

HOW MANY BID PROTESTS IS

TOO MANY?

**GAO's Recent One-Year Ban of a Frequent
Protestor Spurs Debate over the GAO Bid Protest
Forum and Its Authority**

by Christoph Mlinarchik



After a remarkable decision rendered by the Government Accountability Office (GAO),¹ there's a buzz in the air about bid protests—and it's at a fever pitch.

For the first time ever, GAO chose to *ban* a protestor from filing any bid protests with GAO for a period of one year. But was GAO's sanction against this protestor justified? Will it withstand scrutiny? Does GAO actually possess the power to put both a protesting firm and its principal into a 365-day "time out" from filing any bid protests?

This article examines this GAO decision, GAO's justifications for its action, and the powers granted to GAO through statute and regulation—and also features an interview with the principal of the banned firm to hear the other side of the story.

Background

According to GAO, a *bid protest* is "a challenge to the award or proposed award of a contract for the procurement of goods and services or a challenge to the terms of a solicitation for such a contract."² Generally speaking, the bid protest system is important, as it ensures "transparency and accountability" in the federal acquisition process and provides "guidance to the agencies in the form of publicly-available decisions."³ GAO is one forum where such bid protests may be heard.

The bid protest process costs money—both for the protestor and the government, but the process is intentionally designed to be "inexpensive,"⁴ and to avoid "substantial costs"—as this would "have the unintended consequence of discouraging participation in federal contracting and, in turn, [limit] competition."⁵ GAO can recommend that the procuring agency pay the attorneys fees of a successful protestor, but an unsuccessful protestor does not have to pay for the time or resources of the government attorneys. Some consider this to be unfair, while others argue that any penalties imposed on unsuccessful protestors would undermine the procurement process by discouraging protests, thereby decreasing scrutiny of federal agencies.

What nobody saw coming happened on August 18, 2016. GAO *did* impose what is arguably a penalty on an unsuccessful protestor: Latvian Connection LLC, and its principal, Keven Barnes.⁶ This penalty came in the form of a one-year ban. As GAO stated in its decision:

By separate letter of today to Latvian Connection, we are advising the firm, and its principal, that both will be precluded from filing a protest in our Office for a period of one year from the date of this decision.... [I]f, at the end of this period, Latvian Connection wishes to raise concerns that an agency has violated procurement laws or regulations in an acquisition where Latvian Connection has a direct economic interest, and Latvian Connection demonstrates that it is prepared to engage substantively on the issues it raises, we will again accept its protests in our forum.⁷

This unusual case stirred a renewed interest in the GAO bid protest forum and its authority.

The Latvian Connection LLC Decision

The protest at hand concerned the issuance of a task order by the U.S. Defense Information Systems Agency (DISA) to ManTech Advanced Systems International Inc. for engineering services.⁸ Latvian Connection LLC protested this award, alleging that DISA:

Failed to set the acquisition aside for small businesses, and

Failed to post the solicitation on the Federal Business Opportunities (FedBizOpps) website.⁹

Apart from the one-year ban, Latvian Connection's protest was dismissed for three different reasons. (The first two are pedestrian reasons for dismissal, all too familiar to bid protest gurus.)

Reason for Dismissal #1—GAO Lacked Jurisdiction to Hear the Protest

GAO lacked jurisdiction to hear the protest because it concerned the issuance of a task order for less than \$10 million against a multiple-award, indefinite delivery/indefinite quantity (IDIQ) contract. Of course, GAO only has protest jurisdiction for orders placed against multiple-award IDIQ contracts if the task or delivery order is *greater* than \$10 million, or if the order increases the scope, period of performance, or maximum contract value of the underlying contract.¹⁰

Reason for Dismissal #2—Latvian Connection Was Not an Interested Party

The protestor was not an *interested party*—i.e., "an actual or prospective offeror whose direct economic interest would be affected by the award of the contract or by the failure to award a contract."¹¹ According to the *Code of Federal Regulations*, only an "interested party" may protest such a solicitation.¹² Latvian Connection did not hold one of the contracts under which the protested task order was issued, and was therefore not an "interested party." As such, Latvian Connection lacked standing to protest the issuance of this task order.

