

GAO SUSTAIN RATE AND EFFECTIVENESS RATE REMAIN RELATIVELY STABLE IN 2018

Copyright 2019 by Richard D. Lieberman, Consultant & Retired Attorney

The Government Accountability Office (“GAO”) released its annual bid protest report to the Congress for fiscal year 2018 on November 27, 2018 (B-158766). The GAO actually received 2,607 protests in fiscal year (“FY”) 2018 but dismissed or immediately denied a substantial number of them, while actually considering and issuing decisions on 622 protests, known as “merit decisions.” This was a small increase compared to FY 2017.

The GAO sustain rate decreased only two percent, from 17 percent in FY 2017 to 15 percent in FY 2018.

The GAO bid protest statistics for fiscal years 2014-2018 were as follows:

GAO Bid Protest Statistics for Fiscal Years 2014-18

	FY2014	FY2015	FY2016	FY 2017	FY 2018
Merit decisions	556	587	616	581	622
Sustained	72	68	139	99	92
Sustain rate	13%	12%	23%	17%	15%
Effectiveness rate	43%	45%	46%	47%	44%
Alternative Dispute Resolution (ADR) cases	96	103	69	81	86
ADR success rate	83%	70%	84%	90%	77%
Hearings	5% (42 cases)	3% (31 cases)	3% (27 cases)	2% (17 cases)	0.5 (5 cases)

The “effectiveness rate” remained about the same, 47 percent in 2017 and 44% in 2018. 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—only 2 percent in 2017, declining to only 5 cases, or half of one percent in 2018.

GAO also reported that:

- There were no instances in which a federal agency did not fully implement a GAO recommendation; 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 2017. These were:

1. Unreasonable technical evaluation
2. Unreasonable past performance evaluation

3. Flawed selection decision

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 defend the protest on the merits.

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