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Grassley calls on NASA to meet its commitment in procurement probe

WASHINGTON — Sen. Chuck Grassley is asking the National Aeronautics and Space Administration – NASA – to account for its failure to follow-up on pledges made to independent reviewers about a contract for data management software that violated government procurement procedures.

In a letter sent today to NASA headquarters, Grassley said that the agency made specific commitments in a letter to the Government Accountability Office as part of its response to a bid protest. These commitments led to the dismissal of that protest, but a review by the NASA Office of the Inspector General found that NASA did not follow through. “NASA needs to ensure that basic procurement principles are followed. NASA also needs to keep GAO informed and alert them to the events that have transpired since the dismissal of the bid protest to ensure that future responses to GAO are taken credibly,” Grassley said.

The text of Grassley’s letter, which details the alleged improprieties, follows here.

April 5, 2007

Michael D. Griffin
Administrator
National Aeronautics and Space Administration
NASA Headquarters
300 E Street SW
Washington, DC 20546

Dear Administrator Griffin:

As a senior member of the United States Senate and as Ranking Member of the Senate Committee on Finance (Committee), it is my duty under the Constitution to conduct oversight into the activities of executive branch agencies, including the activities of the National Aeronautics and Space Administration (NASA). Recently, allegations were brought to my attention from a number of sources regarding improprieties in the procurement process at NASA

related to mechanical computer-aided design (MCAD) and data management. I write today to highlight two specific concerns; (1) the accuracy of NASA's statements to GAO in dismissing a procurement protest, and (2) NASA's actions taken during an agency-wide review of MCAD needs that was to be completed February 3, 2007.

In August 2005, NASA conducted a procurement for MCAD and data management software licenses at multiple NASA Centers. This procurement was initiated to replace or renew existing licenses for MCAD and data management software, as well as for additional training and other support services. At the time of the procurement, NASA continued to maintain licenses on various MCAD products from various vendors. Ultimately, NASA awarded the MCAD procurement to Parametric Technology Corporation (PTC) for \$5.2 million in September 2005. Following the procurement award to PTC, two vendors filed a joint procurement protest with the Government Accountability Office (GAO), stating that the procurement was fundamentally flawed and conducted improperly because NASA used procedures that did not comply with competition requirements.

NASA's Office of General Counsel (OGC) responded to the protest filed with GAO on November 8, 2005, stating, "there were some inconsistencies in the procurement process"[1] and that NASA would "take corrective action in the matter,"[2] which included an effort to "plan and conduct a new competitive acquisition, estimated to be from three (3) to six (6) months." [3] Based upon these statements by NASA OGC, GAO dismissed the procurement protest on November 10, 2005, relying on the fact that, "NASA intends to issue a new solicitation after a thorough review of the agency's requirements." [4]

My concerns today stem from NASA's actions following the GAO's dismissal of the procurement protest in November 2005. It appears NASA did not begin the agency-wide review of requirements for MCAD software, as it told GAO it would after the dismissal of the bid protest. Instead, NASA officials drafted a "Justification for Other Than Full and Open Competition" [5] in February 2006.

Following the receipt of multiple complaints regarding this procurement, NASA's Office of Inspector General (NASA/OIG) began reviewing this matter. In August 2006, NASA/OIG issued a memorandum to NASA management finding that, "NASA's planned acquisition approach in attempting to noncompetitively renew PTC licenses on a long-term basis at this point is questionable." [6] Further, NASA/OIG noted that NASA should conduct an agency-wide assessment of MCAD requirements and should suspend any procurement efforts to increase the number of licenses for PTC's MCAD product. Finally, NASA/OIG found that NASA OGC, "should notify the GAO in writing of any deviations from the corrective actions the Agency stated it would take." [7]

While NASA agreed to two of the three recommendations from NASA/OIG, it appears that NASA has not yet informed GAO of the actions it took following the dismissal of the protest, either formally or informally. Moreover, when questioned by NASA/OIG as to why NASA had not notified GAO, NASA stated, "in the absence of an open bid protest, notification to the [GAO] would be an academic matter." [8] I find this response troubling given that GAO only dismissed an open bid protest based upon assurances made by NASA OGC that were

amended after the dismissal.

NASA/OIG sought further clarification on this response to GAO in a follow-up memorandum to NASA in September 2006. NASA replied on September 12, 2006, stating, “no final corrective action has been made and none will be made until the independent assessment...has been completed.”[9] This independent assessment refers to an agency-wide assessment conducted by NASA Chief Engineer’s Office that was to be completed on February 3, 2007.

