

PROTESTER'S FAILURE TO REBUT OR SUBSTANTIVELY COMMENT

Copyright Richard D. Lieberman, Consultant & Retired Attorney

What happens when a protester submits a protest to the Government Accountability Office (“GAO”), the agency responds in its agency report with a detailed response to every assertion, but the protester fails to rebut or substantively address the agency’s arguments in its comments on the agency report? The simple answer is “protest denied.” See, e.g., *Oakland Consulting Group, Inc.*, B-412054.2, September 19, 2016.

Oakland Consulting protested its exclusion from the competitive range by the Defense Logistics Agency (“DLA”) on a procurement for information technology (“IT”) services. The DLA found one weakness, three significant weaknesses and two deficiencies which made Oakland Consulting’s proposal technically unacceptable. Oakland Consulting challenged the evaluation of all six areas in its protest.

Following its usual procedure, GAO asked the agency to provide comments in an agency report on the protest. DLA’s agency report addressed every allegation in detail. Again, following its usual procedure, the GAO gave Oakland Consulting the regular time period to comment in writing on the agency report. However, in response to the agency report, Oakland Consulting “simply repeated its earlier protest grounds and did not meaningfully address or rebut the merits of the agency’s statements and explanations.”

Under those circumstances (detailed agency response to protest but no rebuttal or substantive comments in the protester’s response), the GAO has no basis to conclude that the agency’s position is unreasonable or improper. The mere fact that the protester continues to disagree with the agency’s evaluation—but offers no rebuttal or explanation as to why the evaluation was wrong—is insufficient to show that the agency evaluation was unreasonable.

Comment: If you protest an agency procurement and receive a detailed agency report inviting your comments, do not just repeat to the GAO what was in your protest. Address every point raised in the agency report, demonstrating why it is factually or legally insufficient, or otherwise an unreasonable agency position. If you cannot rebut anything in the agency report, you should consider withdrawing your protest.