

CLARIFYING GOVERNMENT ACCOUNTABILITY OFFICE PLEADING STANDARDS

©2026 Richard D. Lieberman, Consultant & Retired Attorney

Consider the following statements from the Government Accountability Office (“GAO”) Warfighter Focused Logistics, Inc., B-43546 and B-423456.2, August 5, 2025 decision, with particular attention to the highlighted sentences (references are omitted):

[Protester, Warfighter Focused Logistics, or “WFL”] contends that the agency's evaluation of VMP's quotation was unreasonable. Specifically, the protester alleges VMP [awardee] misrepresented the inventory stock VMP had available at the time the firm submitted its quotation. According to the protester, both WFL and VMP used the same supplier for the tire cross chains. The protester alleges that the stock VMP quoted was inventory “that WFL had already procured, which was being held at [the supplier's] facility.” Essentially, the protester argues that there was no stock available from the supplier VMP would use to supply the requirement because the inventory quoted by VMP was allegedly owned by WFL.

Our Bid Protest Regulations require that protests include a detailed statement of the legal and factual grounds of protest and that the grounds be legally sufficient. 4 C.F.R. § 21.1(c)(4) and (f). This requirement contemplates that protesters will provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action.* Protesters must provide more than a bare allegation; the allegation must be supported by some explanation and evidence that establishes the likelihood the protester will prevail in its claim of improper agency action. (Emphasis added)

[Footnote]* In response to section 885(a) of the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025, Pub. L. No. 118-159 (Dec. 23, 2024), GAO proposed to clarify and enhance our pleading standard to resolve any perceived ambiguity between our pleading standard and how it has been applied in our decisions. In this regard, our stated pleading standard provides that protesters must allege, at a minimum, either allegations or evidence sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. This formulation may have created a perception that allegations standing alone are sufficient to meet our pleading standards. In practice, our decisions have explained that “bare allegations” or allegations based upon “information and belief” are not sufficient to meet our pleading standards. In order to make it clear that only protests meeting the standards of legal and factual sufficiency will survive dismissal, we proposed to replace our existing formulation with a requirement that protesters must provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action. GAO's Proposal in Response to Section 885 of the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (FY2025 NDAA), B-423717, July 14,

2025 at 22-23. We adopt this formulation of our pleading standard here and in future decisions.

The result in the Warfighter protest was as follows:

Here, we find that the protester has not provided sufficient information to support its contention that VMP misrepresented its supply. Although the protester argues that vendors cannot obtain the tire cross chains through “ordinary supply channels,” WFL provides no evidence to support for this statement, or any information suggesting that VMP intended to use the same supplier that WFL intended to use. See Protest at 3[] (only stating that supplier was in contact with “other partners.”). Further, even assuming that VMP and WFL were using the same supplier, WFL presents no information to support the assertion that WFL owned all of the supplier's stock, or that the supplier only had enough inventory to supply items for one procurement or one dealer. As such, we find that the protester's bare assertion to be speculative and is factually and legally insufficient.[GAO dismissed this ground of protest for failure to state a valid basis of protest]

Takeaway. Bare assertions or allegations that are merely based on “information or belief” to establish the likelihood of a protester’s claim of improper agency action will not be sufficient to support a protest. Rather, as stated by GAO “protesters must provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action.” The submission of credible allegations supported by evidence is essential in submitting any GAO protest; the submission of bare speculative assertions will cause a protest to be dismissed. GAO has now clarified its pleading standard

For other helpful suggestions on government contracting, visit:

Richard D. Lieberman’s FAR Consulting & Training
at <https://www.richarddlieberman.com/>, and **Mistakes in Government Contracting**
at <https://richarddlieberman.wixsite.com/mistakes>