

Government Contractors Get Relief in More Than Half of GAO Bid Protests

Client Alerts

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On November 14, 2024, the Government Accountability Office (GAO) released its Bid Protest Annual Report to Congress for Fiscal Year 2024. 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. While the report shows that both the number of bid protests filed and GAO's "Effectiveness Rate" decreased this past fiscal year compared to fiscal year 2023, it is important to note that fiscal year 2023 included an unusually high number of protests challenging a single procurement.

According to the report, contractors filed 1,803 protests, cost claims, and requests for reconsideration in fiscal year 2024, which reflects an 11% decrease from the prior fiscal year (but a nearly 9% increase from fiscal year 2022). Protest filings are down more than 35% since the high-water mark of 2,789 filings in fiscal year 2016. (When considering these numbers, it is important to remember that multiple cases can be associated with a single solicitation, either because of supplemental protests or multiple protesters, so the number of procurements challenged are materially fewer than the numbers indicate.)

GAO resolved the merits of the protest in 387 of the 1,803 cases filed, reflecting the lowest number of protests resolved on the merits since 2009 (315); the remainder of cases were dismissed by GAO or withdrawn by the protester. GAO sustained 61 protests (approx. 16%). While GAO's Effectiveness Rate decreased to 52% from last year's 57% (partly due to the unusually high number of protests challenging a single procurement in 2023), it has slightly increased from GAO's Effectiveness Rates during fiscal years 2018-2022. The Effectiveness Rate reflects the percentage of cases in which the protester obtained some form of relief, either through voluntary corrective action or a GAO decision sustaining the protest. *In other words, in more than half of the cases GAO resolved in fiscal year 2024, the bid protest forum was an effective avenue for the protester to obtain some form of relief.*

Notably, GAO held only one hearing in fiscal year 2024, the lowest number in at least 20 years (and far fewer than the 22 hearings held during 2023). This continues the downward trend in the number of hearings held, although deciding cases through Alternative Dispute Resolution (ADR) remains

popular and useful. GAO turned to ADR in 76 protests, and 69 of these ADRs were successful (*i.e.*, the protest was resolved without the need for a written decision on the merits).

While the overall numbers reflect a decrease in GAO's usage trends from 2023, the statistics alone do not tell the full story. In this respect, a substantial number of protests filed and resolved in 2023 related to the Department of Health and Human Services, National Institutes of Health's, award of the Chief Information Officer–Solutions and Partners 4 ("CIO-SP4") procurement. CIO-SP4 resulted in hundreds of contract awards and accordingly, hundreds of protests filed in response—of the 2,025 protests filed in 2023, 318 (nearly 16%) of them related to CIO-SP4. When these protests are removed from the overall statistics for fiscal year 2023, there would have been 1,707 protests filed in 2023, as compared to the 1,803 protests filed in 2024. This would have reflected a little more than a 5% increase in protests from 2023 to 2024.

Finally, GAO reports that the most prevalent reasons for sustaining bid protests during fiscal year 2024 were: (1) unreasonable technical evaluation; (2) flawed selection decision; and (3) unreasonable cost or price evaluation. These three grounds for protest are the same most common bases for sustaining protests as in fiscal year 2023.

Jenner & Block's Government Contracts 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. In addition to the authors, Partner Moshe Broder, Special Counsel Nathaniel Castellano, and Associates Jennifer Eve Retener, Andrew Balland, and Ginsey Kramarczyk also assist clients in bid protest disputes and matters.

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