

## GAO SUSTAINED PROTESTS INCREASE IN 2016

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The Government Accountability Office (“GAO”) released its annual bid protest report to the congress for fiscal year 2016 on December 15, 2016 (B-158766). The GAO actually received nearly 2,800 protests in FY2016, but dismissed or immediately denied nearly 80 percent of them, while actually considering and issuing decisions on only 616 protests, known as “merit decisions.

The sustain rate increased from an unusually low 12 percent in 2015 to an unusually high rate of 23 percent in 2016. The actual number of sustained protests doubled from 68 in 2015 to 139 in 2016. All of this took place while the number of actual bid protest decisions decided on the merits remained about the same (587 in 2015 and 616 in 2016).

The GAO bid protest statistics for fiscal years 2012-2016 were as follows:

**GAO Bid Protest Statistics for Fiscal Years 2012-2016**

	<b>FY2012</b>	<b>FY2013</b>	<b>FY2014</b>	<b>FY2015</b>	<b>FY2016</b>
<b>Merit decisions</b>	570	509	556	587	616
<b>Sustained</b>	106	87	73	68	139
<b>Sustain rate</b>	19%	17%	13%	12%	23%
<b>Effectiveness rate</b>	42%	43%	43%	45%	46%
<b>Alternative. Dispute Resolution (ADR) cases</b>	106	145	96	103	69
<b>ADR success rate</b>	80%	86%	83%	70%	84%
<b>Hearings</b>	6% (56 cases)	3% (31 cases)	5% (42 cases)	3% (31 cases)	3% (27 cases)

Note that the effectiveness rate remains about the same—slightly above 40 percent. 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 conducts a hearing remains small—under 5 percent.

Finally, the GAO reported on the most prevalent reasons for sustaining protests that were actually resolved on the merits in FY 2016. These were:

1. Unreasonable technical evaluation
2. Unreasonable past performance evaluation
3. Unreasonable cost or price evaluation
4. Flawed selection decision