

## GAO SUSTAIN RATE AND EFFECTIVENESS RATE CONTINUE AT RELATIVELY STABLE RATES IN FISCAL 2019

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The Government Accountability Office (“GAO”) released its annual bid protest report to the Congress for fiscal year 2019 on November 5, 2019 (B-15866). The GAO actually received 2,198 protests in fiscal year (“FY”) 2019 but dismissed or immediately denied or dismissed a substantial number of them, while actually considering and issuing decisions on 587 protests, known as “merit decisions.” This was a small increase compared to FY 2017.

The GAO sustain rate decreased only two percent, from 17 percent in FY 2017 to 15 percent in FY 2018.

The GAO bid protest statistics for fiscal years 2015-2019 were as follows:

**GAO Bid Protest Statistics for Fiscal Years 2015-2019**

	<b>FY2015</b>	<b>FY2016</b>	<b>FY2017</b>	<b>FY 2018</b>	<b>FY 2019</b>
<b>Merit decisions</b>	587	616	581	622	587
<b>Sustained</b>	68	139	99	92	77
<b>Sustain rate</b>	12%	23%	17%	15%	13%
<b>Effectiveness rate</b>	45%	46%	47%	44%	44%
<b>Alternative Dispute Resolution (ADR) cases</b>	103	69	81	86	40
<b>ADR success rate</b>	70%	84%	90%	77%	90%
<b>Hearings</b>	3% (31 cases)	2.5% (27 cases)	2% (17 cases)	0.5% (5 cases)	2% (21 cases)

The “effectiveness rate” remained about the same, about 44 percent in 2017 and in 2018. These are protests where the protester obtains some form of relief from the agency, either as a result of voluntary agency corrective action or the protest being sustained.

The percentage of cases where the GAO conducted a hearing remained small—generally only 2 to 3 percent of the cases

GAO also reported that:

- There were no instances in which a federal agency did not fully implement a GAO recommendation; and
- GAO issued its decision on every protest within 100 days, as required by law, although it did toll the deadlines because of the government shutdown between December 2018 and January 2019.

Finally, the GAO reported on the most prevalent reasons for sustaining protests that were actually resolved on the merits in FY 2017. These were:

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

The GAO also noted that a significant number of protests it received did not reach a decision on the merits because agencies voluntarily took corrective action rather than defend the protest on the merits.

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