Reason for Dismissal #3—"Abuse of Process"

Here's where things get really interesting. While the first two grounds for dismissal may have been yawn-inducing, the third reason GAO dismissed this protest is a different story. The third reason was for "abuse of process," an exceptionally rare reason, sure to intrigue even the most battle-hardened and desensitized contracting professional. From the "Digest" section of GAO's protest decision:

Protest challenging the issuance of a task order to a large business concern is dismissed for abuse of process, and the protester is suspended from protesting for a period of one year, where the protester has... repeatedly failed to demonstrate that it is capable of, or interested in, performing the solicited requirements; and has repeatedly failed to engage constructively on the substantive and threshold issues raised by its protests.¹³

At the risk of understating the situation, the careful reader will detect that GAO seems to be slightly *annoyed*. Anyone familiar with GAO bid protests recognizes that GAO usually takes great pain to pen sober, calm, and detached decisions, devoid of any passionate accusations. This decision was distinctly different—questioning motives, criticizing the content of protest filings, and complaining about "abusive" and "baseless" accusations found therein.¹⁴ In short, this is not the typical GAO bid protest decision. Something else is afoot.

What Led GAO to Sanction a Protestor?

To set the stage for GAO's decision, it is first important to note that Latvian Connection is no stranger to the GAO bid protest process. In fact, one could argue, at least in GAO's view, that Latvian Connection may be *too* familiar with the process. Based on GAO's reaction in its decision, it is clear that the firm's year-long suspension was not because of this individual protest, but rather due to the *sheer volume* of protests it had filed in the past. According to GAO:

Our records show that Latvian Connection has filed an additional 296 protests in prior fiscal years; almost all of these protests were filed in the last five years. In addition, the firm has filed 9 requests that it be reimbursed its protest costs (all were dismissed as legally insufficient), and 40 requests for reconsideration (4 pending, 3 dismissed as untimely, and 33 dismissed as legally insufficient).¹⁵

Further, Latvian Connection had a unique ability to produce not only an impressively high volume of protests over the course of a fiscal year, but also the ability to launch a rapid-fire volley of protests in a single week:

In a single week in fiscal year 2015, Latvian Connection filed 59 separate protests challenging what the protester termed were Air Force solicitations. All 59 protests were dismissed when it became evident that the 59 solicitations that Latvian Connection was challenging did not actually exist.¹⁶

According to GAO, Latvian Connection filed enough protests to demonstrate a "pattern of vexatious protesting that dates back several years."¹⁷

In legal terms, a proceeding is said to be *vexatious* "when the party bringing it is not acting *bona fide*, and merely wishes to annoy or embarrass his opponent, or when it is not calculated to lead to any practical result."¹⁸

Does GAO Have the Authority to Ban or Suspend a Protestor?

This case presents a number of colorful issues, but the most relevant question for legal scholars is whether the GAO bid protest forum actually has the power to ban or suspend protestors. There is no mention of the power to ban or suspend protestors in the GAO bid protest statutes¹⁹ or regulations.²⁰ In fact, two different statutory sections say that GAO "shall" decide protests, indicating that a ban or suspension may be improper:

A protest concerning an alleged violation of a procurement statute or regulation *shall* be decided by the Comptroller General if filed in accordance with this subchapter.²¹

To the maximum extent practicable, the Comptroller General *shall* provide for the inexpensive and expeditious resolution of protests under this subchapter.... [T]he Comptroller General *shall* issue a final decision concerning a protest within 100 days after the date the protest is submitted to the Comptroller General.²²

