



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

B-158766

November 1, 2022

Re: GAO Bid Protest Annual Report to Congress for Fiscal Year 2022

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 during the prior year. 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).

Agency Failure to Fully Implement Recommendations

For fiscal year 2022, one federal agency declined to implement the recommendations made by our Office in connection with a bid protest. By letter dated February 15, 2022, we reported an occurrence involving the Department of the Navy, Naval Air Systems Command: *Northrop Grumman Systems Corporation--Mission Systems*, B-419560.6, Aug. 18, 2021, 2021 CPD ¶ 330. As explained in our February 15 letter, in sustaining the protest, we found that the Department of the Navy's evaluation of the awardee's proposal was not consistent with the terms of the solicitation and the Department of the Navy should have found a deficiency in the awardee's proposal. We recommended that the Department of the Navy reopen discussions and request revised proposals; evaluate proposals consistent with the evaluation criteria; and make a new source selection decision. Alternatively, if the agency concluded that its specifications should be revised, we recommended that the Department of the Navy issue an amendment to the solicitation reflecting updated specifications, request revised proposals, and make a new source selection decision. On October 18, 2021, the Department of the Navy notified our Office that it would not implement our recommendations.

Enclosed for your information is a copy of our letter of February 15, 2022, reporting the Department of the Navy's failure to implement our recommendations. We note that, after we issued our decision, a protest was filed at the Court of Federal Claims in which the Court also reviewed the Department of the Navy's evaluation of the awardee's proposal in this procurement. We also note that as a result of the Court's oral opinion in that protest, the Department of the Navy agreed in June 2022, to take corrective action, which will include reopening discussions, requesting and evaluating revised proposals, and making a new source selection decision. As a final matter, the agency's corrective actions resulting from the Court's oral opinion are consistent with GAO's recommendations to correct the procurement errors.

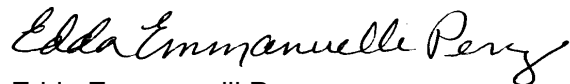
## Summary of Overall Protest Filings

During the 2022 fiscal year, we received 1,658 cases: 1,595 protests, 43 cost claims, and 20 requests for reconsideration. We closed 1,655 cases during the fiscal year: 1,598 protests, 39 cost claims, and 18 requests for reconsideration. Of the 1,655 cases closed, 344 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 2018-2022.

## Most Prevalent Grounds for Sustaining Protests

Of the protests resolved on the merits during fiscal year 2022, our Office sustained 13 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests during the 2022 fiscal year were: (1) unreasonable technical evaluation;<sup>1</sup> (2) flawed selection decision;<sup>2</sup> and (3) flawed solicitation.<sup>3</sup> 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,



Edda Emmanuelle Perez  
General Counsel

Enclosure

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<sup>1</sup> *E.g.*, *Apprio, Inc.*, B-420627, June 30, 2022, 2022 CPD ¶ 170 (finding the agency's technical evaluation unreasonable where the agency improperly assessed a weakness in the protester's proposal under the corporate experience factor, which was directly contradicted by the contents of the protester's proposal that showed the protester had the required experience).

<sup>2</sup> *E.g.*, *Softrams, LLC; Chags Health Info. Tech., LLC*, B-419927.4 *et al.*, Feb. 7, 2022, 2022 CPD ¶ 57 (finding the agency's selection decision unreasonable where the awardee never submitted a complete quotation and the agency relied upon part of a quotation from the awardee's previously excluded team member in selecting the awardee).

<sup>3</sup> *E.g.*, *Selex ES, Inc.*, B-420799, Sept. 6, 2022, 2022 CPD ¶ 234 (finding the terms of a solicitation ambiguous where the solicitation contained obvious conflicting information as to whether certain requirements were due at the time of proposal submission or after award).

