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¶ 55 FEATURE COMMENT: An Analysis Of GAO's 2025 Bid Protest Statistics—Quality Over Quantity, Enduring Prevalence Of Corrective Action—Together With Last Year's Top Protest Decisions And Developments

The Government Accountability Office has released its bid protest statistics for fiscal year 2025. *GAO Bid Protest Annual Report to Congress for Fiscal Year 2025*, B-158766 (GAO-26-900695), available at http://www.gao.gov/assets/890/882727.pdf; 68 GC ¶ 25. In our view, the story of the year is quality over quantity, with the bid protest "effectiveness rate" coming in very high once again.

GAO's Statistics—GAO received 1,617 (down seven percent) and closed out 1,676 bid protests in FY 2025—an average docket volume of about 31.6 per week. As a gentle reminder, GAO counts protests by docket number, or "B-numbers," not by the number of procurements challenged; multiple B-numbers in one proceeding are common, especially with more complex or hotly contested procurements. In FY 2018, GAO received 2,474 protests, so protest filings have dipped by over one-third (34.6 percent) over the past seven years.

For FY 2025, GAO reported that task or delivery order procurements under indefinite-delivery, indefinite-quantity (IDIQ) contracts were contested in 359 closed cases, again over 20 percent of all cases closed. As we opined last year, IDIQ protests are here to stay; increasingly it seems that one-fifth marks the balance point of congressional intent to limit, but not eliminate, IDIQ task order protests. There were three hearings in FY 2025, more than the one hearing the year before but below the historical average—so hearing volume is still something to keep an eye on. The past fiscal year, GAO applied alternative dispute resolution 53 times, 48 times successfully, for a success rate of 91 percent. Thus, alternative dispute resolution volume was down over 30 percent year-over-year and down 28 percent from the average of the prior four years. We still think outcome prediction remains an underused technique within the GAO bid protest system. At the other end of the spectrum—practitioner overuse—there were 41 requests for reconsideration in FY 2025. There was only one instance last year where the agency disregarded GAO's decisional recommendation, an unusual Air Force satellite terminal procurement; GAO uncommonly recommended that Congress consider a private bill to remedy the situation.

GAO provided its customary list of its most frequent grounds for sustaining a protest. The top reason in

FY 2025 (also first in each of the past nine years) was "unreasonable technical evaluation." Number two, which was third last year, was "unreasonable cost or price evaluation." Coming in third, not seen in the past decade, was "unreasonable rejection of proposal"—which could occur, of course, for a wide range of putative reasons. We wrote two years ago, and repeated last year, that "[w]hile no one would say it is easy to convince GAO that an agency has made a technical evaluation error, with the Government still getting the benefit of doubt, that ground of protest has enjoyed relative success and continues to be raised frequently." The beat goes on.

The 380 protests that went all the way to a GAO sustain-or-deny decision in FY 2025 (down six from the year before) were about 22.7 percent (down one percent) of protests closed out. Of those 380 full merits protests, 53, or 14 percent, resulted in a sustained protest. That sustain rate is roughly in line with prior years (excluding FY 2023 with its CIO-SP4 anomaly). We count 26 sustain decisions issued (vs. B-numbers included) by GAO in FY 2025, which is down from last year's 32 decisions and consistent with the overall downward trend in the number of sustained decisions in recent past years.

GAO's FY 2025 report includes the standard observation that "a significant number of protests filed with our Office do not reach a decision on the merits because agencies voluntarily take corrective action in response to the protest rather than defend the protest on the merits." For newer readers, voluntary corrective action (VCA) refers to an agency voluntarily deciding to reopen and redo at least some part of a procurement before GAO issues any decision in a protest, and usually before GAO has given any indication of the likely outcome. For FY 2025, GAO reported an "effectiveness rate" of 52 percent: that is, of the 1,676 protests closed out, 872 resulted in either a sustain by GAO (53) or VCA by the Government (819). Despite protest filings being down some, effective outcomes actually increased from FY 2024 (850) to FY 2025 (872). The latest effectiveness rate of 52 percent is consistent with the rate of the past few years (again excluding the very unusual FY 2023). No wonder why protesters protest. The multi-year "effectiveness" average is significantly better than a red-black or odd-even bet in a game of roulette.

