contract or the terms of a government solicitation.

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