

ABUSE OF GAO PROCESS RESULTS IN PROTEST DISMISSAL

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You must be extremely careful with protected material obtained in a Government Accountability Office (“GAO”) protest. BBGSRO, the protester, challenged an evaluation of a technical approach in a solicitation for design and construction of an ammunition apron in Romania. *BBGSRO Const. SRL*, B-423091, Jan. 21, 2025.

The Agency submitted its report on the protest on Nov. 12, 2024. The Agency response included several documents containing redactions (blacked out words) and the Source Selection Document (“SSD”) was marked as “Protected Material to be Disclosed Only in Accordance with Government Accountability Office Protective Order.” On November 22, 2024, the protester’s counsel filed its comments and a supplemental protest, which indicated that he had discovered that the agency redactions were unsuccessful because “the black highlighted information...was searchable” by copying it and pasting it into a Microsoft word document. Counsel for protester acknowledged that various supplemental grounds for protest were based on information contained in the SSD. Upon questioning protester’s counsel, he acknowledged that there were multiple protest grounds that had been obtained by circumventing the Agency’s attempted redactions.

The GAO found the actions of protester’s counsel as inconsistent with, and undermining the GAO’s bid protest process. There were intended redactions which were not applied, but clearly evidenced the agency’s intent to redact the information. When the counsel discovered that material intended to be redacted could be read, protester’s counsel electronically manipulated the file so it could be read (presumably by his client)—without alerting the agency or the GAO that he was doing this.

As a result, GAO dismissed the supplemental protest grounds that were based on the redacted (but visible) material in the SSD. GAO noted that “Private parties and agencies whose information, whether proprietary or source selection sensitive, is provided under the aegis of our protective order [and] must have the assurance that our Office will be vigilant in protecting that information, to the extent that we are able to do so.” GAO does not discuss the discipline that may have been provided for protester’s counsel.

Takeaway. Protected material from GAO or any court must be respected, and not “manipulated” to show intended redactions. Receipt of any such intended redacted material should immediately be reported to the GAO, (or the relevant court) and agency counsel. Follow the tribunal’s direction—don’t send such material to your client. (We assume protester’s counsel had been admitted to the protective order.)

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