

# **Electronic Protest Docketing System Instructions**

(October 2021)<sup>1</sup>

## **I. INTRODUCTION**

- 1. In General.** These Instructions govern electronic filings for protests, requests for reconsideration, and either requests for recommendation of reimbursement of costs, or requests for recommendation of amount of costs (hereinafter collectively “requests relating to costs”) filed before the U.S. Government Accountability Office (GAO). These instructions supplement, and are subordinate to, GAO’s Bid Protest Regulations, which are set forth in Title 4 of the Code of Federal Regulations (C.F.R.), part 21. Electronic Protest Docketing System (EPDS) User Guides and other reference materials are available on GAO’s website: <https://www.gao.gov/legal/bid-protests/reference-materials>.
- 2. Definitions.** In addition to the definitions set forth in 4 C.F.R. § 21.0, for the purposes of these Instructions, the following definitions apply:
  - (a) “Agency Point of Contact (POC)” means a representative of the U.S. government procuring agency who is designated to receive notice of new protests, requests for reconsideration, or requests relating to costs and who has certain administrative rights over all cases involving the agency that he or she represents.
  - (b) “EPDS” means the GAO’s electronic protest docketing system, which is accessible at <https://epds.gao.gov>.
  - (c) “EPDS User Guides” means the system user guides referenced in section I.1.
  - (d) “Filer” means the party submitting a filing through EPDS.
  - (e) “User” means an authorized EPDS user representing a party or other entity authorized to participate in a protest, request for reconsideration, or request relating to costs pursuant to 4 C.F.R. § 21.3(j).
  - (f) “Agency Filer” or “Agency User” means a representative of the U.S. government, other than an Agency POC, who is representing an agency in connection with a protest, a request for reconsideration, or request relating to costs. Agency Filers will be required to submit a notice of appearance in EPDS that must be approved by GAO prior to the individual obtaining access to a case. For purposes of these Instructions, a representative of a government agency authorized to participate in a case pursuant to 4 C.F.R. § 21.3(j) shall also be an “Agency Filer” or “Agency User.”
  - (g) “Non-agency Filer” or “Non-agency User” means a representative of a party who is not a representative of the U.S. government. For purposes of these Instructions, a representative of the official responsible for submitting the Federal agency tender, or the Federal employees described in 4 C.F.R. § 21.0(a)(2)(B), in a protest in connection with a public-private competition conducted under Office of Management and Budget Circular A-76 regarding an activity or function of a Federal agency shall be a “Non-agency Filer” or “Non-agency User.”

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<sup>1</sup> July 2019 revisions made to section III.6(d).

- (h) "Filing" means any document that is filed electronically in EPDS or as otherwise expressly authorized by GAO pursuant to these Instructions.
- (i) "Filing Fee" means the fee authorized pursuant to 31 U.S.C. § 3555(c)(2) that a protester must pay when filing a new protest. No filing fee is required in connection with the filing of a supplemental protest, request for reconsideration, or request relating to costs. The filing fee, however, is required for a new protest involving a previously resolved protest (e.g., a protest challenging the agency's implementation of corrective action, a protest raising allegations from a prior protest that was previously dismissed as premature). The filing fee is \$350.
- (j) "GAO" means the GAO attorney(s) assigned to handle a case or other GAO personnel. References herein to contacting GAO mean e-mailing [protests@gao.gov](mailto:protests@gao.gov), calling GAO's Procurement Law Control Group at (202) 512-4788, or calling or e-mailing the GAO attorney assigned to handle a specific case.
- (k) "GAO's Bid Protest Regulations" means the GAO's regulations applicable to protests and related proceedings, which are published at 4 C.F.R. part 21 and accessible at <https://www.gao.gov/legal/bid-protests/reference-materials>.
- (l) "Time of Filing" is the time recorded by EPDS when a filing is successfully received by EPDS. The time of filing is the official time that GAO will use to determine the timeliness of a filing in accordance with 4 C.F.R. § 21.0(g). The time of filing will be reflected in the docket in EPDS.

