



**Comptroller General
of the United States**

Washington, D.C. 20548

B-208159.13

July 15, 1988

The Honorable David Pryor
Chairman, Subcommittee on Federal
Services, Post Office, and Civil
Service
Committee on Governmental Affairs
United States Senate

Dear Mr. Chairman:

This is in response to your letter dated June 13, 1988, asking us to respond to a series of questions regarding how our Office handles bid protests involving allegations of fraud or other criminal misconduct.

As you know, our bid protest role requires us to resolve disputes on a written record developed by the parties to the protest. Although we therefore normally do not undertake investigations in connection with protest allegations, we have always been sensitive to allegations of fraud or other criminal conduct. Protests based on such allegations constitute a very small portion of the total number of bid protests filed with our Office. Nevertheless, when such allegations appear to be potentially meritorious, such that investigation is warranted, we have referred the cases to the Inspectors General or our own in-house fraud prevention group. Our detailed responses to your questions follow.

(1) How does GAO handle a request by a bid protester that possible fraud or other criminal conduct be investigated? In 1987 how many protesters raised questions of possible fraud or other criminal conduct and how were they handled?

(2) If a GAO protest reviewer becomes aware of a possible fraud or other criminal activity, what is the procedure for investigating the possible criminal violations?

Our general policy and procedures for handling information indicating violations of federal criminal laws or other potential fraud or abuse in agency operations are set out in GAO Order 1130.1. That Order is not limited to our bid protest function; it applies to all aspects of our Office's activities. Where there is reasonable cause to believe that

a criminal law has been violated, we will refer the information to the Criminal Division of the Department of Justice for further action. After such a referral, our policy is to discontinue further action on our part on matters directly related to the criminal aspects of the information reported.

It is also our policy to coordinate specific cases involving apparent fraud or abuse, whether or not a possible violation of criminal law is involved, with the agency Inspector General offices. If a specific case is already under active investigation by the Inspector General, we will defer pursuing the case if possible and allow the Inspector General's investigation to run its course.

We decided approximately 3,000 bid protests in 1987. To find every case in which a question of criminal misconduct was raised would require review of the complete file in each of these cases, a task that could not be completed in time to meet your needs. We have, however, reviewed the approximately 1,300 published bid protest decisions issued in 1987 to identify those which discussed allegations of fraud or other criminal conduct. Our search located the following 10 cases: Thermex Energy Corp., B-227034.2, Aug. 17, 1987, 87-2 CPD ¶ 164; Nationwide HealthSearch, B-228148, Nov. 24, 1987, 87-2 CPD ¶ 512; Wagster Contracting, B-229060, Sept. 17, 1987, 87-2 CPD ¶ 271; King-Fisher Co., B-228316, et al., Oct. 13, 1987, 87-2 CPD ¶ 353; Connelly Containers, Inc., B-227539, July 14, 1987, 87-2 CPD ¶ 44; Transcontinental Enterprises, Inc., B-225802, July 1, 1987, 66 Comp. Gen. _____, 87-2 CPD ¶ 3; Canadian General Electric Co. Ltd., B-223934.2, July 10, 1987, 87-2 CPD ¶ 29; Devres, Inc., B-228909, Dec. 30, 1987, 87-2 CPD ¶ 644; Rowe Contracting Service, Inc., B-228647, Oct. 29, 1987, 87-2 CPD ¶ 416; Delaware Eastwind, Inc., B-228533, Nov. 18, 1987, 87-2 CPD ¶ 494.

As noted above, our policy is to refer cases involving alleged criminal conduct to the Justice Department for further investigation only where there is reasonable cause to believe that a criminal law has been violated. It was our judgment, in these 10 cases, that the record contained insufficient evidence of criminal conduct to warrant such a referral.

(3) Are there examples of GAO requesting Department of Justice or Inspector General investigations as the result of information uncovered in a bid protest?

While we did not find any cases in which we requested a Justice Department investigation based on allegations raised in a bid protest, the following two cases resulted in requests for Inspector General investigations. In Monchick-Weber Associates, Inc., B-196433, Aug. 8, 1980, 80-2 CPD ¶ 102, it appeared that considerable information had been disclosed to the protester regarding its competitor's proposal; we referred the matter to the contracting agency's Inspector General for further action. In American Federation of Government Employees, B-201734, Mar. 4, 1981, by letter we referred allegations regarding collusion and other improper conduct by the contracting agency and the contractor to the agency's Inspector General.

In addition, in Wickman Spacecraft and Propulsion Co., B-219675, Dec. 20, 1985, 85-2 CPD ¶ 690, the protester alleged that the contracting agency had exerted improper influence to pressure the protester into withdrawing its protest. The allegation was being investigated by the contracting agency's Inspector General and we referred the matter to our in-house fraud prevention group as well.

(4) When a protester files a simultaneous request for investigation with an Inspector General, how are the two requests coordinated? To your knowledge, do Inspectors General normally receive legal counsel from the agency attorney handling the protest? To your knowledge, have I.G.'s ever declined such investigation because of the existence of the protest?

As discussed above, our policy generally is to defer pursuing a case which is already under active investigation by the Inspector General. In U.S. Financial Services, Inc., B-197259, May 7, 1982, 82-1 CPD ¶ 437, for example, our decision on the protest was held in abeyance by agreement of all the parties until issuance of an Inspector General report on the protester's allegations. The report ultimately was made part of the protest record and was the basis for sustaining the protest. Since enactment of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. §§ 3551 et seq. (Supp. IV 1986), however, we generally cannot accommodate indefinite delays in developing a protest record pending completion of an Inspector General investigation, since CICA requires that our decisions be issued within 90 days after the protest is filed, unless we find that the specific circumstances of the protest require a longer period. Accordingly, coordination of protests which involve ongoing Inspector General investigations is handled on a case-by-case basis; if possible, we will defer issuing our decision until the Inspector General report is available.

Regarding use by the Inspectors General of agency legal counsel, we assume that agency attorneys would be consulted where an investigation concerns matters raised in a protest. Finally, we are unaware of any cases where an Inspector General declined to investigate because of the existence of a protest.

(5) GAO has now expanded its rules to permit a fact finding proceeding. Under these procedures, could investigators from the GAO, the Department of Justice, or an Inspector General Office make an independent presentation at the conference on any protest issues they have investigated?

The goal of our fact finding conferences generally is to take testimony from parties to the protest on factual issues essential to the resolution of the protest. The parties are to testify on issues about which they have direct knowledge. We believe our regulations are sufficiently flexible to allow us in appropriate cases to call on investigators with direct knowledge relevant to the factual issues in the protest to participate in a fact finding conference.

We appreciate your expression of support for our bid protest function and are ready to assist you with any additional information you may need.

Sincerely yours,

A handwritten signature in cursive script that reads "Milton J. Foster".

Acting Comptroller General
of the United States