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