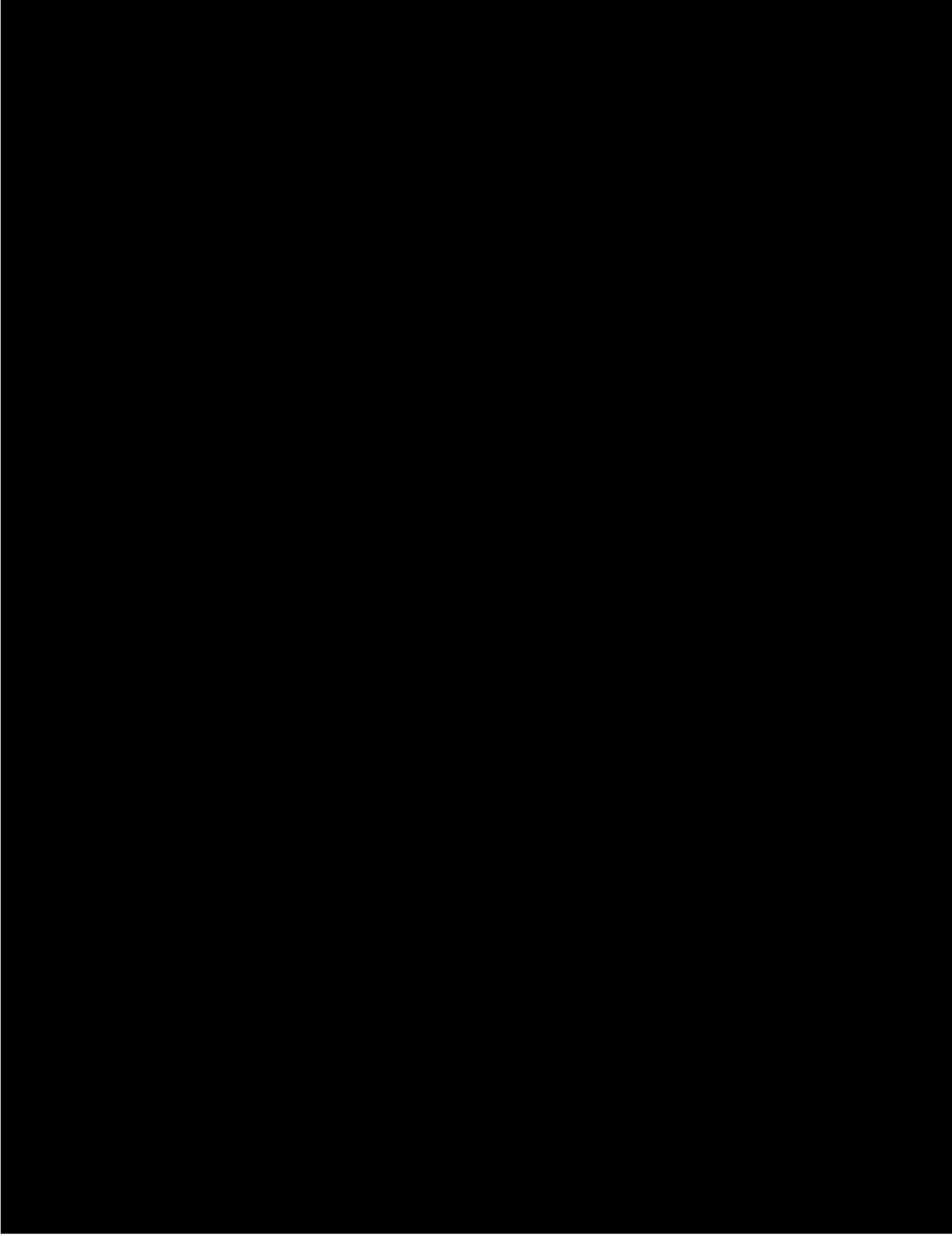
Just like the statutes, the regulations also command GAO to handle bid protests using "shall" language: "GAO *shall* issue a decision on a protest within 100 days."²³

Therefore, GAO has a statutory and regulatory responsibility to decide legitimate bid protests. But is there any authority for GAO to shirk this responsibility? The regulations dealing with protective orders discuss "sanctions," but these sanctions are directly tied to the violation of a protective order:

Any violation of the terms of a protective order may result in the imposition of such sanctions as GAO deems appropriate, including referral to appropriate bar associations or other disciplinary bodies, restricting the individual's practice before GAO, prohibition from participation in the remainder of the protest, or dismissal of the protest.²⁴

Latvian Connection's ban did not have anything to do with a violation of a protective order, so GAO could not rely on this provision.

The regulations concerning remedies available to the GAO bid protest forum do not mention the power to ban or suspend protestors, either. Rather, the available remedies include recommendations to agencies to terminate, re-compete, or award contracts. There is language that might provide GAO flexibility in "other



recommendation(s) as GAO determines necessary to promote compliance,"²⁵ but again, this broad option for recommendation(s) would be directed to an agency, not to an individual protestor. None of these enumerated sanctions or remedies resemble a one-year ban or suspension.

Likely due to the fact that GAO has no explicit authority to rely upon, GAO banned Latvian Connection to "conserve government resources" based on "an inherent right...to impose sanctions against a protester." Yet, the GAO bid protest decision cited in support of this idea, *PWC Logistics Servs. Co. KSC(c)*, does not mention anything about bans or suspensions. Rather, *PWC Logistics Servs. Co. KSC(c)* involves sanctions—in the form of dismissal of the protest—for violations of a protective order. Again, Latvian Connection did not violate a protective order.²⁶

Why would GAO cite to the dismissal of a single protest—due to violations of a protective order—to justify a one-year blanket ban of a protestor who did not violate a protective order? To say the least, a link is missing in GAO's chain of logic. Perhaps human emotion trampled over legalistic reasoning. Attorneys are human beings, after all, including GAO bid protest attorneys.

