

GAO ACTIVITY IN FISCAL YEAR 2022

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The Government Accountability Office (“GAO”) released its annual bid protest report to the Congress for fiscal year 2022 on November 2, 2022 (B-158766). The GAO actually received 1,658 protests in fiscal year (“FY”) 2022 but dismissed or immediately denied or dismissed a substantial number of them, while actually considering and issuing decisions on 455 protests, known as “merit decisions.” This was a 22% decrease compared to FY 2021

The GAO sustain rate remains relatively steady ranging from 15 percent in FY 2018 to 13 percent in FY 2022. GAO’s two year average sustain rate in FY 2021-22 was 13.9 percent. This compares with a two year average sustain rate of 9.71 percent in bid protests during calendar year 2021-2022 before the Court of Federal Claims (information given in a speech by Judge Patricia Campbell-Smith).

The other key GAO bid protest statistics for fiscal years 2018-2022 were as follows:

GAO Bid Protest Statistics for Fiscal Years 2018-2022

	FY2018	FY2019	FY 2020	FY 2021	FY 2022
Merit decisions	622	587	545	581	455
Sustained	92	77	84	85	59
Sustain rate	15%	13%	15%	15%	13%
Effectiveness rate	44%	44%	51%	48%	51%
Alternative Dispute Resolution (ADR) cases	86	40	124	76	74
ADR success rate	77%	90%	82%	84%	92%
Hearings	0.51% (5 cases)	2% (21 cases)	1% (9 cases)	1% (13cases)	0.27% (2 cases)

The “effectiveness rate” increase somewhat, from about 48 percent in 2021 to 51 percent in 2022. 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 1 or 2 percent of the cases.

GAO also reported that there was one instance in which a federal agency (the Navy on the procurement of a aircraft mounted radar jammer) did not fully implement a GAO recommendation in FY 2022. (The last time GAO reported an agency failure to implement a bid protest decision recommendation was in FY2015.) In the instant case, GAO did not recommend further action in this case because it resulted from a disagreement between the Navy and the GAO on a narrow evaluation issue that did not have implications beyond the particular procurement at issue.

Finally, the GAO reported on the most prevalent reasons for sustaining protests that were actually resolved on the merits in FY 2022. These were:

1. Unreasonable technical evaluation
2. Flawed selection decision
3. Flawed solicitation

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. Agencies need not and do not report any of the many reasons they decide to take voluntary corrective actions.

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