



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

B-158766

November 05, 2019

Re: GAO Bid Protest Annual Report to Congress for Fiscal Year 2019

Congressional Committees:

This letter responds to the requirements of the Competition in Contracting Act of 1984 (CICA), 31 U.S.C. § 3554(e)(2), 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 2019. 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).

Effect of Government Shutdown

For 35 days between December 2018 and January 2019, parts of the United States Government ceased operations and shut down as the result of a lapse in appropriations to fund operations for fiscal year 2019. GAO was not subject to the lapse in appropriations and remained open during the partial government shutdown. We posted on our website, www.gao.gov, a notice applicable to protests involving procurements conducted by agencies impacted by the lapse in appropriations. The notice explained how the partial shutdown would affect bid protest activities and how we would proceed when the affected parts of the government resumed operations. We explained that the partial shutdown did not affect filing deadlines for protesters and private parties. We also explained that all deadlines for affected agency filings were tolled during the lapse in appropriations for the applicable agency and that GAO would establish revised filing deadlines for affected agencies when the lapse in funding was resolved.

Because the government shutdown lasted for 35 days, bid protest decision deadlines for eight protests from affected agencies were extended, as needed, for a maximum of 35 days. Despite the length of the shutdown, and because GAO remained open during this period, we continued to decide all protests within 100 calendar days for the period that the relevant portion of the government was funded. Enclosed for your information is a chart detailing each of the eight cases (Enclosure I).

Summary of Overall Protest Filings

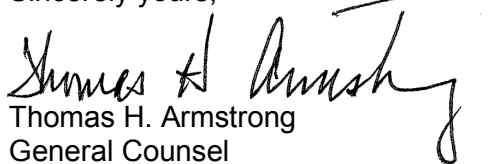
During the 2019 fiscal year, we received 2,198 cases: 2,071 protests, 60 cost claims, and 67 requests for reconsideration. We closed 2,200 cases during the fiscal year: 2,080 protests, 56 cost claims, and 64 requests for reconsideration. Of the 2,200 cases closed, 373 were

attributable to GAO's bid protest jurisdiction over task orders. Enclosed for your information is a chart comparing bid protest activity for fiscal years 2015-2019.

Most Prevalent Grounds for Sustaining Protests

Of the protests resolved on the merits during fiscal year 2019, our Office sustained 13 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests during the 2019 fiscal year were: (1) unreasonable technical evaluation;¹ (2) inadequate documentation of the record;² (3) flawed selection decision;³ (4) unequal treatment;⁴ and (5) unreasonable cost or price evaluation.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,


Thomas H. Armstrong
General Counsel

Enclosure

¹ E.g., Native Energy & Tech., Inc., B-416783 et al., Dec. 13, 2018, 2019 CPD ¶ 89 (finding that the agency's evaluation of the awardee's technical proposal was unreasonable where the record did not support the assignment of three of the five strengths that were cited as discriminators in favor of the awardee).

² E.g., NavQSys, LLC, B-417028.3, Mar. 27, 2019, 2019 CPD ¶ 130 (finding that the agency failed to adequately document the basis for its intended corrective action of terminating the award to the prior awardee and making award to the prior protester, which was taken in response to an earlier protest).

³ E.g., Harmonia Holdings Group, LLC, B-417475.3, B-417475.4, Sept. 23, 2019, 2019 CPD ¶ 333 (finding that the agency's best-value tradeoff decision was unreasonable and inadequately documented where it was based on numerous evaluation errors under the cost/price, past performance, and technical factors, and where the record did not demonstrate that the selection official considered the qualitative aspects of the quotations or justified why any advantages of the awardee's quotation were worth the price premium).

⁴ E.g., ManTech Advanced Sys. Int'l, Inc., B-416734, Nov. 27, 2018, 2018 CPD ¶ 408 (finding that the agency unequally evaluated quotations where both the protester and the awardee did not propose retention techniques focused on cleared personnel, but only the protester's quotation was evaluated as having a weakness on that basis).

⁵ E.g., Shearwater Mission Support, LLC, B-416717, Nov. 20, 2018, 2018 CPD ¶ 402 (finding that the agency performed a price realism analysis that was not permitted by the solicitation).

List of Congressional Committees

The Honorable Richard Shelby
Chairman

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

The Honorable Ron Johnson
Chairman

The Honorable Gary C. Peters
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Nita M. Lowey
Chairwoman

The Honorable Kay Granger
Ranking Member
Committee on Appropriations
House of Representatives

The Honorable Carolyn Maloney
Acting Chairwoman

The Honorable Jim Jordan
Ranking Member
Committee on Oversight and Reform
House of Representatives

Enclosure I Impact of Government Shutdown⁶

B-Number	Protester	Disposition	Original Due Date	# Days Extended By Shutdown	Date Closed
B-417135.1	VariQ Corporation	Sustained	3/1	17	3/18
B-417135.2	Octo Consulting Group, Inc.	Dismissed	3/4	14	3/18
B-417140.1	Intellect Solutions, LLC	Withdrawn	3/6	29	4/4
B-417149.1	Kingfisher Systems, Inc.	Denied	3/11	21	4/1
B-417149.2	Blue Glacier Management Group, Inc.	Denied	3/11	21	4/1
B-416377.4	IntelliDyne, LLC	Denied	3/18	31	4/18
B-416126.3	Ekagra Partners, LLC	Dismissed	4/8	9	4/17
B-415080.7	Metropolitan Interpreters & Translators, Inc.	Denied	4/10	34	5/14

⁶ The government shutdown between December 2018 and January 2019 resulted in GAO extending bid protest deadlines up to 35 days (the period of the shutdown) for cases in progress, and cases filed during the time the government was partially shut down. GAO decided all protests within 100 calendar days for the period the relevant portion of the government was funded.

Enclosure II

Bid Protest Statistics for Fiscal Years 2015-2019

	FY2019	FY2018	FY2017	FY2016	FY2015
Cases Filed ¹	2198 (down 16%) ²	2607 (less than 1% increase) ³	2596 (down 7%)	2789 (up 6%)	2639 (up 3%)
Cases Closed ⁴	2200	2642	2672	2734	2647
Merit (Sustain + Deny) Decisions	587	622	581	616	587
Number of Sustains	77	92	99	139	68
Sustain Rate	13%	15%	17%	23%	12%
Effectiveness Rate ⁵	44%	44%	47%	46%	45%
ADR ⁶ (cases used)	40	86	81	69	103
ADR Success Rate ⁷	90%	77%	90%	84%	70%
Hearings ⁸	2% (21 cases)	0.51% (5 cases)	1.70% (17 cases)	2.51% (27 cases)	3.10% (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 From the prior fiscal year.

⁴ Of the 2,200 cases closed in FY 2019, 373 are attributable to GAO's bid protest jurisdiction over task or delivery orders placed under indefinite-delivery/indefinite-quantity contracts.

⁵ 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.

⁶ Alternative Dispute Resolution.

⁷ Percentage of cases resolved without a formal GAO decision after ADR.

⁸ Percentage of fully developed cases in which GAO conducted a hearing; not all fully-developed cases result in a merit decision.