GAO's 2009 Report to Congress "Frivolous" Protests, and GAO's Authority to Penalize Unsuccessful Protestors

To be clear, GAO did not (explicitly) accuse Latvian Connection of filing "frivolous" protests; the word *frivolous* is not found anywhere in the bid protest decision.²⁷ However, the author believes there is an eyebrow-raising reason why GAO studiously avoided using the word *frivolous*.

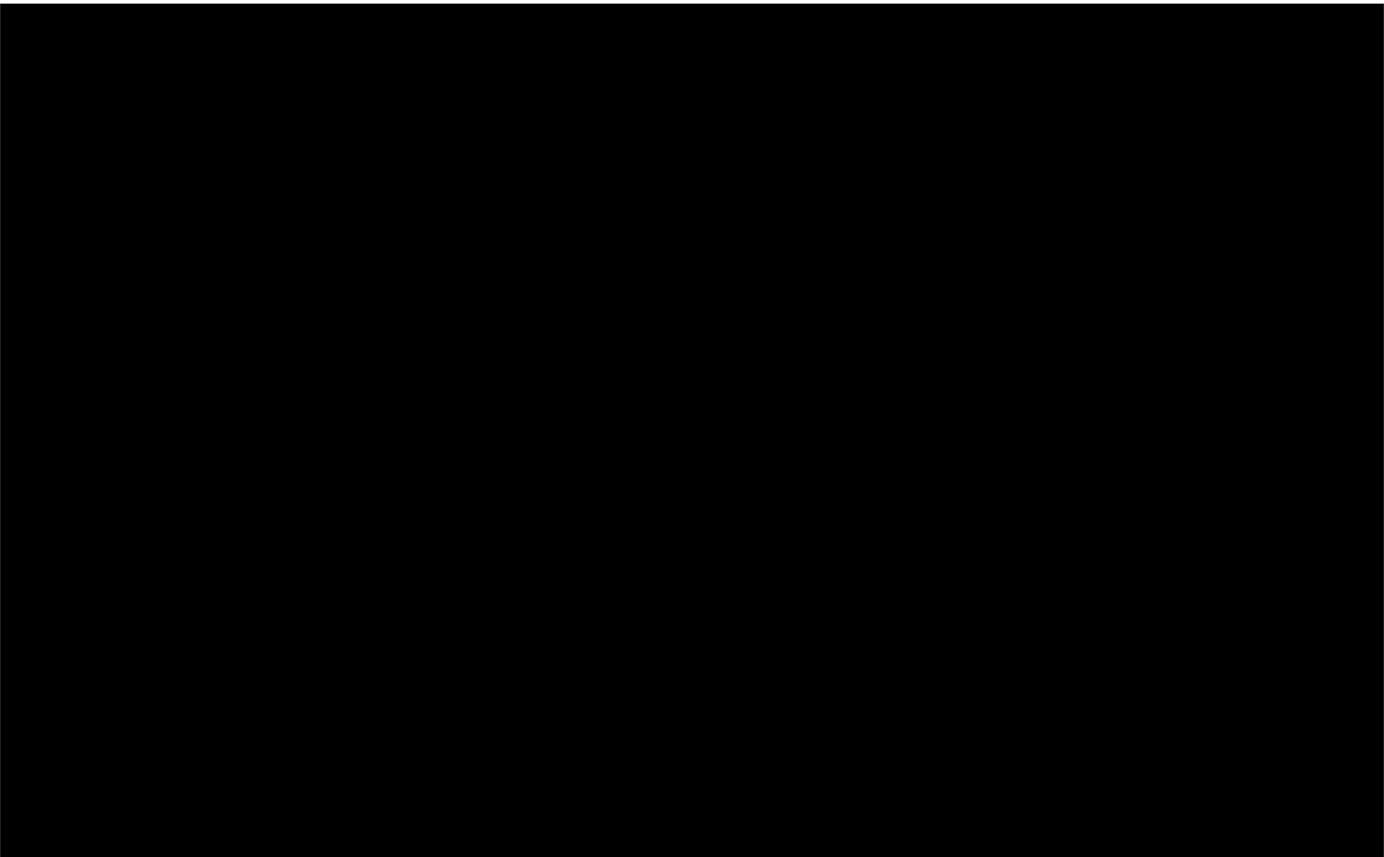
This is rather remarkable, because GAO likely regrets limiting its own powers to penalize unsuccessful protestors. Years ago, GAO specifically denied the need to empower itself with new ways to deter frivolous protestors. In 2009, GAO responded to direction from the House Committee on Armed Services, which asked GAO to review the last five years of GAO protests against the Department of Defense (DOD) and assess:

