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Accountability * Integrity * Reliability

United States General Accounting Office
Washington, DC 20548

B-158766

January 30, 2004

The Honorable J. Dennis Hastert
Speaker of the House
of Representatives

Dear Mr. Speaker:

This letter responds to the requirements of the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(e)(2) (2000), 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. There were two such occurrences during fiscal year 2003.

The Two Fiscal Year 2003 Protests

- (1) Consolidated Eng'g Servs., Inc., B-291345, B-291345.2, Dec. 23, 2002, 2002 CPD ¶ 220

The first occurrence of an agency not fully implementing a bid protest decision involved a two-phase competition, pursuant to Office of Management and Budget (OMB) Circular A-76, to select a commercial offeror to compete against the government's "most efficient organization" (MEO) under the A-76 cost comparison process for the operation, maintenance, and repair of the Pentagon Heating and Refrigeration Plant (H&RP) in Arlington, Virginia.

Consolidated Engineering Services, Inc. (CESI) protested the Department of Defense's (DOD) rejection, as technically unacceptable, of its proposal--the only one received from a commercial offeror in the private-sector portion of the A-76 competition--at the second phase of the competition, essentially for lack of relevant experience. We sustained CESI's protest by decision of December 23, 2002, concluding that neither the contemporaneous evaluation record nor testimony elicited at a hearing that we conducted in this matter reasonably supported the agency's decision. We recommended that the agency reinstate CESI's second-phase proposal into the competition and compare it with the government's MEO in accordance with the procedures set forth in OMB Circular A-76 and the Revised Supplemental Handbook. We also recommended that CESI be reimbursed the

reasonable costs of filing and pursuing its protest, including reasonable attorneys' fees.

After we issued our decision, the agency did not request that we reconsider it or modify our recommendation for corrective action. Rather, DOD advised that while it would reimburse CESI its costs, it would notify our Office when a final decision was made as to how DOD would proceed with respect to the remainder of our recommendation. Subsequently, the agency advised that after a review of all of the facts surrounding the procurement, it was "unable to" implement our recommendation that CESI be further considered for award in the A-76 competition.

We reported the matter to the Congress on June 30, 2003, pursuant to 31 U.S.C. § 3554(e)(1), which requires our Office to report any case in which a federal agency fails to fully implement a recommendation of the Comptroller General contained in a protest decision concerning the award of a federal contract. We recommended, pursuant to 31 U.S.C. § 3554(e)(1)(B), that in order to preserve the integrity of the procurement process and the public/private competition process under OMB Circular A-76, the Congress consider an inquiry into DOD's failure to satisfactorily explain its decision not to comply with our recommendation for corrective action.

Enclosed is a copy of our June 30 report, as well as a public version of our decision explaining in greater detail the particulars surrounding this procurement.

(2) Symplicity Corp., B-291902, Apr. 29, 2003, 2003 CPD ¶ 89

The second occurrence involved a bid protest filed in our Office on January 24, 2003 by Symplicity Corporation. In its protest, Symplicity contested the Office of Personnel Management's (OPM) award of a task order to TMP Worldwide, Inc. (d/b/a Monster Government Solutions) under TMP's Federal Supply Schedule contract, pursuant to OPM request for quotations (RFQ) No. SOLO30000003, for online federal employment information services.

By decision of April 29, we sustained Symplicity's protest, in part, because TMP's quotation included two labor categories that were not on its General Services Administration schedule contract, and OPM recognized but failed to realize the importance of this during the evaluation. We also sustained Symplicity's protest of OPM's evaluation of quotations with respect to systems integration costs. We recommended that OPM evaluate vendors' quotations to determine whether the proposed services were within the scope of their respective Schedule contracts, and that OPM reopen discussions with all vendors whose quotations were in the competitive range, and request and reevaluate revised quotations. We also suggested that OPM may want to amend its RFQ to further clarify its systems integration needs. On May 19, we dismissed OPM's request that we reconsider a portion of our recommendation.

By letter of July 21, 2003, OPM notified our Office that it declined to follow our recommendation, arguing that the recommendation was "incompatible with the best

interest of the Federal Government” and that “[n]ational security demands and critical domestic needs underlie the Government’s vital need for efficient recruitment and hiring methods.”

On August 5, we reported the matter to Congress pursuant to 31 U.S.C. § 3554(e)(1). In our report, we made a number of observations about OPM’s position and, in order to preserve the integrity of the procurement process, we recommended, pursuant to 31 U.S.C. § 3554(e)(1)(B), that Congress consider an inquiry into OPM’s failure to fully and promptly implement our April 29, 2003 recommendation. We stated that such inquiry would help to identify any significant harm to the procurement system that may have resulted from OPM’s actions and, together with any other congressional action, will serve to preserve faith in the procurement system.

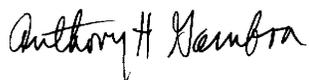
Enclosed, in addition to copies of our April 29 and May 19 decisions, is a copy of our August 5 report, which more fully describes the protest decisions and the circumstances of OPM’s failure to implement our recommendation.

Fiscal Year 2003 Bid Protest Statistics

With respect to the remainder of fiscal year 2003 bid protest activity, during the fiscal year we received 1,269 protests (including 48 cost claims) and 83 requests for reconsideration, for a total of 1,352 cases. We closed 1,244 cases: 1,181 protests (including 40 cost claims) and 63 requests for reconsideration. Attached for your information is a chart comparing the bid protest activity for fiscal years 2001-2003.

A copy of this report, with the enclosure, is being furnished to the Chairman and Ranking Minority Member of the House Committee on Government Reform. A similar report is being furnished to the President of the Senate.

Sincerely yours,



Anthony H. Gamboa
General Counsel

Enclosures

Bid Protest Statistics for Fiscal Years 2001-2003

	FY 2003	FY 2002	FY 2001
Cases Filed	1,352 (up 12% ¹)	1,204 (up 5%)	1,146 (down 6%)
Cases Closed	1,244	1,133	1,098
Merit (Sustain + Deny) Decisions	290 (issued in average of 79 days)	256 (issued in average of 79 days)	311 (issued in average of 79 days)
Number of Sustains	50	41	66
Sustain Rate	17%	16%	21%
Effectiveness Rate (reported) ²	33%	33%	33%
ADR ³ (cases used)	120	145	150
ADR Success Rate ⁴	92%	84%	84%
Hearings	13% (74 cases)	5% (23 cases)	12% (63 cases)

¹ From the prior fiscal year.

² Based on a protester's obtaining some form of relief from the agency, as reported to GAO.

³ Alternative Dispute Resolution.

⁴ Percentage resolved without a formal GAO decision.