

SAAL-PA

MEMORANDUM FOR PRINCIPAL ASSISTANTS RESPONSIBLE FOR CONTRACTING

SUBJECT: 1Q2001 Quarterly Bid Protest Analysis Reports

The quarterly reports for GAO and interagency level protests for the period October 1 through December 31, 2000 (1Q01) is provided in accordance with AFARS 33.190. Additional information related to a GAO protest decision noted on the lessons learned portion of this report can be obtained on GAO's web site http://www.access.gpo.gov/su_docs/aces/aces170.shtml. GAO does not provide a decision on GAO protests that are dismissed or are academic. The interagency's level protest reports are not posted on a web site.

LTC Jacob B. Hansen
Director, Information
Management and Assessment

**QUARTERLY REPORT FOR GAO PROTESTS
FOR THE PERIOD JULY 1 THROUGH SEPTEMBER 30, 2000 (4Q00)**

1. Number of protests filed:

	1Q01	4Q00	1Q00
TOTAL	64	62	65
o AMC	20	20	21
o USACE	19	23	21
o DA Other	25	19	23

Please refer to listing of protests by MACOM at end of this report.

2. Number of protests sustained/granted:

	1Q01	4Q00	1Q00
TOTAL	1	4	4
o AMC	0	1	0
o USACE	0	0	1
o DA Other	1	3	3

3. Costs:

a. Costs and fees awarded by GAO to protester:

	1Q01	4Q00	1Q00
TOTAL	\$4,157	\$26,016	\$0
o AMC	\$0	\$0	\$0
o USACE	\$0	\$0	\$0
o DA Other	\$4,157	\$26,016	\$0

b. Estimated preaward value of requirement or postaward contract cost/price:

(1) Preaward protests (estimated value of requirement):

	1Q01	4Q00	1Q00
TOTAL	\$118,465,695	\$193,349,000	\$27,967,852
o AMC	\$19,723,133	\$168,328,618	\$20,080,000
o USACE	\$54,132,471	\$24,078,000	\$4,647,002
o DA Other	\$44,610,091	\$942,382	\$3,240,850

(2) Postaward protests (contract cost/price):

	1Q01	4Q00	1Q00
TOTAL	\$221,736,448	\$305,982,499	\$329,681,134
o AMC	\$48,606,977	\$165,263,409	\$145,728,067
o USACE	\$61,545,901	\$56,018,983	\$176,883,254
o DA Other	\$111,583,570	\$84,700,107	\$7,069,813

c. Total government personnel costs resulting from protests:

	1Q01	4Q00	1Q00
TOTAL	\$256,355	\$221,123	\$291,627
o AMC	\$90,938	\$176,942	\$133,545
o USACE	\$126,164	\$37,478	\$101,413
o DA Other	\$39,253	\$6,703	\$56,669

4. Lessons learned, issues and trends:

AMC Lessons Learned:

**a. Star Dynamics Corporation, B-286325.2, B-286325.3
Withdrawn**

Early Document Drop seemed to work well.

b. Hill Aerospace & Defense, LLC, B-285918, Withdrawn

Hopefully, the protests helped the Command refine its procedures for evaluation of surplus flight safety parts.

c. Trans Union Transport, Inc., B-286552.1, B-286552.2, Dismissed

Insufficient acquisition planning was done prior to issuing this solicitation. An in-depth review of the prior 5 year contracts coupled with acquisition reform initiatives and various subject matter expertise to include detailed market research would have resulted in a procurement package which would have better described the needs of the Government. Thereby eliminating the number of amendments and questions that resulted from this solicitation.

d. ATA Defense Industries, B-282511.12, Withdrawn

When requesting final & revised proposals, allow enough reasonable time for contractors to submit proposals.

USACE Lessons Learned:

a. Citywide Managing Services, B-281287.12, B-281287.13: DENIED.

After a long line of protests regarding the acquisition of base operations at FT Hamilton, NY, GAO found the USACE Philadelphia District had satisfied its obligations to perform a price analysis. GAO determined the agency's method of comparing the widely variant line item prices proposed by the offerors under vigorous price competition for a fixed-priced contract and the government estimate to be proper. Moreover, the agency was not required to downgrade awardee's highest-rated technical proposal because of its low price where the awardee verified its price and the agency reasonably determined that the awardee understood and could perform the contract at that price. GAO also denied a separate allegation that the awardee's proposal contained unbalanced item prices and the agency failed to assess whether the unbalancing posed an unacceptable risk to the government. GAO found that despite the agency's erroneous determination that prices were not unbalanced, there was no evidence of significant risk to the government arising from unbalanced prices and the agency's action therefore did not prejudice the protester. GAO also denied protester's challenge of the technical evaluation because the protest merely disagreed with the agency's evaluation and failed to provide evidence of an unreasonable evaluation. The lesson learned from this case is that solicitations that inspire vigorous competition will generally produce protests from disappointed offerors. The agency should do its best to avoid significant delay to the mission by ensuring the record of the evaluation process is well documented and well grounded in reason.

b. TLT Construction, B-286226: DENIED.

