



441 G St. N.W.
Washington, DC 20548

B-158766

December 15, 2016

Re: GAO Bid Protest Annual Report to Congress for Fiscal Year 2016

Congressional Committees:

This letter responds to the requirements of the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(e)(2) (CICA), that the Comptroller General report to Congress each instance in which a federal agency did not fully implement a recommendation made by our Office in connection with a bid protest decided the prior fiscal year and each instance in which a final decision in a protest was not rendered within 100 days after the date the protest is submitted to the Comptroller General. We are pleased to report that there were no such occurrences during fiscal year 2016. In this letter we also provide data concerning our overall protest filings for the fiscal year. Finally, this letter also addresses the requirement under CICA that our report “include a summary of the most prevalent grounds for sustaining protests” during the preceding year. U.S.C. § 3554(e)(2).

Summary of Overall Protest Filings

During the 2016 fiscal year, we received 2,789 cases: 2,621 protests, 80 cost claims, and 88 requests for reconsideration. We closed 2,734 cases during the fiscal year: 2,586 protests, 61 cost claims, and 87 requests for reconsideration. Of the 2,734 cases closed, 375 were attributable to GAO’s bid protest jurisdiction over task orders. With this letter we have included a chart comparing bid protest activity for fiscal years 2012-2016.

Most Prevalent Grounds for Sustaining Protests

Of the protests resolved on the merits during fiscal year 2016, our Office sustained over 22 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests during the 2016 fiscal year were: (1) unreasonable technical evaluation;¹ (2) unreasonable past performance evaluation;² (3) unreasonable cost or price evaluation;³ and

¹ E.g., Deloitte Consulting, LLP, B-412125.2, B-412125.3, Apr. 7, 2016, 2016 CPD ¶ 119 (finding that the agency’s evaluation of key personnel was unreasonable where the awardee’s key personnel did not meet the solicitation’s minimum requirements).

² E.g., Rotech Healthcare, Inc., B-413024 et al., Aug. 17, 2016, 2016 CPD ¶ 225 (finding that the agency failed to consider and document the similarity of the awardee’s past performance contracts to the requirement being solicited).

³ E.g., Valor Healthcare, Inc., B-412960, B-412960.2, July 15, 2016, 2016 CPD ¶ 206 (finding that the agency failed to evaluate the realism of the protester’s proposed pricing in accordance with the solicitation).

(4) flawed selection decision.⁴ It is important to note that a significant number of protests filed with our Office do not reach a decision on the merits because agencies voluntarily take corrective action in response to the protest rather than defend the protest on the merits. Agencies need not, and do not, report any of the myriad reasons they decide to take voluntary corrective action.

Sincerely yours,

A handwritten signature in black ink, appearing to read "S. Poling". The signature is written in a cursive, flowing style.

Susan A. Poling
General Counsel

Enclosure

⁴ E.g., Castro & Company. B-412398, Jan. 29, 2016, 2016 CPD ¶ 52 (finding that, in making the selection decision, the agency only considered point scores and failed to meaningfully consider the merits of the evaluations or proposed prices).

List of Congressional Committees

The Honorable Thad Cochran
Chairman

The Honorable Barbara A. Mikulski
Vice Chairwoman
Committee on Appropriations
United States Senate

The Honorable Ron Johnson
Chairman

The Honorable Thomas R. Carper
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Harold Rogers
Chairman

The Honorable Nita M. Lowey
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Jason Chaffetz
Chairman

The Honorable Elijah E. Cummings
Ranking Member
Committee on Oversight and Government Reform
House of Representatives

Bid Protest Statistics for Fiscal Years 2012-2016

	FY2016	FY2015	FY2014	FY2013	FY2012
Cases Filed ¹	2789 (up 6% ²)	2639 (up 3%)	2561 (up 5%)	2429 (down 2%)	2,475 (up 5%)
Cases Closed ³	2734	2647	2458	2538	2495
Merit (Sustain + Deny) Decisions	616	587	556	509	570
Number of Sustains	139	68	72	87	106
Sustain Rate	22.56%	12%	13%	17%	18.6%
Effectiveness Rate ⁴	46%	45%	43%	43%	42%
ADR ⁵ (cases used)	69	103	96	145	106
ADR Success Rate ⁶	84%	70%	83%	86%	80%
Hearings ⁷	2.51% (27 cases)	3.10% (31 cases)	4.70% (42 cases)	3.36% (31 cases)	6.17% (56 cases)

¹ All entries in this chart are counted in terms of the docket numbers ("B" numbers) assigned by our Office, not the number of procurements challenged. Where a protester files a supplemental protest or multiple parties protest the same procurement action, multiple iterations of the same "B" number are assigned (i.e., .2, .3). Each of these numbers is deemed a separate case for purposes of this chart. Cases include protests, cost claims, and requests for reconsideration.

² From the prior fiscal year.

³ Of the 2,734 cases closed in FY 2016, 375 are attributable to GAO's bid protest jurisdiction over task or delivery orders placed under indefinite-delivery/indefinite-quantity contracts.

⁴ Based on a protester obtaining some form of relief from the agency, as reported to GAO, either as a result of voluntary agency corrective action or our Office sustaining the protest. This figure is a percentage of all protests closed this fiscal year.

⁵ Alternative Dispute Resolution.

⁶ Percentage of cases resolved without a formal GAO decision after ADR.

⁷ Percentage of fully developed cases in which GAO conducted a hearing; not all fully-developed cases result in a merit decision.