

ALERT

GAO Releases Annual Bid Protest Report to Congress for Fiscal Year 2022

November 3, 2022

WHAT: The U.S. Government Accountability Office (GAO) released its Annual Report on Bid Protests for Fiscal Year (FY) 2022. Based on its reported data, GAO received fewer protests for the fifth year in a row. GAO's sustain and effectiveness rates remained relatively steady.

WHEN: The GAO Report was issued on November 1, 2022, and covers the bid protests handled by GAO during Fiscal Year 2022.

WHAT DOES IT MEAN FOR INDUSTRY: The headline of the report is the continued decrease in the number of protests filed at GAO. For FY 2022, GAO reported a total of 1,658 cases, a 12% decrease from FY 2021, and a 36% decrease from the five-year high in FY 2018 of 2,607 protests filed.

While GAO's sustain rate is down 2 percentage points (to 13%), it is consistent with the trend since FY 2014 in which the sustain rate has hovered between 12–15%. Conversely, the protest "Effectiveness Rate"—a combined metric that includes all cases in which the protestor received some form of relief, such as a GAO sustain or agency voluntary corrective action—increased by 3 percentage points, up to 51%. FY 2022's effectiveness rate is tied with FY 2020 for the highest effectiveness rate seen in the last ten years. The effectiveness rate is almost 5 percentage points higher than the average of GAO's annual protest effectiveness rates over the past ten fiscal years (46.2%).

GAO's report also reveals the continued decrease in GAO's use of hearings to resolve protests. In FY 2022, GAO held fewer hearings than any other year since FY 2001 (the first year in which GAO began regularly reporting the number of hearings held), as it conducted a hearing in only 2 cases (.27% of all fully developed cases).

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GAO's report also summarizes the most prevalent grounds for sustained protests in FY 2022. The most common grounds for sustaining a protest in FY 2022 were: (1) unreasonable technical evaluation; (2) flawed selection decision; and (3) flawed solicitation. This is the seventh year in a row GAO has listed an agency's unreasonable technical evaluation as one of its most prevalent bases for sustaining a protest. GAO also listed an agency's flawed selection decision in three of the last five fiscal years and an agency's flawed solicitation in two of the last three fiscal years.

As we've discussed in previous alerts, GAO's annual report does not tell the whole story. *See A Data-Driven Look at the GAO Protest System.* Stay tuned for a deeper dive into GAO's caseload over the last year.

Jonathan Clark, a Law Clerk at Wiley Rein LLP, contributed to this alert.