

12/20/04

GAO proposal would give feds A-76 protest rights

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The Government Accountability Office today issued a proposed rule that would give agency officials the right to protest public-private competitions.

The [proposed rule](#) would amend GAO's bid protest regulations to meet requirements outlined by Congress in the fiscal 2005 National Defense Authorization Act.

The audit agency's proposal comes almost 18 months after it first asked for comments on whether agency officials should receive the right to protest. After receiving 71 comments, GAO decided it could not give agency officials standing until lawmakers amended the Competition in Contracting Act [see [GCN story](#)].

This fall, Sen. Susan Collins (R-Maine), chairwoman of the Senate Governmental Affairs Committee, introduced legislation to create such rights for OMB Circular A-76 reviews [see [GCN story](#)]. The language later was folded into the Defense authorization bill.

GAO's proposed rule would "expand the definition of an interested party to include the official responsible for submitting the federal agency tender" for competitions of 65 or more employees. It also would define who can file the protest. This person would represent a majority of the agency employees engaged in the performance of the activity or the person responsible for submitting the bid.

But if the agency official in charge of the bid decides against protesting, other feds could not protest, the proposed rule notes.

"Agency employees cannot protest the failure of an agency tender official to protest," said Dan Gordon, GAO's associate general counsel. "The proposed rule closely tracks the statute's language."

Additionally, under the new rule, auditors would not require feds to file an agency protest first before going to GAO. And for competitions that involve fewer than 65 employees, GAO said it would not hear protests unless a solicitation had been issued by the agency. For competitions of 65 positions or less—known as streamlined competitions—agencies do not have to release a request for proposals if they deem it unnecessary.

[Submit comments](#) on the proposed rule until Feb. 18.