



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

B-158766

November 13, 2017

Re: GAO Bid Protest Annual Report to Congress for Fiscal Year 2017

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 2017. 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. 31 U.S.C. § 3554(e)(2).

Summary of Overall Protest Filings

During the 2017 fiscal year, we received 2,596 cases: 2,433 protests, 77 cost claims, and 86 requests for reconsideration. We closed 2,672 cases during the fiscal year, 2,471 protests, 107 cost claims, and 94 requests for reconsideration. Of the 2,672 cases closed, 256 were attributable to GAO’s bid protest jurisdiction over task orders. Enclosed for your information is a chart comparing bid protest activity for fiscal years 2013-2017.

Most Prevalent Grounds for Sustaining Protests

Of the protests resolved on the merits during fiscal year 2017, our Office sustained 17 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests during the 2017 fiscal year were: (1) unreasonable technical evaluation;¹ (2) unreasonable past performance evaluation;² (3) unreasonable cost or price evaluation;³ (4) inadequate

¹ E.g., CR/ZWS LLC, B-414766, B-414766.2, Sept. 13, 2017, 2017 CPD ¶ 288 (finding that the agency failed to find awardee’s proposal unacceptable where its technical proposal failed to satisfy the minimum requirements of the solicitation).

² E.g., MLU Servs., Inc., B-414555.3, B-414553.6, July 17, 2017, 2017 CPD ¶ 225 (finding that the agency unreasonably considered the past performance of a firm that was not proposed to perform any portion of the work).

³ E.g., NCI Info. Sys., Inc., B-412870.2, October 14, 2016, 2016 CPD ¶ 310 (finding that the agency failed to demonstrate that the awardee’s low price was consistent with its technical approach).

documentation of the record;⁴ and (5) flawed selection decision.⁵ 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., Threat Mgmt. Grp., LLC, B-413729, Dec. 21, 2016, 2017 CPD ¶ 9 (finding that the record was so limited that GAO could not conclude that the protested task order was within the scope of the underlying contract).

⁵ E.g., CALNET, Inc., B-413386.2, B-413386.3, Oct. 28, 2016, 2016 CPD ¶ 318 (finding that the agency's best-value tradeoff decision relied entirely on adjectival ratings in finding the proposals equivalent under the non-cost evaluation factors, rather than considering the identified strengths and weaknesses and the evaluators' ranking of proposals).

List of Congressional Committees

The Honorable Thad Cochran
Chairman
The Honorable Patrick Leahy
Vice Chairman
Committee on Appropriations
United States Senate

The Honorable Ron Johnson
Chairman
The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Rodney P. Frelinghuysen
Chairman
The Honorable Nita M. Lowey
Ranking Member
Committee on Appropriations
House of Representatives

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

Bid Protest Statistics for Fiscal Years 2013-2017

	FY2017	FY2016	FY2015	FY2014	FY 2013
Cases Filed ¹	2596 (down 7% ²)	2789 (up 6%)	2639 (up 3%)	2561 (up 5%)	2429 (down 2%)
Cases Closed ³	2672	2734	2647	2458	2538
Merit (Sustain + Deny) Decisions	581	616	587	556	509
Number of Sustains	99	139	68	72	87
Sustain Rate	17%	23%	12%	13%	17%
Effectiveness Rate ⁴	47%	46%	45%	43%	43%
ADR ⁵ (cases used)	81	69	103	96	145
ADR Success Rate ⁶	90%	84%	70%	83%	86%
Hearings ⁷	1.70% (17 cases)	2.51% (27 cases)	3.10% (31 cases)	4.70% (42 cases)	3.36% (31 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 2,672 cases closed in FY 2017, 256 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.