Next let's home in on VCA. That rate alone for FY 2025 was 48.9 percent (819/1676). That is just over half a percent more than in FY 2024, and 1.6 percent more than in FY 2022. In sum, VCA alone—set aside sustains—has been happening close to half the time in recent years! Hence our mantra over the years: VCA is the main force in the GAO bid protest system overall, with the protest docket both enabling and forcing agencies to find and fix their own errors and omissions. Further, since most VCA comes in the first month of the protest calendar, before the agency report has been filed and before the protester incurs the legal fees of full briefing on the agency record, a prospective protester's projected return on investment from VCA is quite favorable.

What might change in the future? If and when the latest round of acquisition streamlining actually takes root, protest filings might decline. Many protests arise from overly complex procurements, with too many moving parts. Think, for example, of a solicitation with dozens of evaluation factors, subfactors, and even sub-sub-factors, combined with multiple gradations of evaluation scoring. Simpler acquisition should result in fewer controversies. There is, though, a countervailing force. As federal acquisition rules are pared back and rewritten, older and well understood concepts are being replaced with newer, potentially ambiguous and uncertain concepts. Gray areas are good breeding grounds for protests. Thus, protest filings may increase at first, at least until a new body of clarifying case law is developed.

Sustained GAO Protests—For the seventh year in a row, we have conducted a statistical "deep dive" into GAO's sustained protests. As explained above, the 53 B-number sustains in FY 2025 were encapsulated in only 26 protests. As in prior years, please keep in mind that not everything of interest is apparent on the face of the decisions, so not all categories will sum to 26.

In terms of procurement size for sustained protests, the greatest numbers once again fell in the two cohorts between $10 million and $100 mil-

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lion (11), and between $100 million and one billion (seven). Of the sustain decisions, however, task/delivery order (Federal Acquisition Regulation pt. 16) procurements made a comeback from last year and represented the largest share, with 13 sustain decisions. Of the remaining sustains, six (or nearly half) involved negotiated (FAR pt. 15) procurements, with the remaining six involving General Services Administration Federal Supply Schedule orders and blanket purchase agreements (FAR subpt. 8.4) and one other blanket purchase agreement. Yet again, small business protesters outnumbered their large business counterparts, with 16 of the 26 sustains involving small business protesters. We counted five pre-award and 21 post-award protests. All but five of the 26 sustained decisions were handed down on or after the 98th day on the docketing calendar.

Finally, the last part of our deep dive into sustained protests traditionally examines GAO's recommended corrective actions. In one instance, GAO recommended that the contract remain awarded to the protester (see *Metris LLC*, Comp. Gen. Dec. B-422996.2, 2025 CPD ¶ 27) because GAO found that the agency, in taking corrective action in response to a prior protest, had improperly disqualified the awardee/protester based on an erroneous determination that it had failed to meet the System for Award Management registration requirement. The vast majority of sustains (20) involved GAO recommending the agency reevaluate proposals. Thus, once again, the headline here is that proposal reevaluation was recommended in essentially all of the sustained post-award protests. Only four sustains involved a recommendation that the agency conduct or reopen discussions, although GAO also recommended in 11 decisions that the agency review its requirements and/or revise its solicitation. In short, our analysis this year sums to what we have found in all the prior years we have engaged in this deep dive: In the vast majority of successful bid protests at GAO, the best case result will be another bite at the apple.

Top Decisions and Developments of 2025—We once again respectfully submit a qualitative assessment of what we see as the most impactful bid protest decisions and developments of the past year. For clarity, this compilation is for calendar year 2025 (not FY 2025) and covers both GAO and court protest decisions. Here is our "top 10" for this year in review:

10. *Beware the Use of AI*: The use of artificial intelligence (AI) in bid protests burst onto the scene in 2025, although not really in a constructive way. By our count, GAO published six decisions in 2025 admonishing parties for having submitted pleadings containing citations to incorrect or even "non-existent authority"—i.e., citations to GAO decisions that did not stand for the proposition for which they were cited or that did not exist. In the first of these decisions, *Raven Investigations & Sec. Consulting, LLC*, Comp. Gen. Dec. B-423447, 2025 CPD ¶ 81; 67 GC ¶ 127, GAO advised that it "reserves an inherent right to dismiss any protest and to impose sanctions against a protester, where a protester's actions undermine the integrity and effectiveness of our process" and warned that, "after a review of the totality of the circumstances surrounding the submission and content of pleadings submitted to [GAO], the submission of filings with citations to non-existent authority may result in the imposition of appropriate sanctions." To date, one protester, acting pro se, has been sanctioned in a published decision by GAO with dismissal of three separate pre-award protests for submitting pleadings with "citations to non-existent decisions or materially false representations of the factual or legal issues addressed in the cited decisions in its pleadings." See *Oready, LLC*, Comp. Gen. Dec. B-423649 et al., 2025 CPD ¶ 228. In imposing dismissal of these protests as a sanction, GAO noted that the sanction followed a warning to the same protester in an earlier protest that future false or misleading citations could result in appropriate sanctions, see *Oready, LLC*, Comp. Gen. Dec. B-423524.2, 2025 CPD ¶ 194, and found that the protester's "actions in these recent protests demonstrate its reckless disregard in advancing non-existent citations or decisions in its protest submissions." We are hopeful that the learning curve here will be steep.

