

33.103 Protests to the agency.

(a) *Reference.* Executive Order 12979, *Agency Procurement Protests*, establishes policy on agency procurement protests.

(b) Prior to submission of an agency protest, all parties shall use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(c) The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

(d) The following procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Protests shall be concise and logically presented to facilitate review by the agency. Failure to substantially comply with any of the requirements of paragraph (d)(2) of this section may be grounds for dismissal of the protest.

(2) Protests shall include the following information:

(i) Name, address, and fax and telephone numbers of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.

(iv) Copies of relevant documents.

(v) Request for a ruling by the agency.

(vi) Statement as to the form of relief requested.

(vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the contracting officer or other official designated to receive protests.

(4) In accordance with agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available. Agency procedures and/or solicitations shall notify potential bidders and offerors whether this independent review is available as an alternative to consideration by the contracting officer of a protest or is available as an appeal of a contracting officer decision on a protest. Agencies shall designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When practicable, officials designated to conduct the independent review should not have had previous personal

involvement in the *procurement*. If there is an agency appellate review of the *contracting officer's* decision on the *protest*, it will not extend GAO's timeliness requirements. Therefore, any subsequent *protest* to the GAO *must* be *filed* within 10 days of knowledge of initial adverse agency action (4 CFR21.2(a)(3)).

(e) *Protests* based on alleged apparent improprieties in a *solicitation* *shall* be *filed* before bid opening or the closing date for receipt of proposals. In all other cases, *protests* *shall* be *filed* no later than 10 days after the basis of *protest* is known or *should* have been known, whichever is earlier. The agency, for good cause shown, or where it determines that a *protest* raises issues significant to the agency's *acquisition* system, *may* consider the merits of any *protest* which is not timely *filed*.

(f) Action upon receipt of *protest*.

(1) Upon receipt of a *protest* before award, a contract *may* not be awarded, pending agency resolution of the *protest*, unless contract award is justified, *in writing*, for urgent and compelling reasons or is determined, *in writing*, to be in the best interest of the Government. Such justification or determination *shall* be approved at a level above the *contracting officer*, or by another official pursuant to agency procedures.

(2) If award is withheld pending agency resolution of the *protest*, the *contracting officer* will inform the *offerors* whose *offers* might become eligible for award of the contract. If appropriate, the *offerors* *should* be requested, before expiration of the time for acceptance of their *offers*, to extend the time for acceptance to avoid the need for resolicitation. In the event of failure to obtain such extension of *offers*, consideration *should* be given to proceeding with award pursuant to paragraph (f)(1) of this section.

(3) Upon receipt of a *protest* within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with [15.505](#) or [15.506](#), whichever is later, the *contracting officer* *shall* immediately suspend performance, pending resolution of the *protest* within the agency, including any review by an independent higher level official, unless continued performance is justified, *in writing*, for urgent and compelling reasons or is determined, *in writing*, to be in the best interest of the Government. Such justification or determination *shall* be approved at a level above the *contracting officer*, or by another official pursuant to agency procedures.

(4) Pursuing an agency *protest* does not extend the time for obtaining a stay at GAO. Agencies *may* include, as part of the agency *protest* process, a voluntary *suspension* period when agency *protests* are denied and the protester subsequently files at GAO.

(g) Agencies *shall* make their best efforts to resolve agency *protests* within 35 days after the *protest* is *filed*. To the extent permitted by law and regulation, the parties *may* exchange relevant information.

(h) Agency *protest* decisions *shall* be well-reasoned, and explain the agency position. The *protest* decision *shall* be provided to the protester using a method that provides evidence of receipt.

Parent topic: [Subpart 33.1 - Protests](#)