GAO held USACE's use of negotiated rather than sealed bidding procedures in a procurement for demolition and construction services for upgrading the D-Area barracks at FT Bragg, North Carolina, was proper. The holding was based on a finding that the agency, based on performance problems encountered on prior contracts, reasonably determined that discussions might be necessary to ensure the offerors fully understood the importance of timely, quality performance, and that award must be based on technical evaluation factors, as well as price. GAO also denied the protester's allegation that it is improper for an agency to rely on information retrieved from an electronic database to evaluate a construction contractor's past performance, without giving the protester an opportunity to comment on allegedly negative information in the database. GAO found support in the record that the protester previously had been give ample opportunities to clarify adverse past performance information in the database, and there is no reason to question the validity of the past performance information. The lesson learned from this case is that the USACE Construction Contractor Appraisal Support System (CCASS), a centralized, automated record, has been upheld as a reliable database for past performance on construction contractors.

c. McDonald Construction Services, B-285980, B-285980.2: DENIED.

The protester challenged USACE's award of a contract for the construction of a hospital central energy plant at Eglin Air Force Base, Florida. GAO denied the protester's allegation that USACE unreasonably evaluated

its proposal because it was downgraded under three separate evaluation areas for the same deficiency. In its decision, GAO relied on the record which showed USACE evaluated the protester's proposal in accordance with the criteria announced in the solicitation, the criteria assessed separate aspects of the proposals, and the deficiencies noted were reasonably related to all three evaluation areas at issue. The lesson learned from this case is that evaluation factors must be designed to assess different discrete aspects of the proposals and therefore a noted deficiency may be reasonably related to more than one distinct evaluation area.

DA Others - Lessons Learned:

a. Floro & Associates, B-285451.3 & .4.

Floro protested an award for management services under a section 8(a) multiple award, IDIQ contract issued by the General Services Administration. The IDIQ contract's SOW provided for "noncomplex integration services." The GAO determined that the management services at issue were materially different from noncomplex integration services, and hence were beyond the scope of the IDIQ contract. The protester also alleged that the acquisition, which was a GSA purchase for services required by the Army, violated the Economy Act. That protest ground was denied. Because this case involved corrective action taken in response to an earlier protest, the GAO recommended that the agency pay the protester's costs for both the instant protest and for the earlier protest.

Lesson learned: FAR 16.505 precludes protests of task orders under IDIQ contracts. One exception is for task orders issued beyond the scope of the IDIQ contract. Work required by a task order should be compared to the SOW in the IDIQ contract before the task order is issued. Another important lesson is to ensure that any corrective action taken in response to a GAO protest be objectively reasonable.

b. IT Facility Services, Inc., B-285841.

This was a protest of an A-76 competition to perform the DOL and DPW functions at Ft. Lee, VA. The protester alleged that the Army's labor estimates used to support its most probable cost analysis were flawed, that it was a conflict of interest to include on the SSEB Ft. Lee employees; that it was a conflict of interest for a SSEB member to be married to a person whose job was in jeopardy under the A-76 competition; and that it was improper for the Army's support contractor to support both the MEO development process and the private-vendor competition process. The protest was denied.

Lesson Learned: This important case held that employees who serve within a function under study, but whose jobs are not at risk, are not precluded from serving as members of an A-76 SSEB. GAO did find that the spousal relationship between one SSEB member and a person whose job was at risk in the study was a conflict of interest. The conflict was not substantial, however, because even if the tainted evaluator's scores were ignored, the protester would still not have been in line for this award. The lesson learned is to ensure that potential SSEB members are queried about family relationships with employees whose positions are at risk. Finally, GAO found no organization conflict of interest where a support contractor supports both the MEO and the private-sector competition provided that an adequate "firewall" is in place to isolate the discrete sets of employees involved.

c. James J. Flanagan Shipping Corp., B- 286129.

Flanagan protested the award of a fixed-price, indefinite-quantity contract to perform stevedoring and related services at the Port of Beaumont, Beaumont, Texas. Flanagan was the incumbent. Technical and cost proposals were to be submitted, with technical capability and past performance, in combination, being approximately equal to price. Flanagan's proposal contained numerous material deficiencies including the lack of a management plan, a security and safety plan, a quality control plan and a cargo loss and damage control program. In its protest Flanagan argued that because of its incumbent status, MTMC was well aware of its ability to perform the contract, a fact that outweighed any omissions in its proposals. The GAO denied

the protest, concluding that the Army reasonably rated protester's proposal unsatisfactory since it lacked adequate information to form the basis for an award.

