

## GAO ACTIVITY IN BID PROTESTS REMAINS STABLE IN FISCAL 2021

Copyright 2022 Richard D. Lieberman, Consultant & Retired Attorney

The Government Accountability Office (“GAO”) released its annual bid protest report to the Congress for fiscal year 2021 on November 16, 2021 (B-158766). The GAO actually received 2,017 protests in fiscal year (“FY”) 2021 but dismissed or immediately denied a substantial number of them, while actually considering and issuing decisions on 581 protests, known as “merit decisions.” This was a small increase compared to FY 2020.

The GAO sustain rate remained stable at 15 percent in both FY 2020 and FY 2021.

The other key GAO bid protest statistics for fiscal years 2017-2021 were as follows:

**GAO Bid Protest Statistics for Fiscal Years 2017-2021**

	<b>FY2017</b>	<b>FY 2018</b>	<b>FY 2019</b>	<b>FY 2020</b>	<b>FY 2021</b>
<b>Merit decisions</b>	581	622	587	545	581
<b>Sustained</b>	99	92	77	84	85
<b>Sustain rate</b>	17%	15%	13%	15%	15%
<b>Effectiveness rate</b>	47%	44%	44%	51%	48%
<b>Alternative Dispute Resolution (ADR) cases</b>	81	86	40	124	76
<b>ADR success rate</b>	90%	77%	90%	82%	84%
<b>Hearings</b>	2% (17 cases)	0.5% (5 cases)	2% (21 cases)	1% (9 cases)	1% (13 cases)

The “effectiveness rate” declined somewhat, from about 51 percent in 2020 to 48 percent in 2021. 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, as required by law:

- There were no instances in which a federal agency did not fully implement a GAO recommendation in FY 2020; and
- GAO issued its decision on every protest within 100 days, as required by law.

Finally, the GAO reported on the most prevalent reasons for sustaining protests that were actually resolved on the merits in FY 2021. These were:

1. Unreasonable technical evaluation;
2. Flawed solicitation;
3. Unreasonable cost or price evaluation; and
4. Unequal treatment.

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 elect to defend the merits of the agency action. Agencies need not and do not report any of the many reasons they decide to take voluntary corrective actions. However, voluntary corrective actions taken by agencies are included in the “effectiveness rate” discussed previously.

**For other helpful suggestions on government contracting, visit:  
Richard D. Lieberman’s FAR Consulting & Training  
at <https://www.richarddlieberman.com/>, and Mistakes in Government Contracting  
at <https://richarddlieberman.wixsite.com/mistakes>.**