

THE GAO HAS NO BID PROTEST JURISDICTION OVER FANNIE MAE AND FREDDIE MAC

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Even though the Federal National Mortgage Association (FNMA or “Fannie Mae”) and the Federal Home Loan Mortgage Corporation (FHLMC or “Freddie Mac”) were in receivership, they are not “federal agencies” and are not subject to the bid protest jurisdiction of the Government Accountability Office (“GAO”). *S.E. James & Co.*, B-415733, Feb. 7, 2018.

S.E. James protested actions by Fannie and Freddie not to include their company on a list of approved insurance agencies. GAO noted that both Fannie and Freddie are chartered as for-profit, shareholder-owned corporations, and seek to enhance the liquidity, stability and affordability of mortgage credit. Because of their deteriorating financial condition, which threatened the stability of the financial market, Fannie and Freddie were placed into conservatorships.

The GAO dismissed the protest because of lack of jurisdiction, noting that the Competition in Contracting Act (“CICA”) establishes its jurisdiction, and CICA limits it to procurements by a “federal agency.” CICA adopted the definition of Federal Agency in Section 2 of the Federal Property and Administrative Services Act of 1949, See 31 U.S.C. § 3551(3), 40 U.S.C. § 102. This defines a federal agency as an executive agency or an establishment in the legislative or judicial branch of the Government, except the Senate, the House of Representatives and the Architect of the Capitol and activities thereunder. An executive agency is an executive department of independent establishment in the executive branch or a wholly-owned government corporation. Fannie Mae and Freddie Mac are not executive agencies, nor are they wholly owned government corporations, and therefore are not subject to the jurisdiction of the GAO.

The takeaway: Before you submit a protest to the GAO, be sure that the GAO will have jurisdiction, based on the CICA definitions, or your protest will be dismissed.

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