



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

B-158766

November 27, 2018

Re: GAO Bid Protest Annual Report to Congress for Fiscal Year 2018

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 2018. 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 2018 fiscal year, we received 2,607 cases: 2,474 protests, 55 cost claims, and 78 requests for reconsideration. We closed 2,642 cases during the fiscal year, 2,505 protests, 53 cost claims, and 84 requests for reconsideration. Of the 2,642 cases closed, 356 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 2014-2018.

Most Prevalent Grounds for Sustaining Protests

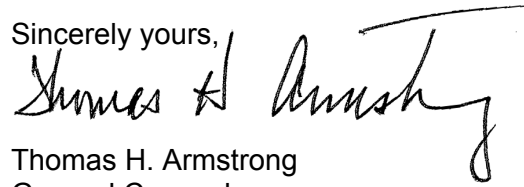
Of the protests resolved on the merits during fiscal year 2018, our Office sustained 15 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests during the 2018 fiscal year were: (1) unreasonable technical evaluation;¹ (2) unreasonable cost or price evaluation;² (3) flawed selection decision.³ It is important to note that a significant

¹ E.g., AdvanceMed Corp., B-415062, B-415062.2, Nov. 17, 2017, 2017 CPD ¶ 362 (finding that the agency unreasonably found the awardee’s proposal was technically acceptable, where the acceptable rating was contingent on remediation of several issues that were not remediated).

² E.g., ENSCO, Inc., B-414844.4, et al., July 5, 2018, 2018 CPD ¶ 260 (finding that the agency’s evaluation and adjustment of direct labor rates for only those employees for which government-verified rates were available was inadequate to assess the realism of the offerors’ cost proposals).

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 "Thomas H. Armstrong". The signature is written in a cursive style with a long horizontal line above the name.

Thomas H. Armstrong
General Counsel

Enclosure

³ E.g., VariQ Corp., B-414650.11, B-414650.15, May 30, 2018, 2018 CPD ¶ 199 (finding that the selection official failed to demonstrate a reasonable basis for finding that awardee's strengths to be beneficial while not finding similar strengths of protester to be similarly beneficial).

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 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 2014-2018

| | FY2018 | FY2017 | FY2016 | FY2015 | FY2014 |
|----------------------------------|--|---------------------|---------------------|---------------------|---------------------|
| Cases Filed ¹ | 2607 (less than 1% increase) ² | 2596 (down 7%) | 2789 (up 6%) | 2639 (up 3%) | 2561 (up 5%) |
| Cases Closed ³ | 2642 | 2672 | 2734 | 2647 | 2458 |
| Merit (Sustain + Deny) Decisions | 622 | 581 | 616 | 587 | 556 |
| Number of Sustains | 92 | 99 | 139 | 68 | 72 |
| Sustain Rate | 15% | 17% | 23% | 12% | 13% |
| Effectiveness Rate ⁴ | 44% | 47% | 46% | 45% | 43% |
| ADR ⁵ (cases used) | 86 | 81 | 69 | 103 | 96 |
| ADR Success Rate ⁶ | 77% | 90% | 84% | 70% | 83% |
| Hearings ⁷ | 0.51% (5 cases) | 1.70% (17 cases) | 2.51% (27 cases) | 3.10% (31 cases) | 4.70% (42 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 2,642 cases closed in FY 2018, 356 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.