## II. **ACCESS TO EPDS; RESPONSIBILITY OF USERS; EXEMPTION FROM USE**

- 3. **Eligibility.** Any representative of a protester, intervenor, agency, or entity authorized to participate in a case pursuant to 4 C.F.R. § 21.3(j) may register as a User by registering for an account through EPDS. A User will have access only to protests, requests for reconsideration, or requests relating to costs in which the User represents a party in that particular matter or in which the User has been authorized to participate in by GAO. By registering as a User, the User consents to electronic service of all filings.

### 4. **Username and Password.**

#### (a) **Username and Password.**

- i. **In General.** Information on registering and managing usernames and passwords is available in the EPDS User Guides.
- ii. **Non-agency Users.** Non-agency Users shall register for an account through EPDS and follow all applicable instructions for establishing and managing a username and password.
- iii. **Agency Users.** Accounts for Agency POCs shall be established by GAO. Agency POCs should contact GAO for assistance in creating and maintaining their accounts. All other Agency Users shall register for an account through EPDS and follow all applicable instructions for establishing and managing a username and password.

- (b) **Security.** A User must protect the security of his or her password and immediately notify GAO if there is any reason to believe its password has been compromised.
- (c) **Use.** No User or other person may knowingly permit or cause a User's username and password to be used by anyone other than the User or an authorized agent of the User. Failure to comply with this provision may result in the imposition of such sanctions as GAO deems appropriate.
- (d) **Using Due Care When Adding A Co-Representative.** A Filer may invite a co-representative to join a matter by sending an invitation through EPDS by entering another User's e-mail address. A Filer must use due care to ensure that the invitation is sent to the intended User. If a Filer accidentally invites another User to join a matter that it did not intend to invite, or if another User receives an invitation to join a matter that it does not believe it is associated with, the Filer and User must immediately notify GAO.

**5. Exemption from Filing Electronically.** All filings shall be made in EPDS, subject to the exceptions set forth below and in section VII.22:

- (a) **Classified Materials.** Classified material shall never be filed through EPDS. Any Filer intending to submit any filing that includes classified material, including the filing of an initial protest, shall contact GAO in advance of the filing to obtain instructions.
- (b) **Certain Agency Filings.** After obtaining permission from GAO, an Agency Filer may submit filings outside of EPDS that: (1) are unusually voluminous (e.g., exhibits to the agency's report that will cumulatively exceed 1 gigabyte); (2) are permitted pursuant to section III.10(a); or (3) contain personal information pursuant to section VI. Any exemption request should be filed with GAO well in advance of any applicable deadline so as to allow GAO ample time to act on the request.
- (c) **Administrative Matters.** Parties may directly contact GAO via email or other means, in lieu of submitting such matters through EPDS, for routine administrative matters (e.g., identifying availability for a conference call or hearing, requesting instructions on the preferred format of a Filing) or technical assistance with using EPDS. Except as set forth in sections II.5(a) and (b), or VII.22, communications outside of EPDS are not appropriate for any substantive matters (e.g., indicating no objection to pending protective order applications, indicating whether a party proposes any redactions to a GAO decision).

