

DON'T BE SILENT (ABANDONMENT OF A PROTEST AT GAO)

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If you protest a procurement at the Government Accountability Office (“GAO”), it is crucial that you meet all filing deadlines. Providing your comments on the agency report that is submitted by the procuring agency in response to the protest is especially important. The GAO rules state that “[c]omments on the agency report shall be filed within 10 days after the agency has filed the report, except where GAO has granted an extension of time or where GAO has established a shorter period for filing of comments.” 4 CFR § 21.3(i)(1). The rules further state that “a protest shall be dismissed unless the protester files comments” within the period established in the previous section. 4 CFR § 21.3(i)(2). The GAO enforces these rules strictly. Failure to file comments means to the GAO that the protester has “abandoned” the protest and it will be dismissed. This is exactly what happened in *Hawthorne Comm'l Constr.-Reconsideration*, B-423753.3, March 2, 2026, and the GAO dismissed the reconsideration request of the protest.

Sometimes protesters have no comment on the agency report. That was the case for Hawthorne, which filed a request for consideration, received an agency report, failed to submit timely comments and had its request dismissed by GAO because that failure “indicate[d] abandonment.” GAO noted that it is required by law to resolve protests expeditiously, 31 U.S.C. § 3554(a), and the failure to meet the deadline for submission could permit “a protester [to] idly wait after receipt of the [agency] report for an indefinite time, to the detriment of the protest and [GAO’s] ability to resolve the protest expeditiously.” That is why the GAO rules provide for dismissal.

Hawthorne argued that it never filed comments because it was not required to repeat previous arguments. But it is clear that GAO considers a failure to comment as “abandonment of the protest.”

What’s the solution if you have no comments, and nothing to add after reviewing the agency report? You are required to make a filing in response to the agency report advising the GAO that the report contains nothing new and that you decline to submit further comments. It is probably a good idea to add that “The protester does not abandon its protest, and seeks a GAO decision on the record here.”

Takeaway. Don’t be silent on an agency report at the GAO, even if you have nothing to add or refute. Make a timely filing by the deadline for comments, and make it clear you stand on the previous record and are not abandoning your protest.

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