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COUNSEL COMMENTARY

GAO Issues Warning Shot on AI Misuse

The Government Accountability Office may sanction protesters who use artificial intelligence to generate filings with fabricated citations.

BY STEPHEN L. BACON

During the past few years, artificial intelligence (AI) has been rapidly deployed across the economy. Government contractors have embraced this change, using AI for a variety of activities, including reviewing solicitations, drafting proposals, preparing contract deliverables, and tracking compliance, among other tasks.

Not surprisingly, some contractors have also started to use AI to draft bid protests. In seconds, contractors can generate what looks like a compelling protest using a large language model (LLM) that is available for free or through a low-cost monthly subscription.

It can be tempting for some contractors, particularly small businesses, to rely on a LLM to generate their protest if they do not have sufficient resources to retain legal counsel. But there are substantial risks associated with filing an AI-generated protest due to certain inherent limitations of LLMs that exist today.

In a series of recent decisions, the Government Accountability Office (GAO) addressed the potential consequences that may be imposed for submitting protests that include fictitious legal authorities generated by AI "hallucinations."[1] These decisions should serve as a stark warning to any company that intends to use AI to generate a bid protest without independently verifying its accuracy.

GAO May Impose Sanctions for AI Misuse

The GAO bid protest forum exists to provide for the "inexpensive and expeditious resolution of protests."[2] Unlike the U.S. Court of Federal Claims, GAO does not require protesters to be represented by counsel. As a result, GAO routinely decides protests filed by *pro se* litigants that are not represented by counsel.

But GAO "draws no distinction between protests filed by those represented by counsel and protests filed by those not represented by counsel."[3] In all cases, GAO "expect[s] all parties to prepare and present their cases carefully and diligently."[4] This means that all parties, "including those proceeding without counsel . . . have an obligation to accurately summarize factual or legal assertions, including cited decisions."[5]

Moreover, GAO "reserves an inherent right to dismiss any protest and to impose sanctions against a protester, where a protester's actions undermine the integrity and effectiveness of [GAO's] process."[6] This "inherent right" is "governed not by rule or statute, but by the control necessarily vested in a forum to manage its own affairs."[7]

During early 2025, in the span of just four months between May and August, GAO issued at least seven public decisions that addressed the use of AI by protesters. In these cases, the agency, intervenor, or GAO noticed that the protesters' filings exhibited the hallmarks of AI-generated content. They included citations to non-existent cases, or to cases that did not in any way support the legal positions asserted by the protester.

In these initial decisions addressing AI misuse, GAO stopped short of exercising its inherent right to sanction

the protesters. Nevertheless, GAO advised the protesters "and future parties that appear before" GAO that "citations to non-existent authority may result in the imposition of appropriate sanctions" to include dismissal based on "the totality of the circumstances."[8]

Then, on September 25, 2025, GAO carried out that threat and dismissed a series of three protests by the same company on the basis that it made repeated use of erroneous citations.[9] GAO noted that the protester's filings "(1) refer to fabricated or non-existent decisions; (2) fabricated or non-existent legal conclusions of decisions issued by [GAO]; or (3) otherwise objectively do not stand for the factual or legal propositions asserted by [the protester]."[10]

GAO found that the "multitude" of "problematic citations" in several filings was a "material aggravating factor" that warranted sanctions.[11] In addition, GAO was troubled by the fact that the protester's misconduct continued even after it had been warned of the potential for sanctions in an earlier decision.

AI-Generated Protests: A Growing Trend?

GAO's spate of recent decisions has now put contractors on notice that they may face consequences for using AI irresponsibly. As AI's novelty begins to fade, it is only a matter of time before GAO will be less tolerant of AI misuse and more likely to sanction protesters for undermining the integrity of the protest process.

During the four-month span between May and August 2025, approximately 7% of all public decisions issued by GAO involved some apparent misuse of AI.[12] If this pattern continues, GAO is likely to become more aggressive in sanctioning protesters to stem the tide of AI-generated protests with fake citations.

The recent surge of GAO decisions involving AI misuse suggests that many unrepresented small businesses are turning to AI to generate protest filings. Indeed, all the decisions that addressed AI misuse involved small businesses that were not represented by counsel.

Moreover, the results of those protests indicate that AI is not a panacea that will save contractors from a disappointing source selection outcome. Although companies may be able to use AI to generate a protest that appears facially credible, it is notable that the AI-generated protests reviewed by GAO thus far contained a number of glaring procedural defects, including issues related to timeliness, mootness, standing, and the legal sufficiency of the grounds asserted.

Using AI Responsibly

Contractors are not prohibited from using AI to assist with preparing protest filings. But companies that decide to enlist AI for help must do so responsibly to avoid potential dismissal, as well as reputational damage they may suffer as a result of filing a protest laden with erroneous citations.

To be clear, responsible use of AI is an imperative for both *pro se* litigants and counsel that represent parties. The problem of citing fake cases is hardly limited to *pro se* litigants at GAO: courts

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across the country have warned and, in some cases, sanctioned attorneys for citing non-existent cases.[13]

For any company that decides to use AI to help with protest preparation, this problem can be avoided rather easily by independently checking any cases referenced in the AI-generated draft. GAO's decisions are available on its public website and, thus, protesters can quickly verify the existence of cases and any quotes generated by the AI. In addition, protesters should read the cases to ensure that they support any factual or legal propositions asserted in the AI-generated draft.