*List of Congressional Committees*

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

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

The Honorable Rosa L. DeLauro  
Chair  
The Honorable Kay Granger  
Ranking Member  
Committee on Appropriations  
House of Representatives

The Honorable Carolyn B. Maloney  
Chairwoman  
The Honorable James Comer  
Ranking Member  
Committee on Oversight and Reform  
House of Representatives

## Bid Protest Statistics for Fiscal Years 2018-2022

	FY2022	FY2021	FY2020	FY2019	FY2018
Cases Filed <sup>1</sup>	1658 (down 12%) <sup>2</sup>	1897 (down 12%)	2149 (down 2%)	2198 (down 16%)	2607 (less than 1% increase)
Cases Closed <sup>3</sup>	1655	2017	2137	2200	2642
Merit (Sustain + Deny) Decisions	455	581	545	587	622
Number of Sustains	59	85	84	77	92
Sustain Rate	13%	15%	15%	13%	15%
Effectiveness Rate <sup>4</sup>	51%	48%	51%	44%	44%
ADR <sup>5</sup> (cases used)	74	76	124	40	86
ADR Success Rate <sup>6</sup>	92%	84%	82%	90%	77%
Hearings <sup>7</sup>	.27% (2 cases)	1% (13 cases)	1% (9 cases)	2% (21 cases)	0.51% (5 cases)

<sup>1</sup> 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.

<sup>2</sup> From the prior fiscal year.

<sup>3</sup> Of the 1,655 cases closed in FY 2022, 344 are attributable to GAO's bid protest jurisdiction over task or delivery orders placed under indefinite-delivery/indefinite-quantity contracts.

<sup>4</sup> 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.

<sup>5</sup> Alternative Dispute Resolution.

<sup>6</sup> Percentage of cases resolved without a formal GAO decision after ADR.

<sup>7</sup> Percentage of fully developed cases in which GAO conducted a hearing; not all fully-developed cases result in a merit decision.



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

Comptroller General  
of the United States

B-419560.6

February 15, 2022

Congressional Committees:

Subject: *Northrop Grumman Systems Corporation--Mission Systems*, B-419560.6, Aug. 18, 2021, 2021 CPD ¶ 330.

This letter is submitted pursuant to 31 U.S.C. § 3554(e)(1), which requires our Office to report promptly any case in which a federal agency fails to fully implement a recommendation from the Comptroller General in a bid protest decision. As required by that statute, this report includes a review of the procurement addressed in our decision, including the circumstances surrounding the failure of the contracting agency to implement the recommendation made in the decision.<sup>1</sup>

The subject bid protest decision concerned the actions of the Department of the Navy, Naval Air Systems Command, with regard to the development of operational prototype aircraft-mounted jamming pods for low band radar. The Navy sought proposals for its Next Generation Jammer Low Band (NGJ-LB) system to augment and replace the current tactical jamming system used on the EA-18G Growler aircraft for airborne electronic attack. The NGJ-LB system will specifically counter low radio frequency band electronic attacks. The technical specifications at issue in the protest relate to jamming performance and are classified.

Northrop Grumman argued that the Navy misevaluated the proposal of the awardee, L3 Technologies, Inc. Communication Systems - West (L3Harris). Specifically, Northrop contended the Navy improperly rated the L3Harris proposal acceptable despite the fact that the proposal did not demonstrate compliance with a material solicitation requirement.<sup>2</sup> Enclosure 1.

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<sup>1</sup> The last time GAO reported an agency's failure to implement one of our bid protest decision recommendations was in 2015. See GAO Annual Report to Congress for Fiscal Year 2015 at 1, GAO-16-270SP (Dec. 10, 2015).

