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United States General Accounting Office
Washington, DC 20548

B-158766

January 29, 2003

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) (2000), 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. There was one such occurrence during fiscal year 2002.

The occurrence concerned a bid protest filed in our Office by Rockwell Electronic Commerce Corporation challenging the Social Security Administration's (SSA) award of a contract to MCI WorldCom Communications, Inc. for network-based call answering services; the protest was the subject of a series of decisions by our Office. On March 5, 2002 we reported the matter to Congress pursuant to 31 U.S.C. § 3554(e)(1), which requires our Office to report any case in which a federal agency fails to fully implement a recommendation of the Comptroller General contained in a protest decision concerning the award of a federal contract. Enclosed is a copy of that report, which describes the protest decisions and the circumstances of the SSA's failure to implement our recommendation. The following is a brief summary.

In our first decision, issued on December 14, 2000, we sustained Rockwell's protest on the basis that MCI's proposal had failed to identify, and the agency had failed to evaluate, certain contract costs that would be incurred under MCI's proposal, as required by the solicitation. We recommended that the agency reopen the competition, amend the solicitation as appropriate, request and evaluate revised proposals, and make an award decision consistent with the terms of the RFP and our decision. We also recommended that Rockwell be reimbursed the costs of filing and pursuing its protest, including reasonable attorneys' fees. We denied SSA's and MCI's requests for reconsideration on April 19, 2001.

Following the reconsideration decision, SSA allowed only MCI to revise its proposal, and limited revisions to the identification of the previously unstated costs. Not surprisingly, given the limited nature of the "corrective action," MCI's proposal was

again selected for award. Rockwell then protested this corrective action as being inconsistent with procurement law and regulation, and our decision; on August 30, 2001, we sustained Rockwell's second protest, reiterating the recommendation stated in our first decision and further defining, by example, appropriate corrective action. We also recommended that Rockwell be reimbursed the costs of filing and pursuing its second protest. SSA again requested reconsideration and, on September 20, we denied the request.

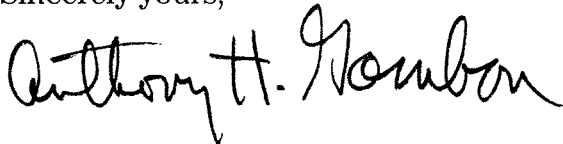
By letter of November 5, 2001, SSA notified our Office that it would not follow our recommendations. We also were advised that the agency had declined to reimburse Rockwell's costs of filing and pursuing the second protest, although SSA had reimbursed Rockwell's costs of filing and pursuing the first protest. In response to a subsequent request from Rockwell, we modified our prior decisions to recommend that SSA also reimburse Rockwell's proposal preparation costs.

In our March 5 report, we recommended, pursuant to 31 U.S.C. § 3554(e)(1)(B), that Congress consider an inquiry into SSA's failure to fully and to promptly implement our December 2000 recommendation. We stated that, in our view, the inquiry should also examine the basis for the agency's determination to continue performance by MCI notwithstanding the protest and thereby incur almost half of the potential contract cost of a service contract within the first year of a contract with a potential term of over 7½ years. We recommended that, in any event, Congress take such actions as necessary to ensure that Rockwell's costs of pursuing this matter using bid protest procedures, and its costs of preparing a proposal, are reimbursed.

With respect to the remainder of fiscal year 2002 bid protest activity, during the fiscal year we received 1,139 protests (including 38 cost claims) and 65 requests for reconsideration, for a total of 1,204 cases. We closed 1,133 cases: 1,072 protests (including 40 cost claims) and 61 requests for reconsideration. Enclosed for your information are 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 Chairman and Ranking Minority Member of the House Committee on Government Reform. A similar report is being furnished to the President of the Senate.

Sincerely yours,

A handwritten signature in black ink that reads "Anthony H. Gamboa". The signature is written in a cursive, flowing style.

Anthony H. Gamboa
General Counsel

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 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
0	6

Table B

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

Defense Agencies	Civilian Agencies
0	0

Table C

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

	Defense Agencies	Civilian Agencies
Where agency determined that urgency justified continued performance	24	18
Where agency found that continued performance was in Government's best interest	7	16

Table D

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

	Defense Agencies	Civilian Agencies
Where agency determined that urgency justified continued performance	0	2
Where agency found that continued performance was in Government's best interest	3	3