By carefully checking case citations, protesters that use AI should be able to avoid the severe sanction of dismissal. But, of course, avoiding sanctions is not the ultimate goal of filing a protest.

A protester should be seeking to identify errors in the procurement process that, if corrected, could give them a substantial chance of award. AI can potentially assist with the identification and elaboration of protest grounds, but the technology has some inherent limitations that users need to appreciate. LLMs compound the problem of "hallucinations" with a tendency to confidently produce the outcome desired by the user regardless of whether it is right or wrong.

To illustrate, imagine an unsuccessful offeror that received the same adjectival ratings as the awardee on a solicitation's technical and past performance factors, but a 40% higher price. The offeror believes the awardee's price is unrealistically low and prompts its preferred LLM to draft a protest challenging the agency's price realism analysis.

The LLM will likely generate an argument that appears to be a compelling price realism challenge. But it may include fake case citations and it likely will not verify that a price realism analysis was actually required by the solicitation.

Critically, "agencies are neither required nor permitted to evaluate price realism in awarding a fixed-price contract" unless a solicitation advises offerors that such an analysis will be conducted and that their proposals may be rejected on the basis of prices that are too low.[14]

Thus, if the solicitation at issue did not include this type of provision, an AI-generated price realism protest would be dismissed as legally insufficient regardless of how persuasive it may have appeared to the person who prompted the LLM.[15]

This hypothetical example demonstrates the danger of relying on AI-generated protests without seeking counsel from a bid protest domain expert who can spot where the AI output includes faulty or incomplete assumptions. Simply put, "you don't know what you don't know," and this saying often holds true for LLMs even though the model has access to vast amounts of information. That is because current model outputs are dictated by prompt inputs that reflect the user's blind spots.

This is not to say that LLMs cannot produce valid arguments if prompted by someone who does not have extensive bid protest knowledge and experience. They certainly can.

But contractors that use AI to generate protests are much more likely to assert legally insufficient grounds or

completely miss grounds that could have been asserted to challenge an agency's evaluation and award decision. Moreover, as the cases decided thus far suggest, AI-generated protests often lack sufficient context from the prompter to correctly analyze complex bid protest procedural rules surrounding issues such as timeliness and standing.[16]

Conclusion

The temptation to use AI for protest drafting is understandable, particularly for small businesses facing resource constraints. But contractors will have to weigh whether they are willing to accept the inherent risks associated with using AI to generate protests.

GAO's recent warnings make clear that it will not tolerate AI-generated protests that contain fabricated authorities or mischaracterized legal precedent. Contractors that choose to use AI must implement rigorous verification processes for all citations and related legal assertions.

Although contractors can use verification to detect when a model has "hallucinated," current LLMs possess other limitations that are much more difficult to detect for someone without sufficient domain expertise.

Given these limitations, contractors that are contemplating a protest should consider retaining counsel who can assist with identifying valid protest grounds and provide objective advice tailored to the contractor's unique circumstances. **CM**

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ENDNOTES

1 Raven Investigations & Security Consulting, LLC, B-423447, May 7, 2025, 2025 CPD ¶ 112; Assessment and Training Solutions Consulting Corporation, B-423398, June 27, 2025, 2025 CPD ¶ 122; Wright Brothers Aero, Inc., B-423326.2, July 7, 2025, CPD ¶ 154; BioneX, LLC, B-423630, July 25, 2025, 2025 CPD ¶ 164; Oready, LLC, B-423524.2, August 13, 2025, 2025 CPD ¶ 194; Helgen Industries d/b/a DeSantis Gunhide, B-423635, August 26, 2025, 2025 CPD ¶ 201; IBS Government Services, Inc., B-423583, Aug. 29, 2025, 2025 WL 2506894; Oready LLC, B-423649, et al., Sept. 25, 2025, 2025 WL 2732634.
2 31 U.S.C. § 3554(a)(1).
3 Oready, LLC, 2025 CPD ¶ 194 at 6.
4 Id.
5 BioneX, LLC, B-423630, July 25, 2025, 2025 CPD ¶ 164 at 2, n.2.
6 Raven Investigations, 2025 CPD ¶112 at 4.
7 Id.
8 Id
9 Oready LLC, 2025 WL 2732634.
10 Id. at 5.
11 Id. at 10.
12 GAO issued ninety-nine reported decisions between May and August of 2025.
13 See Sanders v. United States, 176 Fed. Cl. 163, 168-170 (2025) (citing cases).
14 Facility Services Management, Inc., B-420102.3, Mar. 29, 2022, 2022 CPD ¶ 93 at 6.
15 Id. (dismissing price realism challenge as legally insufficient).
16 See, e.g., Raven Investigations, 2025 CPD ¶ 112 (dismissing protest as academic); Wright Brothers, 2025, CPD ¶ 154 (dismissing protest as untimely); BioneX (dismissing protest as legally insufficient); Oready, 2025 CPD ¶ 194 (dismissing protest as academic); Helgen Industries, 2025 CPD ¶ 201 (dismissing protest because the protester lacked interested party standing).