2833.103 Protests to the agency.

(a) The filing time frames in FAR 33.103(e) apply. An agency protest is filed when the protest is received at the location the solicitation designates for serving protests.

(b) Only interested parties may file a protest.

(c) An interested party filing an agency protest has the choice of requesting either that the contracting officer or an individual above the level of the contracting officer decide the protest.

(d) In addition to the information required by FAR 33.103(d)(2), the protest shall:

(1) Indicate that it is a protest to the agency.

(2) Be filed with the contracting officer or other official designated to receive protests.

(3) State whether the protestor chooses to have the contracting officer or an individual above the level of the contracting officer decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest.

(4) Indicate whether the protestor prefers to make an oral or written presentation of arguments in support of the protest to the Deciding Official.

(e) Upon receipt of a protest by the agency, the contracting officer, even when not serving as the Deciding Official, will notify other vendors competing in the procurement of the protest, any stay of award or suspension of performance, and/or any determination under FAR 33.103(f)

(1) or (3) if and when made.

(f) Intervenors to the protest are not permitted.

(g) The decision by the Agency Protest Official is an alternative to a decision by the contracting officer on a protest. The Agency Protest Official will not consider appeals from a contracting officer's decision on an agency protest and a decision by the Agency Protest Official is final and not appealable.

(h) The protestor has only one opportunity to support or explain the substance of its protest. DOJ procedures do not provide for any discovery. The Deciding Official has discretion to request additional information from the agency or the protestor.

(i) A protestor may represent itself or be represented by legal counsel. DOJ will not reimburse the protester for any legal fees or costs related to the agency protest.

(j) If an agency protest is received before contract award, the contracting officer shall not make award unless the HCA or designee makes a determination to proceed under FAR 33.103(f)(1). Similarly, if an agency protest is filed within ten (10) days after award or within 5 days after a debriefing date has been offered to the protester under a timely debriefing request under FAR 15.505 or 15.506, whichever is later, the contracting officer shall suspend contract performance unless the HCA or designee makes a determination to proceed under FAR 33.103(f)(3). Any stay of award or suspension of performance remains in effect until the agency protest is decided, dismissed, or withdrawn.

(k) The deciding official's decision may be oral or written. If oral, the deciding official shall send a confirming letter after the decision using a means that allows proof of receipt, including electronic mail. The letter shall:

(1) State whether the protest was denied, sustained, or dismissed;

(2) Indicate the date the decision was provided; and

(3) Provide the rationale for the decision.

(l) If the deciding official sustains the protest, relief may consist of any of the following:

(1) Termination of the contract for convenience or cause.

(2) Recompeting the requirement.

(3) Amending the solicitation.

(4) Refraining from exercising contract options.

(5) Reevaluating the offers or bids and making a new award determination.

(6) Other action that the deciding official determines is appropriate.

(m) Proceedings on an agency protest shall be dismissed if a protest on the same or similar basis is filed with a protest forum outside of DOJ.

Parent topic: Subpart 2833.1—Protests