The extent to which bid protests against DOD was increasing,

The extent to which frivolous and improper protests may be increasing, and

The causes of any increases that were identified.²⁸

Congress was concerned that the bid protest process was being abused, and wanted GAO to come up with ways to deter so-called "frivolous and improper" bid protests. In response, GAO painted it-



self into a corner with regard to handling frivolous protests. In the 2009 report, GAO responded to Congress as follows:

GAO does not need to determine that a protest is "frivolous" to promptly close it, and, in our view, making such a determination could add substantial costs to the protest process and have the unintended consequence of discouraging participation in federal contracting and, in turn, limiting competition.²⁹

So, GAO made it clear that the power to dismiss or "close" protests is power enough, and that GAO should not be in the business of determining whether protests are "frivolous" or not. To nail down what "frivolous" would actually mean regarding bid protests, GAO looked to federal courts for an explanation of what determines other legal actions to be frivolous:

[A] legal action is considered "frivolous as filed" when a plaintiff or appellant grounds its case on arguments or issues "that are beyond the reasonable contemplation of fair-minded people, and no basis for [the party's position] in law or fact can be or is even arguably shown."³⁰

Simple enough—some protests might be frivolous the moment they are filed, if there is no reasonable basis for the protestor's position in law or fact.

GAO also relied on a second concept, "frivolous as argued," when a litigant:

...has not dealt fairly with the court, has significantly misrepresented the law or facts, or has abused the judicial process by repeatedly litigating the same issue in the same court.³¹

Again, GAO was careful not to (explicitly) accuse Latvian Connection of filing "frivolous" protests. Yet these earlier statements by GAO raise the question of whether or not these concepts—"frivolous as filed" and "frivolous as argued"—have any relevance to the reasons GAO listed for suspending Latvian Connection.

GAO: Protest Penalties are a Bad Idea

In its 2009 report to Congress, GAO considered the important element in both forms of frivolous litigation—"frivolous as filed" and "frivolous as argued"—to be bad faith, rather than procedural deficiency or lack of merit. GAO also mentioned that it was already equipped to quickly dismiss protests that lack a legal basis or proper procedural qualifications.³² GAO emphasized that it can dismiss protests "where appropriate, without the need to resolve

whether the protest was frivolous."³³ GAO went on to explain that no changes or additional powers are needed:

[A]ttempts to disincentivize protests that in some sense might be considered frivolous may have, on balance, the unintended consequence of harming the federal procurement system by discouraging participation in federal contracting and, in turn, limiting competition.³⁴

GAO reported that imposing penalties for protestors could have "serious negative consequences for contractors (particularly small businesses), our Office, and the procurement process."³⁵ And further:

[A]ny system that imposes penalties on contractors for filing frivolous protests would require adequate due process protections to avoid punishing a company for filing a good-faith but unmeritorious protest.³⁶

Does anyone doubt that a one-year ban on Latvian Connection is a "penalty"? Did GAO treat Latvian Connection like a "frivolous" protestor, without explicitly making the accusation or proving the case? Also, before assessing this penalty, did GAO ensure adequate due process?

GAO: The Standard Would Be Rigorous for Determining a Protest to Be "Frivolous"

In the 2009 report, GAO emphasized that to determine a protest to be "frivolous," GAO would need to conduct a lengthy, fact-specific inquiry into the subjective intent of the protestor. This would require "substantial litigation, such as declarations, affidavits, or live testimony," to be sure that the protestor actually demonstrated the intent necessary to establish so-called "bad faith."³⁷ As such, GAO realized that a determination of frivolous protests was too high a hurdle to clear, given existing GAO resources. Because it would be such a serious, difficult, and time-consuming exercise, GAO backed away from the responsibility to determine frivolity. GAO thus established that its own standard for determining a protest to be "frivolous" would have to be quite rigorous, if it were ever used.

Essentially, in its 2009 report to Congress, GAO made its stance clear on the following issues:

Imposing penalties on frivolous protestors is a bad idea,

Imposing penalties could harm the federal procurement system by causing a chilling effect on bid protests, and

Determining frivolity would require a substantial litigation process to protect due process.

