



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

B-158766

December 23, 2020

Re: GAO Bid Protest Annual Report to Congress for Fiscal Year 2020

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 2020. 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 2020 fiscal year, we received 2,149 cases: 2,052 protests, 56 cost claims, and 41 requests for reconsideration. We closed 2,137 cases during the fiscal year, 2,024 protests, 66 cost claims, and 47 requests for reconsideration. Of the 2,137 cases closed, 417 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 2016-2020.

Most Prevalent Grounds for Sustaining Protests

Of the protests resolved on the merits during fiscal year 2020, our Office sustained 15 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests during the 2020 fiscal year were: (1) unreasonable technical evaluation;¹ (2) flawed

¹ *E.g.*, *Leidos Innovations Corp.*, B-417568.3, B-417568.4, May 11, 2020, 2020 CPD ¶ 167 (finding that the agency’s evaluation was unreasonable where the agency excluded from consideration certain portions of the offerors’ proposals and failed to comply with the solicitation’s provisions regarding consideration of that information).

solicitation;² (3) unreasonable cost or price evaluation;³ and (4) unreasonable past performance 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.

Sincerely yours,



Thomas H. Armstrong
General Counsel

Enclosure

² *E.g.*, *Blue Origin Florida, LLC*, B-417839, Nov. 18, 2019, 2019 CPD ¶ 388 (finding that the terms of a solicitation failed to provide an intelligible and common basis for award, where the proposed methodology--predicated on the agency's determination of which combination of two independently developed proposals offered the best value to the government--failed to reasonably represent the key areas of importance and emphasis to be considered in the source selection decision and to reasonably support meaningful comparison and discrimination between and among competing proposals as required by the Federal Acquisition Regulation).

³ *E.g.*, *Sayres & Assocs. Corp.*, B-418374, Mar. 30, 2020, 2020 CPD ¶ 115 (finding that the agency's cost realism analysis was unreasonable where the record fails to establish the reasonableness of the agency's rejection of the protester's proposed labor escalation rate and where that rejection was inconsistent with the terms of the solicitation).

⁴ *E.g.*, *Addx Corp.*, B-417804 *et al.*, Nov. 5, 2019, 2020 CPD ¶ 118 (finding that the agency's evaluation of the protester's past performance was unreasonable where the agency identified a weakness based on an unstated evaluation criterion and where the ratings of marginal and moderate risk lacked a reasonable basis).

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

Bid Protest Statistics for Fiscal Years 2016-2020

	FY2020	FY2019	FY2018	FY2017	FY2016
Cases Filed ¹	2149 (down 2%) ²	2198 (down 16%)	2607 (less than 1% increase)	2596 (down 7%)	2789 (up 6%)
Cases Closed ³	2137	2200	2642	2672	2734
Merit (Sustain + Deny) Decisions	545	587	622	581	616
Number of Sustains	84	77	92	99	139
Sustain Rate	15%	13%	15%	17%	23%
Effectiveness Rate ⁴	51%	44%	44%	47%	46%
ADR ⁵ (cases used)	124	40	86	81	69
ADR Success Rate ⁶	82%	90%	77%	90%	84%
Hearings ⁷	1% (9 cases)	2% (21 cases)	0.51% (5 cases)	1.70% (17 cases)	2.51% (27 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 2,137 cases closed in FY 2020, 417 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.