

GAO may also tell an agency to award a prevailing protestor its costs (including attorneys fees and in-house labor hour costs) in pursuing a protest. When such an award is issued, the amount of these fees and cost is usually agreed by the agency and protestor. On many occasions, however, GAO has stepped in and resolved disputes over the amount of fees.

GAO authority to provide relief, however, is limited in one important respect: GAO can only **recommend** that an agency take a specific action. GAO cannot force an agency to correct its violation of the law.

Agencies almost always abide by GAO's recommendations. If they did not, Congress could potentially cut the nonconforming agencies budgets the next year. The recommendatory nature of GAO is important, however, when it comes to protest cost awards.

Until recently, GAO's rules provided that its protest cost orders were mandatory. Many executive agencies challenged GAO's authority to make these awards, and the rules were changed. Now, GAO's protest cost award power is only recommendatory.

In fact, the rule reflects recent history, rather than changes it. Even when GAO protest cost authority was deemed mandatory, the agencies were never particularly cooperative in paying protest costs. They often delayed payment or refused it on various grounds. Given this history, protestors cannot expect agencies to make payments willingly now that the GAO has authority only to recommend an action.

**GAO has published rules for protesting.** Typically the protestor files a protest, the agency gets 25 working days to respond, the protestor gets another 10 working days to respond to the agency report. GAO then makes a decision, generally within 90 working days. Most protests are decided on the basis of the pleadings submitted by the parties; there are not many in-person "trials" or fact-finding hearings as GAO calls them. There is no appeal to a court, although under certain circumstances, an issue lost before GAO can be brought to the Court of Federal Claims.

**Timely protests are essential.** A protest submitted a day late will be thrown out. Protests about the terms of the IFB (for example, asserting that the Corps is requiring the wrong type of steel for the project or the specification is ambiguous) must be filed before the closing date for the receipt of bids.