



Federal Government Contracts & Procurement

GAO Bid Protests at a Glance

- Fast and efficient option for challenging incorrect award decisions on federal contracts.
- Timing is key. The GAO enforces strict deadlines that require a protest to be filed within days after an issue arises.
- The most practical method for challenging agency errors – and it is possible to recover costs and attorneys' fees if you win.

Government Contracting 101: A Practical Guide To Filing (and Winning) GAO Bid Protests

The Government Accountability Office (GAO) provides a relatively low-cost and efficient venue for government contractors to resolve disputes involving federal procurements. Traditionally, GAO bid protests serve two primary purposes: (1) to resolve solicitation defects prior to bid opening; and (2) to challenge procurement errors in connection with the award of federal contracts.

While the GAO is not the only venue to contest procurement errors (for example, the Court of Federal Claims exists as an alternative), it offers government contractors the benefit of a fair and speedy resolution (normally within 100 days of filing) without the delays and expense associated with traditional litigation in court.

Is a GAO Bid Protest Right for Me?

GAO bid protests can be the ideal forum for government contractors to gain the upper hand in the intense competition that marks today's federal marketplace. Ideally, GAO bid protests should be used to challenge:

- **Clear solicitation errors that place your business at a competitive disadvantage.** By correcting mistakes in the Request for Proposal (RFP) before bids are even opened, you can pave the way for a lucrative contract award.
- **Obvious violations of the selection criteria or other violation of law.** Sometimes, your business misses out on a federal contracting opportunity because the agency just plain got it wrong. The GAO is the ideal venue for addressing common sense claims and will often result in almost immediate relief.

- **Competitive range and contractor pool decisions.** GAO bid protests are also a great venue for challenging an agency's decision to omit your business from a competitive range or pool of potential contractors. Relief is easier to come by when you are requesting to add a business capable of providing valuable service to the government into the mix.

While the GAO is the logical forum for certain kinds of disputes, it should not be used for every type of protest. For example, the GAO vests considerable discretion in the contracting officer when it comes to proposal evaluations. Therefore, if you are questioning a "judgment call" (rather than an obvious misapplication of the RFP requirements), a GAO bid protest is unlikely to offer relief. In addition, protests requiring an in-depth examination of the law are better reserved for the Court of Federal Claims.



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What Do I Need To Know Before I File?

GAO bid protests involve numerous procedural hoops, which is why we recommend consulting with an attorney if you think your business was treated unfairly. The most important question to ask upfront is *when* the protest is due. Failing to file on time will result in the immediate dismissal of your protest.

If you want to challenge a federal procurement by filing a GAO bid protest, your business needs to act fast. For protests concerning solicitation defects apparent before bid opening, the protest must be filed before the date proposals are due.

Deadlines for filing bid protests that arise after bid opening can vary, but the general rule of thumb is:

- 10 calendar days after you “knew or should have known” of the basis for the protest.
- 10 calendar days after a required government debriefing is held.

It is important to emphasize that these examples are provided only as a general guideline. Actual GAO bid protest deadline can vary greatly (depending on the circumstances). The important takeaway is to act fast and preserve your rights.

After determining the appropriate deadline, the bid protest is filed directly with the GAO (the most effective and efficient way to file is by email). Although no particular style or format is required, the protest must provide sufficient detail of the legal and factual basis asserted.

Next Steps for a Successful Protest

After your GAO bid protest is filed, the government agency has the opportunity to respond. In many instances – when the protest points out an obvious mistake and clearly has merit – the government will take “corrective action.” In other words, the government will correct the identified errors and your business can move forward victorious.

If there is no immediate corrective action, the government will file its formal response to the protest, known as an agency report. The agency report sets forth the government’s counterarguments to the issues raised in the protest. The protester has the opportunity (and in fact is *required*) to file written comments in response to the agency report within 10 days. These comments are

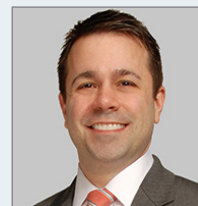
an opportunity to further state your case and can often capitalize on new facts disclosed by the agency for the first time in its report.

Typically, the GAO will rule on a protest within 100 days after it is filed. When a protest is sustained, the GAO will recommend that the agency take certain corrective action, such as terminating an improper award or requiring the GAO to reinstate an improperly excluded contract offeror into the competitive range. The protest should therefore be very clear in identifying exactly what actions should be taken when it is sustained.

Tips, Tricks and Notes

- The GAO offers contract “stay” provisions authorized under the Competition in Contracting Act (CICA). CICA stays prevent the government from awarding or allowing performance of a disputed contract while the outcome of a protest is pending. CICA stays are an invaluable resource for protestors, but also come with accelerated filing deadlines.
- When the GAO sustains a successful protest, it will often recommend the reimbursement of the costs of filing and pursuing the protest – including your attorneys’ fees.
- Even a denied protest is not the end of the road. There are options for reconsideration and even appealing the decision to the Court of Federal Claims.
- Your business’ confidential, sensitive or classified information can be strictly protected during a protest by seeking a written protective order from the GAO.
- If there is a protest filed on a contract where your business received the award, you have the right to play a part in the proceedings. By entering the protest as an “intervener,” your business can file comments to the agency report and even move to dismiss the protest entirely.

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