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Thus far, GAO has shown relative restraint in imposing sanctions on parties—imposing sanctions only when a party failed to heed a prior warning—but GAO's patience may run out at some point.

9. *Farewell to the "CPD"*: Since 1974, the Comptroller General's Procurement Decisions (CPD) reporter has served as a repository and uniform citation source for GAO's bid protest decisions. (Actually, the CPD reporter goes even further back; the original publisher of the CPD reporter republished all of GAO's procurement decisions from 1958 to 1973.) Publication of the CPD reporter, however, was discontinued by the most recent publisher in December 2025, and, last month, GAO announced that, effective Feb. 2, 2026, it would no longer be citing to the CPD reporter for decisions. In this digital age, some of our newer colleagues may not have been entirely sure what the "CPD ¶ " represented in citations to GAO decisions, but for those of us who have been around a while, we are a bit nostalgic for the days of cross-referencing the CPD index and flipping through the reporters in the library. Farewell, old friend.

8. *Actual NDAA Acquisition Reform*: For the first time in years, "bid protest reform" moves up on our list. Last year we noted the renewed interest of Congress in so-called bid protest "reform." In Section 875 of the FY 2026 National Defense Authorization Act (NDAA), Congress mandated that the Department of Defense implement procedures that would penalize incumbent contractors that file GAO bid protests lacking "any reasonable legal or factual basis." Specifically, Section 875 authorizes DOD contracting officers to withhold up to five percent of the total amount that otherwise would be paid to an incumbent contractor during the pendency of certain protests where the Government implements a stay of contract performance, the incumbent contractor continues to perform under an extension or bridge contract, and the procurement involves the same or substantially similar goods or services provided under the incumbent contract. Section 875 further provides that any withheld payments will be forfeited by the incumbent contractor "upon the determination by [GAO] to dismiss such bid protest based on a lack of any reasonable legal or factual basis becoming a final determination." We have our doubts that these potential consequences will dissuade many incumbent contractors from filing bid protests, but Congress's renewed interest in—and actual adoption of—some modicum of bid protest reform is nonetheless worth noting. With the dam now broken, the FY 2026 NDAA may be a harbinger of more reforms to come.

7. *A New-ish Enhanced Pleading Standard at GAO*: As we noted last year, Congress's interest in bid protest reform also extended to a request, included in the FY 2025 NDAA, for GAO to coordinate with DOD to develop an enhanced pleading standard for GAO bid protests involving DOD procurements. In response to this request, GAO proposed instead to "clarify" and "enhance" its pleading standard "to resolve any perceived ambiguity" between its pleading standard and how it has been applied. See *GAO's Proposal in Response to Section 885 of the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (FY2025 NDAA)*, B-423717, July 14, 2025, available at https://www.gao.gov/assets/880/879950.pdf. Thereafter, GAO announced its "new" enhanced pleading standard in *Warfighter Focused Logistics, Inc.*, Comp. Gen. Dec. B-423546, B-423546.2, 2025 CPD ¶ 169; 67 GC ¶ 307, in which GAO explained protesters must "provide, at a minimum, credible allegations that are supported by evidence and are sufficient, if uncontradicted, to establish the likelihood of the protester's claim of improper agency action" and "must provide more than a bare allegation"—that is, "the allegation must be supported by some explanation and evidence that establishes the likelihood the protester will prevail in its claim of improper agency action." As explained by GAO, this formula-

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tion essentially tracks GAO's existing pleading standard "in practice" but was intended to dispel the "perception that allegations standing alone are sufficient to meet [GAO's] pleading standards." So noted.

