

2006 GAO Bid Protest Sustain Rate at an All-Time High

On November 15, 2006, the Government Accountability Office (GAO) issued its annual report to Congress regarding its bid protest activity during the previous fiscal year. The GAO reported that in fiscal year 2006, its protest sustain rate increased to 29 percent of all cases in which GAO issued a decision on the merits. The GAO issued 72 protest sustain decisions out of 249 such decisions.

The GAO's protest sustain rate of 29 percent is the highest GAO protest sustain rate ever reported. In 2005, the GAO issued sustains for 23 percent of its protest decisions. For 2004, the sustain rate was 21 percent.

The GAO report also indicated that the effectiveness rate, defined by the GAO as a situation where the protester obtains some form of relief (either as a result of voluntary corrective action or via corrective action recommended by GAO), also increased to a high of 39 percent. The GAO reported effectiveness rates of 37 percent and 34 percent for 2005 and 2004, respectively.

The total number of protests filed in FY 2006 was down slightly (2%) over the prior fiscal year. The GAO also reported that the number of protests where Alternate Dispute Resolution methods were utilized dropped to 91 in 2006. In contrast, the GAO used ADR in 145 protests in 2002.

The GAO reported that there were no protests in 2006 where an agency refused to fully implement the GAO's recommendation.

The latest annual GAO report again demonstrates that, over the past decade, GAO has begun to offer a more protester-friendly forum than was once the case. At the same time, GAO practice has become increasingly complex, even as litigants are using judicial remedies in the Court of Federal Claims as an adjunct to GAO protests. Accordingly, in order to protect their rights, both disappointed offerors and awardees should review their circumstances with an experienced bid protest attorney.

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