My concerns are twofold. First, based upon the history of this procurement, it appears that NASA made misleading statements to the GAO that resulted in GAO dismissing the procurement protest. Further it appears NASA altered course shortly after GAO dismissed the protest by drafting the “Justification for Other Than Full and Open Competition” three months later. NASA also told GAO it would conduct a new procurement following the dismissal of the procurement protest in November 2005, but according to NASA/OIG, as of August 2006 there was no evidence of a review of agency requirements was being conducted. While such a review was scheduled for completion on February 3, 2007, I remain concerned about NASA’s decision not to inform the GAO about its actions following the dismissal of the protest.

Second, I have concerns regarding NASA’s agency-wide review. Various internal NASA sources have stated that while the review is being conducted, NASA continues to request vendors to submit bids utilizing only one version of MCAD software. Other sources have stated that NASA is requiring vendors to provide costs estimates for conversions of previously existing data to new formats, resulting in increased costs to NASA—and ultimately, the American taxpayer. If NASA is truly conducting an impartial agency-wide review to determine if a new procurement for MCAD software is necessary, any requests for bids should include costs analysis for both software programs until the agency-wide review by NASA Chief Engineer is completed.

Regardless of which product NASA ultimately chooses, NASA needs to ensure that basic procurement principles are followed. NASA also needs to keep GAO informed and alert them to the events that have transpired since the dismissal of the bid protest to ensure that future responses to GAO are taken credibly. I have copied Comptroller General Walker on this letter to inform his office so GAO can perform the necessary follow-up on this bid protest. Additionally, I ask that NASA provide responses to the following requests:

(1) Provide a copy of the agency-wide assessment on MCAD and data management needs conducted by NASA Chief Engineer’s Office and scheduled for completion February 3, 2007.

(2) Provide a detailed list of the “inconsistencies in the procurement process of the MCAD contract” that NASA recognized in the letter to GAO dated November 8, 2005.

(3) Explain in detail why NASA did not notify GAO of its decision to forgo “new competitive acquisition, estimated to be three (3) to six (6) months” and instead drafted a “Justification for Other Than Full and Open Competition” in February 2006.

(4) Explain in detail why NASA/OIG was unable to find evidence of a “thorough scrub of agency requirements” in August 2006, after NASA stated to GAO that it would conduct such a review in its response to the procurement protest in November 2005.

(5) Does NASA plan on conducting a new competitive acquisition for MCAD software following the agency-wide review? Why or why not.

(6) What is the current status of the “Justification for Other Than Full and Open Competition” that was prepared in the months following GAO’s dismissal of the bid protest? Was this ever prepared in final format?

(7) When was the decision first made to draft the “Justification for Other Than Full and Open Competition” related to the MCAD procurement? When was the document actually prepared? Please provide the name and position of all individuals who were involved in the decision to prepare this document.

(8) Provide of list of all bid protests for the last six (6) years that have been found by NASA to have “inconsistencies in the procurement process” that were later dismissed by GAO due to assurances of corrective action. In complying with this request, note all instances where NASA told GAO of a pending corrective action(s) that were either amended or not taken. Additionally, note all instances where GAO was or was not informed of such deviations from corrective action(s).

(9) Provide a list of outstanding bids, requests for proposal, or other potential procurements that require a cost estimate for converting previously existing MCAD data from one existing vendor to another. In complying with this request please provide any cost estimates associated with such a conversion.

Thank you in advance for your prompt attention to this matter. Please provide your written response by no later than April 19, 2007. Additionally, I request that your office provide an in-depth briefing to the Committee staff following the submission of your written response.

Sincerely,

Charles E. Grassley
United States Senator
Ranking Member, Committee on Finance

Cc: The Honorable David Walker
Comptroller General
U.S. Government Accountability Office

The Honorable Robert W. Cobb
Inspector General
National Aeronautics and Space Administration

[1] Letter from Contracts & Procurement Practice Group, NASA, to Paul E. Jordan, Esq., Government Accountability Office 1 (Nov. 8, 2005).

[2] Id.

[3] Id. at 2.

[4] Memorandum Decision from General Counsel, Government Accountability Office 1 (Nov. 10, 2005) (dismissing the protest to the MCAD procurement).

[5] See Memorandum from NASA Office of Inspector General, Assistant Inspector General for Auditing, to NASA Chief Engineer, General Counsel, and Procurement Officer at Johnson Space Center 5 (Aug. 23, 2006).

[6] Id.

[7] Id. at 7.

[8] Id.

[9] Memorandum from NASA Office of Inspector General, Assistant Inspector General for Auditing, to NASA Chief Engineer, General Counsel, and Procurement Officer at Johnson Space Center 3 (Sept. 21, 2006) (citing Sept. 12, 2006 comments submitted by NASA to NASA/OIG).