Does anyone doubt that a one-year ban on Latvian Connection is a "penalty"? Did GAO treat Latvian Connection like a "frivolous" protestor, without explicitly making the accusation or proving the case? Also, before assessing this penalty, did GAO ensure adequate due process?

Could this be the reason why the term *frivolous* is not found anywhere in GAO’s decision banning Latvian Connection? Perhaps GAO is fully aware of its past report to Congress, and realizes that a determination of frivolity and bad faith is a serious matter, and therefore chose to painstakingly avoid those concepts entirely. GAO has already made it clear that determining frivolity would require extensive investigation, with resources that GAO does not have. Why start now?

Instead of calling this or other protests by Latvian Connection “frivolous,” GAO curiously describes Latvian Connection’s pattern of protest filings as “vexatious.”³⁸ Instead of finding any evidence of “bad faith,” GAO concludes that Latvian Connection’s protests “constitute an abuse of process” that “undermine[s] the integrity and effectiveness” of the bid protest process.³⁹ Does that sound anything like “bad faith”⁴⁰?

Did GAO treat Latvian Connection as if it had filed *frivolous* protests, in *bad faith*, despite never using those two terms in the protest decision, and despite never meeting the higher standards required for a finding of bad faith or frivolous litigation? If so, Latvian Connection may have a reason and a justification to challenge the GAO protest decision in another forum, such as the federal courts.

Latvian Connection’s Side of the Story: An Interview with Keven Barnes

Every contracting professional who follows GAO’s bid protests⁴¹ will recognize the name “Latvian Connection.” As a frequent protestor, Latvian Connection piques the curiosity of contracting officers, attorneys, and industry contracting professionals alike. Those who have read the decisions have found that these protests are usually filed by Latvian Connection’s principal and CEO, Mr. Keven Barnes.

Many contracting professionals are most likely curious to know the motivation for such an unusually large number of protests. After all, there must be a logical reason for such a dedicated, extensive, and exhaustive effort. While some may consider this effort to be excessive, the contracting profession should examine the origins and reasons behind Latvian Connection’s long history of GAO bid protests, if only out of intellectual curiosity. For this reason, and because there are always at least two sides to a story, *Contract Management* contacted Barnes directly, so that he could share his point of view with the contracting profession.⁴²

CONTRACT MANAGEMENT Some may not know that you have litigated several GAO protests that were sustained. In other words, Latvian Connection has indeed won protests with GAO. How many GAO protests have you won?

It should be noted that the successful protests by Latvian Connection against the Department of State (B-410947) and the Department of the Interior (B-41091) established the following GAO precedent:

Exclusion from a private firm’s online procurement system, used on behalf of a federal agency, constitutes a de facto negative responsibility determination on the part of the federal agency.

Latvian Connection LLC, B-410947 (March 31, 2015)

The sustained protest against the Department of State involved FedBid, a private firm that offers online, reverse-auction procurement services for federal agencies, among other things. Latvian Connection was precluded, by FedBid, from participation in FedBid’s online auction system, which conducted a procurement on behalf of the Department of State. Because Latvian Connection could not participate with FedBid, Latvian Connection could not bid on the Department of State’s procurement. GAO found that this constituted a negative responsibility determination by the Department of State. Under the Small Business Act, federal agencies must defer to the Small Business Administration for negative responsibility determinations (as per 15 U.S.C. 637 (b)(7) and FAR 19.6); therefore, GAO held that the Department of State, through its agent, FedBid, precluded a small business (i.e., Latvian Connection) from competing for a contract on the basis of the firm’s integrity, which amounted to a negative responsibility determination that should have been referred to the Small Business Administration.

Latvian Connection LLC, B-410981 (April 6, 2015)

The sustained protest against the Department of the Interior involved similar facts and determinations, again concerning FedBid and Latvian Connection’s exclusion from FedBid’s online auction system, which further strengthened the GAO precedent established by the earlier *Latvian Connection* decision.

KEVEN BARNES Latvian Connection LLC has won three GAO protests so far:

Latvian Connection, LLC, B-410947 (March 31, 2015), against the State Department;

Latvian Connection, LLC, B-410981 (April 6, 2015), against the Department of Interior; and

Latvian Connection, LLC, B-411489 (August 11, 2015), against the Department of Army.

CM Which of your successful protests are you the most proud of winning, and why?

KB *Latvian Connection, LLC, B-410947*, against the State Department, and *Latvian Connection, LLC, B-410981*, against the Department of Interior. I won both of these protests in the same week, involving the same issue—I was not allowed to participate in solicitations conducted on behalf of a federal agency by a private firm. In both cases, my protests were sustained, I won my bid protest costs, and I established important GAO precedence for the small business community.

