



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

Comptroller General
of the United States

B-158766

October 26, 2023

Re: GAO Bid Protest Annual Report to Congress for Fiscal Year 2023

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 (1) a federal agency did not fully implement a recommendation made by our Office in connection with a bid protest during the prior year, and (2) 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. There were no instances in which a federal agency did not fully implement a recommendation made by our Office during fiscal year 2023. During fiscal year 2023, we issued final decisions within 100 days for all protests filed with GAO. 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 2023 fiscal year, we received 2,025 cases: 1,957 protests, 38 cost claims, and 30 requests for reconsideration. We closed 2,041 cases during the fiscal year: 1,972 protests, 38 cost claims, and 31 requests for reconsideration. Of the 2,041 cases closed, 368 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 2019-2023.

The chart reflects a 22 percent increase in cases filed during the 2023 fiscal year. Of note, the bid protest activity for fiscal year 2023 includes our Office’s resolution of an unusually high number of protests challenging a single procurement. This procurement involved the Department of Health and Human Services’ award of Chief Information Officer-Solutions and Partners 4 (referred to as “CIO-SP4”) government-wide acquisition contracts; a single procurement for the award of hundreds of information technology services contracts.¹

Most Prevalent Grounds for Sustaining Protests

Of the protests resolved on the merits during fiscal year 2023, our Office sustained 31 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests

¹ See, e.g., *Systems Plus, Inc. et al.*, B-419956.184 *et al.*, June 29, 2023, 2023 CPD ¶ 163 (sustaining 93 protests and supplemental protests); *Phoenix Data Security, Inc. et al.*, B-419956.200 *et al.*, July 10, 2023, 2023 CPD ¶ 172 (sustaining 26 protests and supplemental protests).

during the 2023 fiscal year were: (1) unreasonable technical evaluation;² (2) flawed selection decision;³ and (3) unreasonable cost or price evaluation.⁴ 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.

I trust this information is useful. If you have any questions, please feel free to reach out to the Managing Associate General Counsels for Procurement Law, Kenneth Patton at 202-512-8205 and Edward Goldstein at 202-512-4483.

Sincerely yours,



Edda Emmanuelli Perez
General Counsel

Enclosure

² *E.g.*, *Systems Plus, supra* (finding the agency's evaluation of phase one proposals unreasonable where the agency's record and responses to the protests failed to show the agency reasonably validated all proposed self-scores or reasonably established cutlines for socio-economic categories to determine advancement of proposals past phase one of competition).

³ *E.g.*, *CharDonnay Dialysis, LLC*, B-420910, B-420910.2, Oct. 27, 2022, 2022 CPD ¶ 273 (finding the agency's best-value tradeoff decision unreasonable where the agency failed to meaningfully look behind the adjectival ratings and adequately document reasons for finding the protester's and awardee's proposals technically equal before making award to the lowest-priced offeror).

⁴ *E.g.*, *TRAX Int'l Corp.*, B-420361.7, B-420361.8, June 28, 2023, 2023 CPD ¶ 162 (finding the agency's evaluation of the awardee's cost proposal unreasonable where the agency was required to review indirect rates for realism, but the agency instead improperly relied on the awardee's business judgments and applied fair and reasonable price analysis considerations in lieu of assessing the realism of the awardee's indirect rates).

List of Congressional Committees

The Honorable Patty Murray
Chair
The Honorable Susan Collins
Vice Chair
Committee on Appropriations
United States Senate

The Honorable Gary C. Peters
Chairman
The Honorable Rand Paul, M.D.
Ranking Member
Committee on Homeland Security and Governmental Affairs
United States Senate

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

The Honorable James Comer
Chairman
The Honorable Jamie Raskin
Ranking Member
Committee on Oversight and Accountability
House of Representatives

Bid Protest Statistics for Fiscal Years 2019-2023

	FY2023	FY2022	FY2021	FY2020	FY2019
Cases Filed ¹	2025 (increase of 22%) ²	1658 (down 12%)	1897 (down 12%)	2149 (down 2%)	2198 (down 16%)
Cases Closed ³	2041	1655	2017	2137	2200
Merit (Sustain + Deny) Decisions	608	455	581	545	587
Number of Sustains	188	59	85	84	77
Sustain Rate	31%	13%	15%	15%	13%
Effectiveness Rate ⁴	57%	51%	48%	51%	44%
ADR ⁵ (cases used)	69	74	76	124	40
ADR Success Rate ⁶	90%	92%	84%	82%	90%
Hearings ⁷	2% (22 cases)	.27% (2 cases)	1% (13 cases)	1% (9 cases)	2% (21 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 2,041 cases closed in FY 2023, 368 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.