



**Comptroller General
of the United States**
Washington, D.C. 20548

B-158766

January 29, 1999

The Honorable J. Dennis Hastert
Speaker of the House
of Representatives

Dear Mr. Speaker:

This letter responds to the requirements of the Competition in Contracting Act of 1984, 31 U.S.C. § 3554(e) (Supp. II 1996), that the Comptroller General report to the 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. There was one such occurrence during fiscal year 1998.

In Pemco Aeroplex, Inc., B-280397, Sept. 25, 1998, 98-2 CPD ¶ 79, we considered a challenge to an Air Force solicitation that bundled together into one procurement a significant portion of the workload currently performed by the Sacramento Air Logistics Center, which the Base Realignment and Closure Commission recommended be closed by July 2001. We sustained the protest because we concluded that the Air Force had failed to show that combining this workload into a single solicitation was reasonably required to satisfy the agency's needs. We recommended that the Air Force cancel the solicitation and resolicit its requirements without bundling these workloads.

The Air Force decided to proceed with contract award under the solicitation despite our decision. The Undersecretary of Defense for Acquisition and Technology has advised the Congress that the Air Force decision was driven by a conclusion that implementation of our decision's recommendations would harm Air Force readiness. In an argument that had been considered and rejected by our Office as insufficient, the Air Force stated that the risk to readiness of unbundling the KC-135 portion of the Sacramento workload was unacceptable.

In response to the Air Force refusal to follow the recommendation in our decision, Pemco Aeroplex filed a lawsuit in the United States District Court, Northern District of Alabama. That lawsuit, Pemco Aeroplex, Inc. v. Cohen (Civ. Action No. CV-98-J-2584-S), seeks a ruling that the Air Force solicitation, and subsequent action, are improper. The case is pending before the court.

Our Office has conducted a comprehensive review of this procurement. Public-Private Competitions: Processes Used for Sacramento Depot Maintenance Award Appear Reasonable (GAO/NSIAD-99-42, Nov. 23, 1998). We make no recommendation for further congressional action pursuant to 31 U.S.C. § 3554(e)(1)(B) at this time.

Regarding the rest of the bid protest activity during the fiscal year, we received 1,427 protests (including 29 cost claims) and 139 requests for reconsideration for a total of 1,566 cases. We closed 1,600 cases: 1,467 protests (including 29 cost claims) and 133 requests for reconsideration. Enclosed for your information are some statistics concerning suspensions of contract awards and performance as a result of bid protests.

A copy of this report, with the enclosure, is being furnished to the House Committees on Government Reform and Appropriations. An identical report is being furnished to the President of the Senate.

Sincerely yours,

Robert P. Murphy

for

Comptroller General
of the United States

Enclosure

Suspension of Award/Performance Data

BACKGROUND

CICA contains several provisions whose purpose is to enhance the likelihood that protests can be decided before contract performance reaches a stage at which corrective action is effectively precluded. Where an agency is notified of a protest before award, CICA precludes an award unless the head of the procuring activity makes certain findings justifying the award. In cases where notice is received within 10 days following the date of award or within 5 days after a requested and, when requested, required debriefing, CICA requires the suspension of performance unless the head of the procuring activity makes certain other findings justifying the continuance of performance despite the protest.

DATA

The following tables present data regarding the number of contracts awarded after a protest was filed (table A), the number of protests in table A in which GAO sustained the protest (table B), the number of contracts in which performance was not suspended following a protest (table C), and the number of cases sustained by GAO in which performance was not suspended (table D).

Table A

Protests Filed Before Award--
Contracts Awarded After Protest Filing

Defense Agencies	Civilian Agencies
8	11

Table B

Protests Filed Before Award--
Protests Sustained Where Contracts Awarded After Protest Filing

Defense Agencies	Civilian Agencies
0	1

Table C

**Protests Filed After Award--
Contracts in Which Performance Was Continued**

	Defense Agencies	Civilian Agencies
Where agency determined that urgency justified continued performance	23	16
Where agency found that continued performance was in Government's best interest	22	23

Table D

**Protests Filed After Award--
Protests Sustained Where Performance Was Continued**

	Defense Agencies	Civilian Agencies
Where agency determined that urgency justified continued performance	1	2
Where agency found that continued performance was in Government's best interest	3	4