<sup>2</sup> Northrop raised a variety of allegations when it challenged the Navy's award of the NGJ-LB contract to L3Harris and some of these allegations required consideration of classified information. In order to properly safeguard the Navy's classified information, our Office issued three separate decisions to resolve Northrop's protest. In the first decision, we addressed Northrop's protest of the agency's investigation and consideration of a conflict of interest in connection with the procurement. *Northrop Grumman Sys. Corp.--Mission Sys.*, B-419560.3 *et al.*, Aug. 18, 2021, 2021 CPD ¶ 305. We sustained these allegations in an unclassified decision and the agency followed our recommendation for that decision. Enclosure 2. In our second decision, which is the subject of this letter, our Office sustained Northrop's protest challenging the agency's technical evaluation. As discussed in this letter, the Navy has represented that it is not implementing our recommendation for the second sustain decision. This second decision discusses classified information and is therefore classified. In a third separate classified decision, we denied other classified allegations raised by Northrop. *Northrop Grumman Sys. Corp.--Mission Sys.*, B-419557.2 *et al.*, Aug. 18, 2021, 2021 CPD ¶ 329.

In reviewing the protest, our Office concluded that the Navy's evaluation of L3Harris's proposal was not consistent with the terms of the solicitation and the Navy should have found a deficiency in the L3Harris proposal. The solicitation identified certain threshold requirements for this system and directed offerors to describe how their proposed approach meets the threshold requirements. The Navy's evaluators expressly recognized that L3Harris's proposal did not meet the requirements, although the evaluators found L3Harris proposed "a credible path" to meeting the requirements. Based on the record, our Office found that the Navy's evaluation of L3Harris's proposal as technically acceptable was not reasonable.

Our decision sustaining the protest recommended that the Navy reopen discussions and request revised proposals; evaluate proposals consistent with the evaluation criteria; and make a new source selection decision. We also recommended that the Navy reimburse Northrop Grumman the cost of pursuing its protest.

By letter dated October 18, 2021, the Navy notified our Office that it will not implement our recommendation to reopen discussions and reevaluate revised proposals. Enclosure 2. The Navy contends that GAO misinterpreted the solicitation requirement in light of the developmental nature of the Navy's requirement as it relates to the evaluation criteria and the agency's evaluation. The Navy did not, however, request that our Office reconsider the decision. Instead, the Navy represents that it intends to move forward with the award to L3Harris. Because our statute requires our Office to report any case in which a federal agency fails to fully implement a recommendation from the Comptroller General in a bid protest decision, we are reporting this matter for your attention.

In addition, when reporting a case in which an agency fails to fully implement a recommendation by our Office, 31 U.S.C. § 3554(e)(1)(B) also contemplates that our Office will recommend whether Congress should consider further action in order to correct an inequity or to preserve the integrity of the procurement process. Generally, we have made such recommendations when the agency's decision not follow our recommendation suggested a systemic flaw with the agency's processes or brought to light larger questions of interpreting applicable procurement law. However, when the matter at issue results from a disagreement between the agency and our Office concerning the propriety of the agency's action on a narrow evaluation issue that does not have implications beyond the particular procurement at issue, as is the situation in this case, we have declined to recommend further action. Accordingly, we do not offer a further recommendation in this case.<sup>3</sup>

Enclosed for your review are copies of our public decision in the protest and the Navy's letter of October 18, 2021. If you, or your staff, have any questions about this letter, please contact either of the following Managing Associate General Counsels: Ralph O. White (202-512-8278) or Kenneth E. Patton (202-512-8205).

Sincerely yours,

  
Edda Emmanuelle Perez  
General Counsel

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<sup>3</sup> We also note that the propriety of the agency's actions in this procurement are currently being challenged by the protester at the U.S. Court of Federal Claims.

Enclosures - 2

cc: The Honorable Patrick Leahy  
Chairman  
The Honorable Richard C. Shelby  
Vice Chairman  
Committee on Appropriations  
United States Senate

The Honorable Jack Reed  
Chairman  
The Honorable James M. Inhofe  
Ranking Member  
Committee on Armed Services  
United States Senate

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

The Honorable Rosa L. DeLauro  
Chair  
The Honorable Kay Granger  
Ranking Member  
Committee on Appropriations  
House of Representatives

The Honorable Adam Smith  
Chairman  
The Honorable Mike Rogers  
Ranking Member  
Committee on Armed Services  
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The Honorable Carolyn B. Maloney  
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The Honorable James Comer  
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