CM Why is the firm called “Latvian Connection LLC”? Are you Latvian?

KB No, I am not Latvian. I am a U.S. citizen, and Latvian Connection LLC is a service-disabled veteran-owned small business. In the past, I worked on a U.S. Embassy project in Latvia. “Latvian Connection General Trading and Construction LLC” is the full name, and I have a former Latvian business partner. My former Latvian business partner gave up on the business of U.S. government contracts because he was frustrated by the federal contracting process.

CM A major theme of your bid protests is small business set-asides. What changes would you like to see in the contracting profession regarding small business?

KB All solicitations between \$3,000 and \$150,000 should be automatically reserved for U.S. small businesses. Any federal agency that fails to meet the annual small business goals of the Small Business Act and the Small Business Administration should lose 10 percent of their budget the following year.

I think federal agencies need to do a better job of complying with the “Rule of Two” for small businesses.⁴³ I also think everyone should read and follow 13 C.F.R. 125.2(c)(1), SBA’s regulation which requires each federal agency to “foster the participation of small business...regardless of the place of performance.”

CM Another theme from your protests is foreign and overseas contracting. What are your views on foreign-owned entities participating in U.S. government contracting?

KB Only American companies with ownership by American citizens should be awarded American contracts. Any foreign-owned companies should only be allowed to participate as team members, not as prime contractors.

CM Now that you have been banned from protesting at GAO for one year, what do you plan to do next? Will you give up? Will you appeal this decision to another court?

KB I will keep filing GAO protests that demonstrate procurement violations. There are many websites that are not posting solicitations with a value greater than \$25,000 to FedBizOpps. Those will be protested at GAO directly, and to agencies as well. My goal is to see more compliance with the Small Business Act, the “Rule of Two,” and automatic, mandatory set-asides for small businesses applied worldwide. **CM**

ENDNOTES

1. I.e., GAO, *Latvian Connection LLC, B-413442* (August 18, 2016).
2. GAO, “Are You Considering Filing a Bid Protest?” available at www.gao.gov/legal/are-you-considering-filing-a-bid-protest/about; see also the definition of protest found at FAR 33.101.
3. See, generally, GAO, “Report to Congress on Bid Protests Involving Defense Procurements,” B-401197 (April 9, 2009) (hereinafter, “2009 Report to Congress”).
4. See, generally, 31 U.S.C. 3554(a)(1).
5. GAO 2009 Report to Congress, *op cit*.
6. From a search of the publicly available System of Award Management (SAM) database on August 23, 2016, the firm “Latvian Connection General Trading and Construction LLC” lists Keven L. Barnes as the CEO for both the Kuwait City, Kuwait (NCAGE Code: SGM59, DUNS: 534749622) and Healdsburg, California (CAGE Code: 5GLB3, DUNS: 830587791) listings. The SAM registrations for these listings expire on July 8, 2017, and April 26, 2017, respectively.
7. *Latvian Connection LLC*, see note 1.
8. *Ibid*.
9. *Ibid*.
10. 10 U.S.C. 2304c(e).
11. FAR 33.101; see also 4 CFR 21.0(a)(1).
12. 4 CFR 21.1.
13. *Latvian Connection LLC*, see note 1.
14. *Ibid*.
15. *Ibid*.
16. *Ibid*. (citing *Latvian Connection, LLC, B-410801, et al* (December 22, 2014)).
17. *Ibid*.
18. Definition of “vexatious,” *Black’s Law Dictionary* (www.thelawdictionary.org).
19. See 31 U.S.C. 3551-3557.

“I will keep filing GAO protests that demonstrate procurement violations.” – Keven Barnes