6. *Changed Agency Requirements and the New Administration*: The start of the second Trump Administration ushered in a host of actions that impacted the scope of work involved in pending procurements, with protesters challenging the terms of solicitations that were not changed to reflect purportedly new or different administration requirements, see, e.g., *United Defense, LLC*, Comp. Gen. Dec. B-423577, 2025 CPD ¶ 196, and still other protesters challenging the solicitation revisions made by agencies in response to perceived changed requirements, see, e.g., *Development InfoStructure, LLC—d/b/a Devis*, Comp. Gen. Dec. B-422776.2, 2025 CPD ¶ 220; 67 GC ¶ 259. Interestingly, however, we were unable to find any published decisions from 2025 where GAO sustained a protest challenging an agency's action (or inaction) in the face of alleged changed requirements.

5. *The Piecemeal Dismantling of the FAR's Project Labor Agreements (PLA) Continues, but There Is a Twist*: We noted last year that there were a handful of bid protests in 2024 that sought to undo aspects of existing socioeconomic policies adopted by the Biden Administration in furthering labor harmony agreements and project labor agreements in construction projects. More such challenges are pending before the Court of Federal Claims. Based on the court's baseball-themed analysis in *Brasfield & Gorrie, LLC v. U.S.*, 179 Fed. Cl. 509 (2025), however, it does not appear that the challengers are likely to obtain relief from PLA requirements without litigating their individual challenges. In *Brasfield & Gorrie*, the COFC explained that, after having "called seven pitches earlier this year" involving challenges to PLA requirements, a new plaintiff was "up to bat to swing at a procurement" to challenge a PLA requirement as unduly restrictive of competition. Explaining that, although the court agreed with the plaintiff that "this particular pitch is improper" and ruled the PLA requirement was unlawful, the court could not "call future pitches or change the rules of the game" and, therefore, rejected the plaintiff's request to facially invalidate all PLA requirements. We note that, in a twist, the second Trump Administration has voiced its support for PLAs, with the Office of Management and Budget issuing a memorandum stating the administration's support when PLAs are "practicable and cost-effective." See 67 GC ¶ 157. Additionally, the FAR subpart setting forth the policies and procedures for using PLAs (FAR subpt. 22.5) largely remained intact after it was revised as part of the "Revolutionary FAR Overhaul" (more on the overhaul below). It seems unlikely that the protracted challenge to PLA requirements is going to end soon.

4. *The Rise in COFC Protest Actions*: We cannot help but notice—along with just about everyone else, we imagine—the sharp increase in the past two years in the number of bid protest actions filed at the COFC. As reported in these pages, according to the COFC's annual statistics there were 266 bid protest actions filed in FY 2024 and 234 in FY 2025. See 68 GC ¶ 11; 67 GC ¶ 26. Contrast those numbers with the average of 134 protest actions filed at the COFC between FY 2014 and FY 2023, and further contrast the recent rise in COFC protests with the long-term trend downward in the number of bid protests filed at GAO noted above (i.e., a dip in GAO protests by over one-third in the past seven years). We do not have a unified theory as to why the number of COFC protests have been rising of late. The transaction costs of filing a bid protest at the COFC remain relatively higher than filing at GAO, but perhaps protesters are seeing more value in pursuing their claims at the court? Time will tell whether the current trend continues.

3. *"Revolutionary" Changes to the FAR*: As we as a Nation look forward to celebrating the 250th anniversary of the signing of the Dec-

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laration of Independence, it is perhaps fitting to note another revolution of sorts—the so-called "Revolutionary FAR Overhaul" (RFO) is now in full swing, making changes big and small. For bid protest practitioners, the RFO changes go beyond merely requiring an update to citations to the bid protest provisions found in FAR pt. 33. Among the intended changes of the RFO is a more robust agency-level protest process. Whether the RFO changes on that front will bear fruit remains to be seen. But, as noted above, as the RFO process pares back and rewrites the FAR, there is bound to be some uncertainty about how to understand and apply the new or modified rules, with GAO and the courts left to interpret and apply the changes coming out of the RFO. Here, we are thinking of the substantial changes made to the contracting by negotiation procedures set forth in FAR pt. 15. It is still the early days, but we anticipate the change wrought by the RFO to feature prominently in bid protests filed in the coming year.

