

GAO Protest Requires Fee and Specialized Filing Starting May 1, 2018

Starting May 1, 2018, the General Accounting Office (GAO) will require that all new protests (except those containing classified information) be filed using its web-based electronic filing system known as the Electronic Protest Docketing System (EPDS). The final rule identifying the changes to the GAO's filing requirements is available [here](#). As part of that process, a protestor must pay a \$350 protest filing fee to help defray the cost and maintenance of the system. Preliminary experience in GAO's system indicates it is relatively user friendly, but one aspect—the automatic email notification—is not foolproof at present.

Background

The GAO has long-served as an informal, low-cost administrative forum for bid protests challenging federal agency procurement decisions. Pleading requirements are relatively informal, and, prior to May 1, GAO did not require any filing fee. Over the past 15 years, GAO offered the protestor several alternative means to file a written protest—hand delivery, facsimile and email. Ease of filing and the absence of fees promoted GAO as an attractive forum for pro se protests, including protests involving smaller-dollar procurements. Beginning May 1, 2018, a protestor must file initial protests (and all subsequent communications) using the EPDS and must pay a fee, albeit a relatively small one.

Key Features of EPDS

To file or intervene in a bid protest, users must register as a filer in the EPDS system. After registering, EPDS users may:

- File a new protest by completing all fields in EPDS' New Protest Information form, uploading protest documents, entering comments and submitting the filing fee;
- View active case docket sheets and download filings;
- Submit new documents and comments in active cases;
- Add parties associated with active cases (each party may have up to four representatives who may access or file documents in the EPDS);
- Request to intervene in a case pursuant to 4 C.F.R. §§ 21.0(b) or 21.3(j);
- Manage protected material by marking documents containing information that is proprietary, confidential or otherwise not releasable to the public, uploading redacted documents, submitting proposed redactions to GAO decisions, submitting protective order applications, and agreeing or objecting to protective order admissions; and
- File a request for reconsideration, request for entitlement or request for reimbursement of costs after GAO issues a decision on a case.

Experience With EPDS

The GAO has been actively engaged in the design, development and testing of the EPDS for the past two years. In recent months, GAO conducted a pilot program in which it enlisted experienced protest counsel in select protests to use the EPDS. The initial protest was filed by traditional means, but all subsequent communications used the EPDS.

Based on our experience in this pilot, we believe that the EPDS [user manual](#) provides helpful guidance, and the system as a whole is relatively user friendly by comparison with federal court systems. One note of caution—the EPDS is designed to automatically generate email notice of all filings when made, but SPAM filters may intercept EPDS-generated emails. Protestors and intervenors should work with their email administrators to ensure that EPDS notices are delivered.

Significance

Short term, a protestor simply needs to be aware of the new requirements, and be prepared to meet them from day one.

Long term, for competitors on most procurements, the fee and filing requirements will not be a barrier. If the fee does cull out protests on smaller procurements, the GAO—and in turn the parties before it—may benefit from more attention to protests on more substantial procurements. Otherwise, it remains to be seen whether GAO's implementation of its EPDS will make the process any less informal.

Due to CICA's automatic suspension feature, a GAO protest was once known as the 25-cent injunction. While GAO now becomes a \$350 injunction, the GAO protest remains a bargain for a competitor seeking to maintain the status quo while obtaining relatively expert third-party review of pivotal agency procurement decisions.

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