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Government Accountability Office Bid Protests in Air Force Source Selections

Evidence and Options—
Executive Summary

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Summary

When an offeror participating in an Air Force source selection believes that the Air Force has made an error that unjustly “prejudices” its chance of winning the source selection, the offeror can file a protest with GAO. During FY 2000 through FY 2008, the Air Force experienced such bid protests in an average of 93 contract awards a year, and GAO sustained an average of three of these protests a year.

The need to change three source selections a year does not sound like a serious problem in an organization that buys as much as the Air Force does. Unfortunately, a number of the protests that GAO sustained during this period—namely, protests in the CSAR-X and KC-X programs—were highly visible and caused significant disruptions in resource and operational planning in the Air Force. OSD temporarily suspended the Air Force’s control of the KC-X source selection. Complications caused by the CSAR-X protest sustainment ultimately helped lead OSD to cancel the program. Consequently, the Air Force and OSD began a series of intense reviews of Air Force source selection policies and practices.

As part of this effort, during the summer of 2008, SAF/AQ asked PAF to identify specific changes in policies and practices that could improve Air Force performance in GAO bid protests. The Air Force asked PAF to pay special attention to how the Air Force conducts source selections in large acquisitions. This executive summary synthesizes findings from a documented briefing that addresses these requests.

Our analysis found that, during the 1990s, the number of unwarranted protests dropped markedly, leaving the Air Force in a position

to focus on protests that were more likely to require corrective action. Since 2001, the numbers of corrective actions and of merit reviews per 1,000 contract awards have slowly dropped. The Air Force should be careful to protect the policies and practices that have supported this pattern of steadily improving performance.

The threat manifested in the CSAR-X and KC-X programs appears to be relatively new in character and so does justify significant adjustments in policies and practices in appropriate circumstances. But we expect this threat to present itself in a relatively small number of acquisitions—the large, complex ones, with relatively large stakes for the participants—and it is probably more likely when the participants understand how to pursue sophisticated protests. Such protests will continue and could increase in number until the Air Force demonstrates that it can effectively counter them. The Air Force should focus its countermeasures on the places where the threat is greatest. That should make it easier to tailor the countermeasures to the circumstances and to choose the set of measures best suited to helping the Air Force avoid future costs and delays, such as those associated with the protests sustained in the CSAR-X and KC-X source selections.

In particular, the Air Force can take the following steps to reduce the risks associated with sophisticated protests:

- Recognize a bid protest as an adversarial proceeding with finely tuned rules. Pay more attention to how GAO views a bid protest. Expect GAO to view the priorities associated with running a source selection differently than the Air Force does. Be prepared to pursue the Air Force's interests within the constraints imposed by GAO's priorities.
- Simplify and clarify selection criteria and priorities. The Air Force is already moving aggressively in this direction. The new approach that the Weapon Systems Acquisition Reform Act (WSARA) prescribes for capability and requirements determination could help clarify the relative importance of requirements in ways that promote this goal.
- Focus formal cost estimates on the instant contract. Again, the Air Force is already moving aggressively in this direction. As it

does so, it should be clear in its source selections how and why the cost estimates it uses to discriminate among proposals differ from the cost estimates it uses in its submissions to the Defense Acquisition Board.

- Tighten discipline throughout the source selection. The Air Force plans to rely more heavily on external review processes to enhance discipline. External review can help; greater involvement of attorneys as part of any external review should be especially helpful. But the issues arising in sophisticated protests can ultimately be addressed only by hands-on, close attention to detail that an external review team cannot perform. Tools are available to support discipline and simplify internal review. New forms of training and coaching can also help.
- Gather new data to help the Air Force target its efforts. More attention to the costs imposed by different forms of protest could help the Air Force determine how much to spend to avoid these costs. Better data on the extent to which sustained protests actually change who wins a competition could help the Air Force inform GAO about when an error is actually likely to prejudice any offeror and hence justify a sustainment.