Lesson learned: The Army has no obligation to look beyond an offeror's proposal in making an award determination. Incumbency status does not alter this important principle.

GAO PROTESTS FILED BY MAJOR COMMANDS (HCAs)

	1Q01	4Q00	1Q00
AMC TOTAL		20	21
ACLAL	0	0	0
ANDA	0	0	1
ARDEC	0	0	0
ARL	2	0	0
ATCOM	0	0	0
AMCOM	4	7	2
AMCOM (AATD)	0	0	0
BELVOIR	0	0	2
BGAD	0	0	1
CACWOO	0	1	0
CCAD	1	0	0
CBDCOM	0	0	0
CECOM	6	4	0
DESCOM-Letterkenny	0	0	0
DPG	0	0	0
IOC	0	1	2
LEAD	0	0	0
MCALESTER	0	0	0
MICOM	0	0	0
NATICK	0	0	0
OSC	1	0	0
PBA	0	0	0
RMA	0	0	0
RRAD	0	0	0
SBCCOM	1	0	1
SSCOM	0	0	0
TACOM	3	7	9
TECOM	0	0	1
TECOM-OPTEC	0	0	0
TECOM-Dugway	0	0	0
TECOM-Yuma Proving Group	0	0	0
USMA	2	0	2
VHFS	0	0	0
WSMR	0	1	0
WVA	0	0	0

	1Q01	4Q00	1Q00
USACE TOTAL	19	23	21
U.S. Army Engineer District			
Alaska	0	0	0
Baltimore	0	5	0
Buffalo	0	0	0
Charleston	0	0	1
Chicago	0	0	0
Detroit	0	0	0
Europe	1	0	0
Fort Worth	0	0	0
Galveston	0	0	0
Headquarters	1	1	0
Humphreys Eng. Center	0	0	0
Huntington	0	0	0
Huntsville	4	0	2
Jacksonville	0	0	0
Japan	0	0	0
Kansas City	0	1	0
Little Rock	0	0	0
Los Angeles	0	0	0
Louisville	1	4	1
Memphis	1	1	0
Mobile	3	3	2
Nashville	0	0	0
New England	0	0	0
New York	0	0	1
New Orleans	2	2	3
Norfolk	0	0	4
Omaha	0	0	0
Pacific Ocean Division	0	0	0
Philadelphia	3	0	0
Pittsburgh	1	0	0
Portland	0	0	1
Rock Island	0	0	0
Sacramento	0	1	1
Savannah	1	4	1
Seattle	0	0	0
St. Louis	1	0	0
St. Paul	0	0	1
Transatlantic	0	0	0
Transatlantic (Europe)	0	0	0
Tulsa	0	0	2
Vicksburg	0	1	0
Walla Walla	0	0	0

DA OTHER TOTAL	1Q01	4Q00	1Q00
	25	19	23
Defense Supply Service - Wash	3	0	1
HQ Military Traffic Mgmt Cmd	0	1	2
Mil District of Wash	0	2	0
MEDCOM	6	2	4
National Guard Bureau	0	3	3
Ofc Dep Cdr for Health Care	0	0	0
USA Contracting Sys Cmd	0	0	0
USA Force Command	5	2	7
USA Information Sys Cmd	2	2	0
USA Intel & Security Cmd	0	0	0
USA Medical Res. & Mat Cmd	0	0	0
USA Pacific	1	0	0
USA South	0	0	0
USASDC	0	0	0
USA Space & Missel Def Cmd	0	0	0
USA TRADOC	6	2	6
8th USA - Korea	0	4	0
USSOC	0	1	0
USACFSC	0	0	0
USAREUR	2	0	0

**QUARTERLY REPORT FOR AGENCY LEVEL PROTESTS
FOR THE PERIOD JULY 1 THROUGH SEPTEMBER 30, 2000 (4Q00)**

1. Number of protests filed:

	1Q01	4Q00	1Q00
TOTAL	24	28	16
o AMC	8	4	0
o USACE	6	17	14
o DA Other	10	7	2

Please refer to listing of protests by MACOM at end of this report.

2. Number of protests sustained/granted:

	1Q01	4Q00	1Q00
TOTAL	3	0	0
o AMC	2	0	0
o USACE	0	0	0
o DA Other	1	0	0

3. Costs:

a. Costs and fees awarded to protester:

	1Q01	4Q00	1Q00
TOTAL	\$4,827	\$4,616	\$0
o AMC	\$0	\$0	\$0
o USACE	\$0	\$0	\$0
o DA Other	\$4,827	\$4,616	\$0

(1) Preaward protests (estimated value of requirement):

	1Q01	4Q00	1Q00
TOTAL	\$10,508,556	\$88,859,984	\$114,435,031
o AMC	\$5,961,046	\$50,743,500	\$108,650,000
o USACE	\$1,742,435	\$25,695,976	\$4,951,931
o DA Other	\$2,805,075	\$12,420,508	\$833,100

