



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

B-158766

November 16, 2021

Re: GAO Bid Protest Annual Report to Congress for Fiscal Year 2021

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, 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 2021. 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 2021 fiscal year, we received 1,897 cases: 1,816 protests, 43 cost claims, and 38 requests for reconsideration. We closed 2,017 cases during the fiscal year, 1,931 protests, 45 cost claims, and 41 requests for reconsideration. Of the 2,017 cases closed, 401 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 2017-2021.

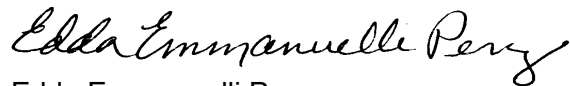
Most Prevalent Grounds for Sustaining Protests

Of the protests resolved on the merits during fiscal year 2021, our Office sustained 15 percent of those protests. Our review shows that the most prevalent reasons for sustaining protests during the 2021 fiscal year were: (1) unreasonable technical evaluation;¹ (2) flawed

¹ *E.g.*, *MetroStar Sys., Inc.*, B-419890, B-419890.2, Sept. 13, 2021, 2021 CPD ¶ 324 (finding that the agency's technical evaluation was unreasonable where the agency assessed a strength in the awardee's proposal based on the agency's flawed understanding of the awardee's proposed staffing approach).

discussions;² (3) unreasonable cost or price evaluation;³ and (4) unequal treatment.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,



Edda Emmanuelli Perez
General Counsel

Enclosure

² *E.g.*, *Ohio KePRO, Inc.*, B-417836.4, B-417836.5, Nov. 4, 2020, 2021 CPD ¶ 325 (finding that the agency engaged in unequal discussions when it conducted another round of discussions with the awardee, but not with the protester, which allowed the awardee to revise its proposal to provide information necessary for the agency to determine the acceptability of its proposal).

³ *E.g.*, *DevTech Sys., Inc.*, B-418273.3, B-418273.4, Dec. 22, 2020, 2021 CPD ¶ 2 (finding that the agency's cost realism evaluation was unreasonable where the agency conceded that there was an error with its evaluation and where the record did not support the agency's upward adjustment of the protester's proposed costs and the agency's failure to adjust some of the awardee's proposed costs).

⁴ *E.g.*, *DigiFlight, Inc.*, B-419590, B-419590.2, May 24, 2021, 2021 CPD ¶ 206 (finding that the agency evaluated quotations in a disparate manner when it assessed a strength in the awardee's quotation, but not in the protester's quotation, for substantively indistinguishable features of the vendors' employee retention plans).

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 2017-2021

	FY2021	FY2020	FY2019	FY2018	FY2017
Cases Filed ¹	1897 (down 12%) ²	2149 (down 2%)	2198 (down 16%)	2607 (less than 1% increase)	2596 (down 7%)
Cases Closed ³	2017	2137	2200	2642	2672
Merit (Sustain + Deny) Decisions	581	545	587	622	581
Number of Sustains	85	84	77	92	99
Sustain Rate	15%	15%	13%	15%	17%
Effectiveness Rate ⁴	48%	51%	44%	44%	47%
ADR ⁵ (cases used)	76	124	40	86	81
ADR Success Rate ⁶	84%	82%	90%	77%	90%
Hearings ⁷	1% (13 cases)	1% (9 cases)	2% (21 cases)	0.51% (5 cases)	1.70% (17 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 2,017 cases closed in FY 2021, 401 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.