20. See 4 CFR 21.0-21.14.
21. 31 USC 3552(a) (emphasis added).
22. 31 USC 3554(a)(1) (emphasis added).
23. 4 CFR 21.9(a).
24. 4 CFR 21.4(d).
25. 4 CFR 21.8(a)(6).
26. PWC Logistics Servs. Co. KSC(c), B-310559 (January 11, 2008).
27. Latvian Connection LLC, see note 1.
28. GAO 2009 Report to Congress, see note 3.
29. *Ibid.*
30. *Ibid.* For this first definition of *frivolous as filed*, GAO cited *Abbs v. Principi*, 237 F.3d 1342, 1345 (Fed. Cir. 2001), citing *State Indus., Inc. v. Mor-Flo Indus., Inc.*, 948 F.2d 1573, 1578 (Fed. Cir. 1991). See also *International Union of Bricklayers Etc. v. Martin Jaska, Inc.*, 752 F.2d 1401, 1406 (9th Cir. 1985) (“frivolous appeal is defined as one in which the result is obvious, or where the appellants’ claims are utterly meritless”).
31. *Ibid.* For this second definition of *frivolous as argued*, GAO cited *Abbs v. Principi*, 237 F.3d at 1345; and *Lawrence N. Sparks v. Eastman-Kodak Co.*, 230 F.3d 1344, 1345 (Fed. Cir. 2000). See also *Finch v. Hughes Aircraft Co.*, 926 F.2d 1574, 582 (Fed. Cir.1991).
32. GAO 2009 Report to Congress, see note 3.
33. *Ibid.*
34. *Ibid.*

The "Rule of Two" (FAR 19.502-2(b)):

- b) Before setting aside an acquisition under this paragraph, refer to 19.203(c). The contracting officer shall set aside any acquisition over \$150,000 for small business participation when there is a reasonable expectation that—
 - 1) Offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (see paragraph (c) of this section); and
 - 2) Award will be made at fair market prices. Total small business set-asides shall not be made unless such a reasonable expectation exists (see 19.502-3 as to partial set-asides). Although past acquisition history of an item or similar items is always important, it is not the only factor to be considered in determining whether a reasonable expectation exists. In making R&D small business set-asides, there must also be a reasonable expectation of obtaining from small businesses the best scientific and technological sources consistent with the demands of the proposed acquisition for the best mix of cost, performances, and schedules.

13 CFR 125.2(c)(1):

- c) *Procuring Agency Responsibilities—*
 - 1) *Requirement to Foster Small Business Participation.* The Small Business Act requires each Federal agency to foster the participation of small business concerns as prime contractors and subcontractors in the contracting opportunities of the Government regardless of the place of performance of the contract. In addition, Federal agencies must ensure that all bundled and consolidated contracts contain the required analysis and justification and provide small business concerns with appropriate opportunities to participate as prime contractors and subcontractors. Agency acquisition planners must:
 - i) Structure procurement requirements to facilitate competition by and among small business concerns, including small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, 8(a) BD small business concerns (including those owned by ANCs, Indian Tribes and NHOs), and small business concerns owned and controlled by women;
 - ii) Avoid unnecessary and unjustified bundling of contracts or consolidation of contract requirements that inhibits or precludes small business participation in procurements as prime contractors;
 - iii) Follow the limitations on use of consolidated contracts;
 - iv) With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under 15 U.S.C. 694b, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work;
 - v) Provide SBA the necessary information relating to the acquisition under review at least 30 days prior to issuance of a solicitation. This includes providing PCRs (to the extent allowable pursuant to their security clearance) copies of all documents relating to the acquisition under review, including, but not limited to, the performance of work statement/ statement of work, technical data, market research, hard copies or their electronic equivalents of Department of Defense (DoD) Form 2579 or equivalent, and other relevant information. The DoD Form 2579 or equivalent must be sent electronically to the PCR (or if a PCR is not assigned to the procuring activity, to the SBA Office of Government Contracting Area Office serving the area in which the buying activity is located);
 - vi) Provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and
 - vii) Invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director with access to acquisition plans.

35. *Ibid.*
36. *Ibid.*
37. *Ibid.*
38. *Latvian Connection LLC*, see note 1.
39. *Ibid.*
40. In legal terms, *bad faith* is an "intentional dishonest act by not fulfilling legal or contractual obligations, misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others." (Definition of "bad faith," *The People's Law Dictionary*, www.dictionary.law.com.)
41. This is one excellent way to stay up-to-date on the practice of contract management (as outlined in Christoph Mlinarchik, "Secrets of Superstar Contracting Professionals," *Contract Management Magazine* (May 2014)). To subscribe to a daily digest of GAO comptroller general legal decisions, visit www.gao.gov/subscribe/index.php.
42. All interview questions and answers derive from personal communications between the author, Christoph Mlinarchik, and Keven Barnes in August 2016. The interview was conducted on behalf of *Contract Management Magazine*. The opinions of Keven Barnes are solely his own, and do not necessarily represent the opinions of Christoph Mlinarchik, *Contract Management Magazine*, or NCMA.
43. The "Rule of Two" is outlined at FAR 19.502-2(b)(1)-(2).

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