

THE CONSEQUENCES OF ABUSING THE PROTEST PROCESS

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Latvian Connection LLC submitted 150 protests to the Government Accountability Office (“GAO”) during the first eleven months of fiscal year 2016. These protests challenged a wide variety of acquisitions (some of which were fully performed years earlier) conducted by numerous contracting agencies. Of the 131 protests closed by the GAO, one was denied on the merits and the remaining protests were all dismissed, the most common reason being that Latvian was not an interested party—i.e. it wasn’t an actual or prospective bidder whose direct economic interest would be affected by the protest. *Latvian Connection LLC*, B-413442, Aug. 18, 2016.

The GAO noted that Latvian’s most common allegations were that agencies had failed to set aside acquisitions for Small Disadvantage Veteran Owned Small Businesses and/or that the agencies failed to publicize the procurement through www.fbo.gov. In the instant protest, the GAO found that Latvian was not an interested party because it did not hold a contract against which the protested order was issued.

The GAO then discussed abuse of the protest process, and the impositions of sanctions. The GAO noted that it has the right to dismiss any protest and/or impose sanctions against a protester where the protester’s actions undermine the integrity and effectiveness of the GAO process—the same right that all litigation forums have to manage their own affairs.

GAO noted that Latvian had filed a very large number of vexatious protests without demonstrating that it was an interested party and was unable to perform the solicited requirements. Latvian had hectorated the agencies and GAO with a stream of protests that diverted their collective time and resources. The GAO concluded that Latvian’s practices constituted an abuse of the GAO process and involved abusive litigation practices that undermine the integrity and effectiveness of the GAO process. The GAO suspended Latvian and its principal, from protesting to the GAO for one year to protect itself.

The GAO describes highly questionable tactics used by Latvian in a very large number of protests (150). While it is perfectly acceptable for a protester to be found by GAO not to be an interested party for a procurement-specific reason, to do so on such a large number of protests clearly raises a question about the validity of the protester’s motives. Latvian had performed only one contract for \$113,000 over the past 5 years and it was terminated for convenience by the government. The GAO also noted that the proprietor of Latvian had established and advertised on behalf of a different consulting entity which offered to file protests at the GAO on behalf of other companies for \$5000, offered complete confidentiality and offered a 20 percent discount if the protest involved a Department of Defense agency. These were questionable actions.

All in all, the message from the GAO is clear. Don’t abuse the GAO protest process by filing numerous, frivolous and “hectoring” protests, especially if you are *not* an interested party. Abusers of the process are likely to be suspended from protesting. This does not mean that you

shouldn't file protests that state a real and valid basis for protest, where you are an interested party to protest. Such protests are never frivolous or hectoring.