2. *Other Transaction Authority Jurisdiction*: Jurisdictional questions surrounding the award of contracts under the Government's other transaction (OT) authority remain a hot topic, and, with DOD moving apace to transform acquisitions and pursue more flexible acquisition vehicles, we expect the Government's use of OT authority to remain at the fore. In 2025, two COFC decisions reinforced the notion that the court's jurisdiction to "resolve challenges to OT projects remains uncertain," *Telesto Grp., LLC v. U.S.*, 176 Fed. Cl. 711 (2025); 67 GC ¶ 149, and is likely to remain so. In *Telesto*, the court grappled with where to draw the jurisdictional line when the Government uses its prototype OT authority. Under the circumstances of that case, the court held that the court had jurisdiction over the Army's decision to use its prototype OT authority under 10 USCA § 4021 as well as over the Army's award of a follow-on production contract, but the court concluded that it did not have jurisdiction over the Army's conduct of the prototype OT agreement itself. In *Raytheon Co. v. U.S.*, 175 Fed. Cl. 281 (2025); 67 GC ¶ 56, the court took a slightly different approach to the jurisdictional question, concluding that it should be answered by evaluating "the federal agency's immediate endgame." Thus, the court in *Raytheon* concluded that whether the agency had "formally committed to purchasing an end product" from a particular prototype developer was "not dispositive"; rather, "the invocation of [the COFC's] jurisdictional authority to review a contested procurement is predicated on the agency's demonstrated intent, actions to date, and intentions moving forward." Because the record demonstrated that the agency had "every intention of awarding a follow-on production contract," the court found that it had jurisdiction over Raytheon's protest challenging the Government's decision to discontinue its prototype OT but to continue with another contractor's prototype OT. Additionally, after surveying prior decisions involving the use of OT authority, the court in *Raytheon* offered the following "working definition" of OTs and OT agreements falling within the court's exclusive bid protest jurisdiction: "an acquisition instrument other than a traditional procurement vehicle intended to provide the government with a direct benefit in the form of products or services." We foresee that definition being put to the test in the near future, with the Government seeking new and different OT authorities that may or may not fit neatly within its confines.

1. *The En Banc Majority in* Percipient.ai *Restores Normal Order*: We began our top ten list with one "AI," and we end with another ".ai." Last year, we noted that the since-vacated panel decision in *Percipient.ai, Inc. v. U.S.*, 104 F.4th 839, vacated and reh'g en banc granted, 121 F.4th 1311 (Fed. Cir. 2024); 66 GC ¶ 171; 66 GC ¶ 221, had caused a stir among bid protest practitioners, with the panel majority's decision appearing to extend standing to potential subcontractors in bid protest actions under 28 USCA

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§ 1491(b)(1) while narrowing the scope of the bar on the COFC's jurisdiction over protests involving task orders under the Federal Acquisition Streamlining Act of 1994 (FASA), 10 USCA § 3406(f). The en banc court of the Federal Circuit agreed to rehear the panel's decision on the first issue (standing) and ultimately reaffirmed what the Federal Circuit had held in a long line of cases—that an "interested party" for purposes of standing under § 1491(b)(1) is limited to an "actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract." *Percipient.ai, Inc. v. U.S.*, 153 F.4th 1226 (Fed. Cir. 2025) (en banc); 67 GC ¶ 227, cert. denied, No. 25-428 (S. Ct. Jan. 12, 2026), 2026 WL 79975. In so ruling, the en banc majority rejected the theory advanced by their dissenting colleagues and the protester that a prospective subcontractor could have standing in a bid protest action to challenge an alleged violation of statute or regulation in connection with a procurement or a proposed procurement under 28 USCA § 1491(b)(1). Tracing the history of bid protest standing and the definition of "interested party" in bid protests, the majority concluded that, regardless of whether the protest involves a challenge to the terms of a solicitation, the proposed or actual award of a contract, or an alleged violation of statute or regulation in connection with a procurement or proposed procurement, an interested party must be "an actual or prospective bidder or offeror" with a direct economic interest. We note that, although the en banc court's conclusion that a prospective subcontractor cannot qualify as an "interested party" under § 1491(b)(1) may have restored normal order to who qualifies as an "interested party," one question left unresolved by the en banc court's disposition of the *Percipient.ai* appeal is the fate of the panel majority's vacated analysis regarding the scope of the FASA task order bar, which would have allowed COFC jurisdiction over task order protests so long as the protest did not challenge the award of the task order itself. We expect that question will come before the court of appeals soon enough.

This Feature Comment was written for THE GOVERNMENT CONTRACTOR by* Jerald S. Howe, Jr., *and by* James J. McCullough, Michael J. Anstett, *and* Robert C. Starling *of Fried Frank Harris Shriver & Jacobson LLP. The views expressed herein are those of the individual authors and not their firms.

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