(2) Postaward protests (contract cost/price):

	1Q01	4Q00	1Q00
TOTAL	\$773,322,809	\$204,262,727	\$47,641,372
o AMC	\$690,121,580	\$1,963,886	\$11,700,000
o USACE	\$6,205,797	\$29,446,373	\$35,702,722
o DA Other	\$76,995,432	\$172,852,468	\$238,650

c. Total government personnel costs resulting from protests:

	1Q01	4Q00	1Q00
TOTAL	\$44,610	\$58,431	\$56,761
o AMC	\$33,472	\$17,785	\$21,055
o USACE	\$4,505	\$33,450	\$35,706
o DA Other	\$6,633	\$7,196	\$0

4. Lesson learn, issues, and trends:

AMC:

- a. **The Goodyear Tire & Rubber Company**, 0011001 & 0021001
Dismissed

Contract Specialists have been reminded to continue coordination with Transportation Specialists. Contract Specialists will provide references to the unit prices in the proposals, particularly when the price changes have been made on amendments.

Contract Specialists should request copies of the transportation worksheets so that they can be assured that the evaluation was performed in accordance with the Section M provisions of the solicitation.

TACOM is reviewing its evaluation provisions in Section M for clarity, consistency and appropriateness.

b. **GAMO Truck Parts, Inc.**, 0081100, Withdrawn

Discussions with the Protester are helpful when trying to resolve a question of fact.

USACE Lessons Learned: No significant information to report.

Other DA Lessons Learned: No significant information to report.

	1Q01	4Q00	1Q00
AMC TOTAL		4	6
ACLAL	0	0	0
ANDA	0	0	0
ARDEC	0	0	0
ARL	0	0	0
ATCOM	0	0	0
AMCOM	1	0	1
AMCOM (AATD)	0	0	0
BGAD	0	0	0
CACWOO	0	0	0
CCAD	0	0	0
CBDCOM	0	0	0
CECOM	3	0	2
DESCOM-Letterkenny	0	0	0
DPG	0	0	0
IOC	1	1	0
LEAD	0	0	0
MCALESTER	0	0	0
MICOM	0	0	0
NATICK	0	0	0
PBA	0	0	0
RMA	0	0	0
RRAD	0	0	0
SBCCOM	0	0	0
SSCOM	0	0	1
PM SANG - Saudi	0	0	1
TACOM	4	3	1
TECOM	0	0	0
USMA	0	0	0
WSMR	0	0	0
WVA	0	0	0
YPG	0	0	0

U.S. Army Engineer District

Alaska	0	0	0
Baltimore	1	0	1
Buffalo	0	0	0
Charleston	0	0	0
Chicago	2	0	0
Detroit	0	0	0
Europe	0	0	1
Fort Worth	0	4	0
Galveston	0	0	0
Humphreys Eng. Center	0	0	1
Huntington	0	0	0
Huntsville	0	1	0
Jacksonville	0	0	0
Japan	0	0	0
Kansas City	0	0	1
Little Rock	0	0	0
Los Angeles	0	0	0
Louisville	1	4	0
Memphis	0	1	0
Mobile	0	0	0
Nashville	0	0	0
New England	0	0	0
New York	0	3	1
New Orleans	0	1	0
Norfolk	1	1	1
Omaha	0	0	1
Pacific Ocean Division	0	0	0
Philadelphia	0	0	1
Pittsburgh	1	0	0
Portland	0	0	1
Rock Island	0	0	0
Sacramento	0	0	1
Savannah	0	1	2
Seattle	0	0	1
St. Louis	0	0	0
St. Paul	0	0	0
Transatlantic	0	1	1
Transatlantic (Europe)	0	0	0
Tulsa	0	0	0
Vicksburg	0	0	0
Walla Walla	0	0	0
Waterways Exp. Station	0	0	0
Wilmington District	0	0	0

	4Q00	4Q00	1Q00
DA OTHER TOTAL	10	7	2
Defense Supply Service - Wash	0	0	1
HQ Military Traffic Mgmt Cmd	0	0	1
Mil District of Wash	0	0	0
MEDCOM	0	0	0
National Guard Bureau	3	0	0
Ofc Dep Cdr for Health Care	0	0	0
USA Contracting Sys Cmd	0	0	0
USA Force Command	0	0	0
USA Information Sys Cmd	0	0	0
USA Intel & Security Cmd	0	0	0
USA Medical Res. & Mat Cmd	0	0	0
USA Pacific	0	0	0
USA South	0	0	0
USASDC	0	0	0
USA Space & Missel Def Cmd	0	0	0
USA TRADOC	0	0	0
8th USA - Korea	7	7	0
USSOC	0	0	0
USACFSC	0	0	0