### III. FILING REQUIREMENTS

#### 6. Protests.

- (a) Except as set forth in sections II.5 or VII.22, a protest must be filed through EPDS. A protest will not be deemed “filed” in accordance with GAO’s Bid Protest Regulations until the Filer has: (i) submitted all of the information required by the “File a New Protest” portal in EPDS; and (ii) successfully completed payment of the Filing Fee.
- (b) Due to the time required to create a user account, submit all required information, and pay the Filing Fee, Filers are advised to file protests in advance of any applicable deadlines. The Time of Filing shall be final. If a Filer cannot complete a Filing in EPDS as a result of a technical failure of EPDS, the Filer may file its protest as set forth in section VII.22; such a Filing, however, must independently meet any applicable filing deadline.
- (d) Upon successfully filing a protest, EPDS will: (i) provide the Filer with a receipt or payment confirmation code for the Filing Fee; (ii) create a new protest entry on the Filer’s EPDS dashboard; and (iii) pursuant to GAO’s notification obligation pursuant to 31 U.S.C. § 3553(b)(1), generate an e-mail notice to the agency identified by the Filer, with a copy to the Filer, that a new protest has been filed. The e-mail notice will provide the Time of Filing. If the Filer does not receive any of the system generated notices identified above or see a new protest entry on the EPDS dashboard, the Filer should contact GAO for further information. The Filer should ensure that it is designating the correct Federal agency involved when filing its protest; failure to designate the correct agency may delay notice of the protest filing.
- (e) Filers should use caution when attempting to file a protest, including avoiding refreshing their internet browser and/or attempting to submit the same protest multiple times, in order to avoid filing duplicative protests. In the event that a Filer files a duplicative protest, GAO may, in its discretion, refund the filing fee paid in connection with the duplicative protest. In order to request a refund for a filing fee paid for a duplicative protest, the Filer must submit a detailed written request demonstrating that the Filer filed--and incurred a filing fee--for a duplicative protest to [protests@gao.gov](mailto:protests@gao.gov). Any refund will be issued by a credit back to the account used to pay the filing fee. GAO cannot provide the Filer with an estimate for the period of time it will take to consider and process any refund.
- (f) Related Protests
  - i. When simultaneously filing multiple protests that are related either in terms of a single solicitation or raising an identical set of operative facts and allegations (e.g., challenging multiple awards made under a single solicitation, challenging the identical solicitation provision in two or more solicitations issued by the same procuring agency), the Filer should file one protest referencing each award and/or solicitation at issue. In accordance with 4 C.F.R. § 21.1(f), the Filer should identify a lead protest as the primary document in EPDS and each associated protest as associated documents in EPDS. The Filer should also reference each award and/or solicitation at issue in both the comments section in EPDS as well as within its substantive

filings. It is the Filer's responsibility to file related protests in a single filing within EPDS; failure to abide by this instruction shall not result in a refund of the Filing Fee to the Filer.

- ii. If GAO, at its sole discretion, determines that the protests are not sufficiently related to constitute a single protest, GAO will direct the Filer to refile its protest submission in EPDS as separate protest filings, including payment of separate Filing Fees. This determination shall be final and not subject to reconsideration. GAO will not consider a protest as filed under our Bid Protest Regulations where the Filer fails to timely refile the protest in accordance with GAO's instructions. For the purposes of this section, GAO may also treat as untimely any subsequent filing(s) that are substantively different from the filing previously made.

## **7. Requests for Reconsideration or Requests Relating to Costs.**

- (a) Except as set forth in sections II.5 or VII.22, any request for reconsideration or request relating to costs must be filed through EPDS. Any of the preceding requests will not be deemed "filed" in accordance with GAO's Bid Protest Regulations until the Filer has submitted all of the information required by EPDS through the appropriate portal in EPDS.
- (b) Due to the time required to create a user account and submit all required information, Filers are advised to file requests for reconsideration or requests relating to costs in advance of any applicable deadlines. The Time of Filing shall be final. If a Filer cannot complete a Filing in EPDS as the result of a technical failure of EPDS, the Filer may file its request for reconsideration or request relating to costs as set forth in section VII.22; such a Filing, however, must independently meet any applicable filing deadline.
- (c) Upon successful filing, EPDS will: (i) create a new entry on the Filer's EPDS dashboard; and (ii) generate an e-mail notice to the procuring agency, with a copy to the Filer, that a request for reconsideration or request relating to costs has been filed. The e-mail notice will provide the Time of Filing. If the Filer does not receive any of the system generated information identified above or see a new entry on the EPDS dashboard, the Filer should contact GAO for further guidance.

**8. Subsequent Filings.** Subject to the exceptions set forth in sections II.5 or VII.22, all subsequent Filings, to include supplemental protests, in any proceeding shall be filed through EPDS.

**9. Exhibits and Attachments.** Subject to the exceptions set forth below and in section II.5, when filing an exhibit or attachment:

- (a) A Filer must file all exhibits or attachments electronically in the same EPDS docket entry as the main document. Information on filing documents and exhibits or attachments is available in the EPDS User Guides.
- (b) In the case of Agency Filers, where the filing includes a voluminous number of exhibits or attachments (e.g., the exhibits to the agency report), Agency Filers are

encouraged to upload to EPDS a single zip file containing all of the exhibits or attachments.

