

## ADVERSE AGENCY ACTION AT THE GAO AFTER AGENCY PROTEST

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The bid protest rules of the Government Accountability Office (“GAO”) state that a protest based on something other than alleged improprieties in a solicitation must be filed no later than 10 calendar days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 CFR § 21.2(a)(2). The GAO rules further state that if a timely agency-level protest was previously filed, any subsequent protest to GAO must be filed within 10 days of actual or constructive knowledge of initial agency action, provided that the agency level protest was timely filed in accordance with the GAO regulations. 4 CFR § 21.2(a)(3). But what exactly is “adverse agency action?” Two protests demonstrate it clearly, *AlphaSpaces*, B-423971 & 2, Jan. 21, 2026 and *The JAAW Group, LLC*, B-424133, Feb. 2, 2026.

The GAO rules state that the term “adverse agency action” means any action or inaction on the part of a contracting agency that is prejudicial to the position taken in a protest that is filed there, including the award of a contract. 4 CFR § 21.0(e). That could include any of the following:

- Agency explicitly denies the protest in writing, by letter or email or any other writing
- Agency denies the protest and so advises the protester orally
- Agency awards the contract that was protested
- Protester receives any information from any source that agency has denied the protest, made award or taken any prejudicial action to a position in the protest (some type of constructive knowledge)
- Undue delay on the part of the agency in responding to the protest.

The GAO has made it clear that a protester may not passively await information providing a basis for a protest—there is an obligation that the protester diligently pursue such information. *Information Unlimited, Inc.*, B-415716, Oct. 4, 2019, 2019 CPD ¶ 352. Neither *AlphaSpaces* nor *JAAW Group* did that, and the GAO dismissed both of their protests as untimely.

On January 29, 2024, the contracting officer notified *AlphaSpaces* that it had been eliminated from the competition because its proposal did not meet minimum requirements of the solicitation. After receiving a debriefing, the company sent multiple emails asserting that it met the requirements. The company filed an informal agency level protest on February 15, 2024, requesting that it receive immediate award. The Agency actually made award to another company on April 4, 2025 and so notified *AlphaSpaces*. On April 16, 2025, in response to the company’s debriefing questions, the agency stated that *AlphaSpace*’s proposal was “eliminated from further competition.” But the company sent periodic emails, stating that it had “extended the time” for the agency to sign contracts with it. Finally, on September 29, 2024, *AlphaSpaces* filed a formal GAO protest, to no avail. GAO noted that the agency’s *inaction*—*not responding* to *AlphaSpaces*’ February 15, 2024 informal agency level protest, and *AlphaSpace*’s unreasonably not deeming the non-response as “adverse agency action” meant its subsequent protest in April 2025 (one year later) was untimely. All of the emails to the agency except the informal agency protest did not help at all. The contractor should have protested long before the actual award was made on April 4, 2025, and GAO dismissed the protest as untimely.

The JAAW Group filed an agency level protest on September 22, 2025, the same day it received a brief explanation of the basis of the award to another company. The protester claimed that its technical rating was improper, but on September 25, 2025, the agency denied JAAW's protest. (The company submitted a "rebuttal" to the contracting officer on September 28, 2025, but it was not a protest). This meant that JAAW was required to submit its GAO protest within 10 days of the "adverse agency action" denying its protest. However, GAO was closed from October 1, 2025 through Nov. 12, 2025 because of a government shutdown, and placed a notice on its bid protest portal extending the deadline for filing new protests while GAO was closed until "the first day that GAO resumes operations" which was November 13, 2025. To be timely, JAAW had to file its protest on November 13, 2025—the first business day that GAO reopened. However, the protest was not filed until December 4, 2025—more than 10 days after JAAW knew or should have known the basis for its protest. GAO dismissed JAAW's protest as untimely.

Takeaway. Both cases show the close adherence that GAO pays to its timeliness rules when a company first files an agency level protest, and then protests at the GAO. Failure to file within 10 days of "adverse agency action" (unless GAO is not open to receive protests, as explained in JAAW's case) will result in your protest being untimely and it will be dismissed by the GAO.

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