



**G A O**

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United States General Accounting Office  
Washington, DC 20548

B-158766

January 9, 2002

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. IV 1998), 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. Although there were no such occurrences with respect to our fiscal year 2001 recommendations, we are reporting an instance related to a fiscal year 2000 decision, where it only became apparent in fiscal year 2001 that the agency was not promptly implementing our recommendation.

In Aberdeen Tech. Servs., Inc., B-283727.2, Feb. 22, 2000, 2000 CPD ¶ 46, we considered a challenge to the Department of the Army's decision, reached after a cost comparison pursuant to Office of Management and Budget Circular No. A-76, that it would be more economical to manage and operate base industrial operations in-house at the Aberdeen Proving Ground, Maryland, rather than contract for the services with Aberdeen Technical Services (ATS), which had submitted the best private-sector proposal in the competition that preceded the comparison. We sustained ATS's protest on several grounds. We recommended that the Army correct errors that we found in the agency's calculation of the costs of in-house and contractor performance, as well as in the public/private cost comparison. Alternatively, we recommended that the Army revise the RFP, reopen discussions, and conduct a new cost comparison.

The Army did not implement our February 2000 recommendation, but advised our Office that, while it still plans to resolicit, there will be additional delays in doing so because of changes in the Army's requirements, requiring that the original solicitation be canceled. The Army estimates that a new solicitation will be issued in early 2002, some 2 years after issuance of our decision and recommendation. On June 19, 2001, we advised the relevant congressional committees that, in our view, this lengthy delay constituted a failure to implement our recommendation. See 31 U.S.C. § 3554(e)(1) (1994 and Supp. IV 1998).

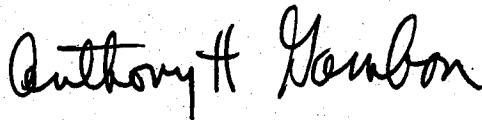
GAO-02-177R

By decision of August 22, we modified our recommendation, at ATS's request and without objection from the Army, to allow the firm to be reimbursed the costs of preparing its proposal. Aberdeen Tech. Servs.—Modification of Recommendation, B-283727.3, Aug. 22, 2001, 2001 CPD ¶ \_\_\_\_. ATS has submitted a claim to the Army detailing the time expended and costs incurred in preparing its proposal; the claim currently is under consideration by that agency.

During the fiscal year, we received 1,084 protests (including 32 cost claims) and 62 requests for reconsideration, for a total of 1,146 cases. We closed 1,098 cases: 1,040 protests (including 33 cost claims) and 58 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,



Anthony H. Gamboa  
General Counsel

Enclosure

**Suspension of Award/Performance Data**

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**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.

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**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).

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**Table A**

**Protests Filed Before Award—  
Contracts Awarded After Protest Filing**

<b>Defense Agencies</b>	<b>Civilian Agencies</b>
9	10

**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	11	23
Where agency found that continued performance was in Government's best interest	8	34

**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	4
Where agency found that continued performance was in Government's best interest	3	9