- (c) All exhibits or attachments should be clearly titled to identify the exhibit or attachment (e.g., Exhibit 1 – Relevant Solicitation Excerpts).

#### **10. Size and File Limitations.**

- (a) **In General.** For Non-agency Filers, all filings must either be submitted as portable document format files (.pdf) or Microsoft Excel files (.xls). For Agency Filers, all filings must be submitted as portable document format files (.pdf), Microsoft Excel files (.xls), or zip files. Although all other file formats are strongly disfavored, to the extent alternative file formats are necessary, the Filer should contact GAO for instructions.
- (b) **Size of Files.** Unless otherwise directed by GAO, each file must not exceed the size limitations established by GAO. The current limitations are 50 megabytes for a single .pdf or .xls file, and an aggregate total of 250 megabytes for each upload (e.g., a 50 megabyte primary document and 4, 50 megabyte exhibits, or a single 250 megabyte zip file).

**11. Courtesy Copies in Paper Form.** GAO may direct a Filer to supply paper courtesy copies of voluminous filings to GAO and/or the other parties.

**12. Text-Searchable Files.** Filers are strongly encouraged to file documents in formats that allow for text to be searchable.

#### **13. Protected Filings.**

- (a) EPDS will allow Filers at the time of filing to designate a filing as including confidential or proprietary information, or information otherwise not subject to public release.
- (b) In the event that GAO issues a protective order, it is the User's obligation to comply with all requirements. Such obligations include, but are not limited to, properly identifying in EPDS those documents that contain protected material, properly marking documents as protected consistent with the terms of the protective order, observing the 2-day holding period for documents not marked as containing protected material, and filing final, agreed-upon redacted versions of filings containing protected material. Failure to comply with all applicable obligations may result in the imposition of such sanctions as GAO deems appropriate.
- (c) In cases subject to the requirements of 4 C.F.R. § 21.3(e), the Agency Filer shall be responsible for filing an unredacted version designated in EPDS as containing confidential or proprietary material, and a redacted version designated in EPDS as not containing confidential or proprietary material. To the extent that the Agency elects to designate party-specific versions of a filing, it should file the party-specific version designated in EPDS as containing confidential or proprietary information and separately serve such version on the appropriate party outside of EPDS.

**14. Redundant, Immaterial, Impertinent, Or Scandalous Matters.** GAO, at its sole discretion, may remove from EPDS, and decline to consider, any redundant, immaterial,

impertinent, or scandalous matter included in, or submitted as part of, a Filing.

- 15. Availability of Filings in EPDS.** Filings will be available for download in EPDS by authorized Users for a period of 60 days after the issuance of GAO's final, public decision resolving the protest, request for reconsideration, or request relating to costs.

#### **IV. FILING PROCEDURES**

##### **16. Notice of Filing; Service.**

**(a) Notifying Users.** At the time a document is filed, EPDS automatically generates a "Notice of Electronic Filing" and automatically e-mails the notice to all Users authorized to participate in a case. GAO will not provide any additional notice to the parties. It is a User's responsibility to ensure that its e-mail settings allow for delivery and receipt of the "Notice of Electronic Filing." Regardless of whether a User elects to receive e-mail notifications, it is the user's responsibility to regularly review the docket for new case developments. Accordingly, the failure to receive any system generated emails will not excuse a party's failure to timely respond to case developments.

**(b) Service.** A Filer fulfills its obligation to provide copies of submissions to the other parties by making its filing through EPDS.

- 17. Timeliness of Filing.** A filing must be completed by the times set forth in GAO's Bid Protest Regulations or as otherwise directed by GAO.

- 18. Official GAO Record.** Except for materials produced subject to section II.5, the official record is the electronic version of the document as filed in EPDS, and the Filer is bound by the document as filed. Corrected or conformed versions of previously submitted filings shall comply with GAO's Bid Protest Regulations.

