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B-183079

August 22, 1979

The Honorable William Proxmire
Chairman, Committee on Banking,
Housing and Urban Affairs
United States Senate

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Dear Mr. Chairman:

This is in response to your request for a report concerning our [disposition of bid protests and agency activities causing bid protests] Also, you asked that we review our rule in 4 C.F.R. 20.2(b)(2) requiring that certain bid protests be filed within a 10-day period. You believe the rule may result in unfair treatment of small businesses with limited legal resources.

There has been concern of GAO rule requiring that certain bid protests be filed within 10-day period may result in

We share your concern that our rule allowing 10 working days to file certain protests not impose an undue burden on protesters, both large and small. As a result of your letter, we surveyed cases filed over selected periods of time covering recent experience under the present 10-day rule as well as our experience under our previous 5-day rule. Our review of the cases decided during fiscal year 1978 to which the 10-day rule was applicable indicated that more than 95 percent of those cases were filed within 15 days after the basis for protest was known. Significantly, most of the cases filed beyond 15 days fell well outside that period, often by more than a month, and we believe any rule permitting consideration of those cases would unduly disrupt the procurement process.

Because the study shows that the great majority of protests would be treated on the merits if we relaxed the present 10-day rule to allow an additional 5 days for a total of 15-days for filing certain protests, we are now considering how a change in the time limit would impact upon certain other provisions of our procedures. We believe it would be prudent for us to solicit and consider the views of the major contracting agencies before effecting a change, because those agencies logically would be concerned about the impact any extension in the filing period would have on the orderly administration of procurements. Therefore, we plan to solicit their views in the near future and upon receipt of those views, determine what changes, if any, would be appropriate. Of course, we will keep you advised of our progress.

*Unusually bid protests
Procurement procedures
Small business contracts*

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In response to your concerns about small businesses, we also sought to determine whether they were adversely affected more often than were large business concerns. However, our files normally did not indicate the protester's size status except when the protest involved small business related issues -- issues which by statute must be decided by the Small Business Administration and which we would not consider in any event.

GAO was

Where we were able to identify a business as small, we were unable to discern any pattern indicating that small businesses as a whole are adversely affected more often by the 10-day rule than are other protesters.) Absent data showing otherwise, a rule according to small businesses a longer period of time than is permitted large firms would discriminate unfairly against large firms and would be difficult, if not impossible, to administer.

A request was also made for

You also request the following information to facilitate evaluation of the disposition of protests by GAO and agency procurement practices which lead to such protests:

- (1) A summary of protest activity, including the number of cases dismissed for various reasons;
- (2) Agency decisions to proceed with the award of a contract despite a pending GAO protest;
- (3) GAO evaluation of the salient issues raised and a discussion, where appropriate, of agency practices which appear to be generating a significant number of protests; and
- (4) Agency implementation of GAO recommendations.

Attachment A to this letter is in response to the request for information in number (1) above and includes 3 tables. Table 1 presents an overview of GAO's protest activity and shows the number of cases decided on the merits, dismissed or withdrawn without a decision on the merits. It also shows the frequency of dismissals for certain issue areas. Note that a large number of protests were closed because

It was noted

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In many cases,
the protest or complaint was withdrawn. It has been our experience that in a significant number of these cases, perhaps the vast majority, the protester achieved satisfaction, such as contract award, remedial action by agency or satisfactory explanation for adverse agency action.

Table 2 is a more detailed breakout than provided in Table 1 of the issue areas dismissed during FY 1978.

Table 3 shows the major time elements in the decision process by listing the average times for various procuring agencies to submit reports, GAO average time required for decision once the case was developed pursuant to our procedures and the total average time consumed from filing to decision date.

While we have only incomplete records relating to FY 1978 agency decisions to proceed with contract award despite a pending GAO protest, we have compiled a list of FY 1978 and FY 1979 (through June) cases in Attachment B where such action was known to have occurred. This listing also indicates the reason stated by the agency in each case for the award action and Table 4 shows the frequency of the reasons given for making award while a GAO protest was pending. FY 1979 data through June indicates that award was made before the case was decided in 30 instances, more than 10 percent of preaward cases filed. We cannot draw any conclusions from the incomplete FY 1978 data.

In Attachment C we discuss certain salient protest issues raised and the agency practices which appear to be generating these protests. Table 5 is included in this attachment to show by general category the relative frequency of major issue areas.

Finally, Attachment D lists and briefly synthesizes FY 1978 decisions which sustained a protest or grant related contract complaint, or which resulted in a corrective action recommendation or other relief. Where a recommendation was made which was subject to § 236 of the Legislative Reorganization Act of 1970 (Pub. L. 91-510), a copy of our decision was furnished to the Senate and House Committees named in the Act, and the head of the procuring agency was advised

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of his or her duty under the Act to respond to those Committees concerning the action taken on our recommendation. Regardless of whether a particular recommendation was treated as justifying § 236 action, or not, Attachment D indicates the procuring activity's disposition of a recommendation, if known.

Table 6 is included with Attachment D and shows generally the types of recommendations resulting from bid protest activity. Table 7 shows the number and percentage of decisions by agency in which protests were sustained or where corrective action was recommended.

We trust this report satisfies the purpose of your inquiry. We appreciate your interest in and attention given to improving our protest procedures.

Sincerely yours,

SIGNED ELMER B. STAATS
Comptroller General
of the United States

Enclosures - 4

See file for attachments