

INSIGHTS

GAO Has Released Its Annual Bid Protest Report

By Heather Mims

While cases filed was slightly lower, effectiveness rate was higher, and other key takeaways.

On December 23, 2020, the Government Accountability Office (GAO) to release its [Bid Protest Annual Report to Congress](#) for fiscal year 2020 (“FY2020”). If you are familiar with this annual report, you know that it typically gets released in November after the close of that year’s fiscal year. However, it being an atypical year, we had to wait a little bit longer for these helpful bid protest statistics. Among other items, this Report details the number of bid protests filed that fiscal year, the number of protests sustained, and the most prevalent grounds for sustaining protests. Before delving into the details, here are some key takeaways:

- Number of cases filed was down 2%
- Protest sustain rate slightly increased
- Effectiveness rate increased

BID PROTEST STATISTICS FOR FY2020

During FY2020, 2,149 cases were filed, a 2% decrease from the 2,198 filed in FY2019. However, the number of sustained protests was slightly higher at 84, compared to 77 the year prior, for a sustain rate of 15% in FY2020. Perhaps more tellingly than the slightly increased sustain rate was the effectiveness rate increasing to 51% compared to 44% in FY2019. The “Effectiveness Rate” measures whether a protester has obtained some form or relief from the agency, including voluntary agency corrective action or the GAO sustaining a protest. Finally, the number of cases using Alternative Dispute Resolution (ADR) dramatically increased to 124 cases (with a success rate of 82%) compared to 40 cases in FY2019 (with a success rate of 90%).

Most Prevalent Reasons for Sustained Protests

Each year, the GAO releases the most prevalent grounds for sustaining protests during the preceding fiscal year. Similarly to past years, the most prevalent grounds for FY 2020 were:

1. Unreasonable technical evaluation
2. Flawed solicitation
3. Unreasonable cost or price evaluation
4. Unreasonable past performance evaluation

For comparison, the most prevalent grounds for FY2019 were:

1. Unreasonable technical evaluation
2. Inadequate documentation of the record
3. Flawed selection decision
4. Unequal treatment
5. Unreasonable cost or price evaluation

In its Report, the GAO cited a recent case as highlighting one of the typical most prevalent reasons for sustain protests: unreasonable technical evaluation. The GAO sustained the protest of [Leidos Innovations Corp., B-417568.3, B-417468.4 \(May 11, 2020\)](#) after the protester's challenge that the agency unreasonably excluded portions of offerors' proposals as contrary to the solicitation. The GAO agreed, finding that the agency's evaluation was unreasonable where the agency failed to comply with the solicitation's requirements regarding consideration of the excluded information. Specifically, the agency failed to consider information discussed during each offerors' Q&A sessions and Interchange Notices (INs) despite the solicitation's unambiguous statement such information would be considered in making the selection decision.

KEY TAKEAWAYS

While a 15% sustain rate does seem daunting to protesters looking for another chance at a procurement, the effectiveness rate should give some solace. Despite a decrease in the overall number of cases being filed, the effectiveness rate had a noticeable increase up to 51%. Thus, based on FY2020 statistics, protesters are more likely than not to obtain some form of relief from the agency.

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