#### **V. SIGNATURES AND RELATED MATTERS**

##### **19. Signature Requirements.**

**(a) Electronic Signature.** Filings should include a signature block with the name and e-mail of the Filer under whose username and password the document is submitted. Electronic signature is permitted in the following format: "s/[name of Filer]." Use of other widely accepted electronic signature methods (e.g., e-signature with certificate functionality in portable document format compatible software) is also acceptable.

**(b) Handwritten Signature.** A Filer may also satisfy the signature requirement by scanning a document containing his or her handwritten signature.

#### **VI. PRIVACY**

##### **20. Personal Information**

- (a) In General.** Filers are advised that any personal information in a filing will be available to other Users who are authorized to receive and review information in connection with a case.

**(b) Including Personal Information in a Filing.** Filers should not include personal information in a filing unless such inclusion is necessary and relevant to the filing.

**(c) Excluding or Redacting Personal Information in a Filing.** The following personal identifiers should be excluded, or redacted when inclusion is necessary, from all filings, unless otherwise directed by GAO:

- i. **Social Security Numbers.** If an individual's Social Security number must be included in a filing, only the last four digits of the numbers should be used.
- ii. **Dates of Birth.** If an individual's date of birth must be included in a filing, only the year should be used.
- iii. **Financial Account Numbers.** If a financial account number is relevant to a filing, only the last four digits of the number should be used.

**(d) Other Sensitive Information.** Filers should exercise caution, including properly indicating in EPDS whether a document includes confidential, proprietary, or protected information, when filing documents containing:

- i. Proprietary or trade secret information;
- ii. A personal identifying number, such as a driver's license or passport number;
- iii. Medical records;
- iv. Employment history; or
- v. Individual financial information.

**21. Responsibility to Protect Personal Information.** It is the sole responsibility of Users to protect any personal information included in a filing; GAO will not review filings to ensure that personal information has been adequately protected.

## **VII. TECHNICAL FAILURE**

### **22. Technical Failure of EPDS**

**(a) In General.** GAO will endeavor to maintain the availability of EPDS Monday through Friday from 8:00 a.m. to 5:30 p.m. eastern time, excluding Federal holidays or when GAO's Headquarters are otherwise closed (hereinafter, normal system operating hours).

In the event that a Filer is unable to file a document in EPDS due to a technical failure of EPDS during normal system operating hours, the following procedures in paragraph (b) shall apply. If a Filer is unable to file a document in EPDS during a period other than normal system operating hours, the Filer should attempt to file its document during the next period of normal system operating hours.

**(b) Submissions to GAO When EPDS is Unavailable.** If EPDS is unavailable during normal system operating hours, a Filer should:

- i. Contact GAO to ascertain EPDS's operating status.
- ii. Make its submission to [protests@gao.gov](mailto:protests@gao.gov), with courtesy copies to the other parties (subject to any requirements under an applicable protective order). Failure to submit filings through EPDS, or [protests@gao.gov](mailto:protests@gao.gov) in the event EPDS is unavailable during normal system operating hours, within the time periods set forth in GAO's Bid Protest Regulations may result in dismissal of the protest, request for reconsideration, or request relating to costs. Any such filing must independently meet any applicable filing deadline.
- iii. Include a detailed description of the nature of the technical error encountered in EPDS that prevented the Filer from completing its filing. It is the Filer's responsibility to establish the unavailability of EPDS. Filers are encouraged to include a screenshot or other evidence of the nature of the technical error encountered.
- iv. By the close of business on the second day after making its submission to [protests@gao.gov](mailto:protests@gao.gov), or as otherwise directed by GAO, the Filer shall re-file its submission in EPDS. If the same technical error persists, the Filer should contact GAO for guidance. Filers should provide information in the "comments" section in EPDS to indicate when the submission was previously made via e-mail. The filing in EPDS shall be identical to the submission made via e-mail. GAO may treat as untimely any filing in EPDS that is different from the submission previously made via e-mail. Additionally, GAO will not consider a submission that was previously e-mailed to GAO as filed under our Bid Protest Regulations where the Filer fails to timely refile the submission in accordance with GAO's instructions.