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GAO Report: Bid Protest Filings Down, but Effective Rate Remains Steady

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The Government Accountability Office (“GAO”) released its Annual Report to Congress for the Fiscal Year 2019, which provides a statistical summary of its bid protest activity for the past fiscal year. The chart below highlights GAO’s bid protest statistics for the past five years:

	FY2019	FY2018	FY2017	FY2016
Cases Filed	2,195	2,607	2,596	2,789
Merits Decisions	587	662	581	616
Sustains	77	92	99	139
Sustain Rate	13%	15%	17%	23%
Effectiveness Rate	44%	44%	47%	46%
ADR Cases	40	86	81	69
Hearings	21	5	17	27

The FY 2019 statistics generally illustrate the past year was business as usual at GAO, with one notable exception—the number of bid protest filings dropped significantly. Here are few observations:

- Bid Protest Filings Drop 16%:** Over the past several years, the number of bid protest filings before GAO remained fairly steady. However, FY 2019 marked the lowest number of bid protest filings since FY 2009. While the reason for this notable drop is not apparent from GAO’s report, a few factors may explain the decline: (i) implementation of GAO’s new Electronic Protest Docketing System, which now includes a \$350 filing; (ii) utilization of enhanced debriefing procedures for Department of Defense procurements; and (iii) greater reliance on task order procurements. Only time will tell if this number is indicative of a new trend, or an anomaly.
- Effectiveness Rate Remains Steady:** GAO calculates the effectiveness rate to include the protester obtaining some form of relief, including either voluntary corrective action by the agency or achieving a decision sustaining the protest by GAO. Since FY

2008, the effectiveness rate for protests pursued at GAO has steadily remained above 42%. This trend provides a great data point demonstrating GAO remains a good forum for disappointed bidders to pursue their bid protest.

- ***Bid Protests of Task Order/Delivery Orders Increases:*** Of the 2,195 cases filed before GAO, 373 of those cases challenged the award of a task or delivery order. This represents a 5% increase from FY 2018. The increase is particularly remarkable because it reflects the first full year of bid protests following implementation of Section 835 of the National Defense Authorization Act of Fiscal Year 2017, which increased GAO's jurisdictional threshold for Department of Defense task or delivery order bid protests from \$10 million to \$25 million.

Although the bid protest process continues to be a hot topic within the Congress, these statistics demonstrate that GAO continues to see its fair share of bid protests on a year-over-year basis. Even more telling is the fact that GAO's effectiveness rate continues to show that protesters have a nearly 50/50 chance of obtaining some relief in response to their bid protest.