PART 733—PROTESTS, DISPUTES, AND APPEALS

Authority: Sec. 621. Pub. L. 87-195, 73 Stat. 445 (22 U.S.C. 2381), as amended: E.O. 12163, Sept. 29, 1979, 44 FR 56673, 3 CFR, 1979 Comp. p. 435.

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Parent topic: SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Subpart 733.1—Protests

Source: 61 FR 39094, July 26, 1996, unless otherwise noted.

733.101 Definitions.

(a) All “days” referred to in this subpart are deemed to be “calendar days”, in accordance with (48 CFR) FAR 33.101. In the case of USAID overseas offices with non-Saturday/Sunday weekend schedules, the official post weekend applies in lieu of Saturday and Sunday.

(b) All other terms defined in (48 CFR) FAR 33.101 are used herein with the same meaning.

733.103-70 Protests to the agency.

USAID follows the agency protest procedures in (48 CFR) FAR 33.103, as supplemented by this section.

733.103-71 Filing of protest.

(a) Protests must be in writing and addressed to the contracting officer for consideration by the

M/OAA Director.

(b) A protest shall include, in addition to the information required in (48 CFR) FAR 33.103(d)(2), the name of the issuing Mission or office.

(c) Material submitted by a protester will not be withheld from any interested party outside the Government or from any Government agency if the M/OAA Director decides to release such material, except to the extent that the withholding of such information is permitted or required by law or regulation.

733.103-72 Responsibilities.

(a) *M/OAA Director.* The decision regarding an agency protest shall be made by the M/OAA Director within 30 days from the date a proper protest is filed unless the M/OAA Director determines that a longer period is necessary to resolve the protest, and so notifies the protester in writing. The M/OAA Director shall make his or her decision after personally reviewing and considering all aspects of the case as presented in the protest itself and in any documentation provided by the contracting officer, and after obtaining input and clearance from the Office of the General Counsel's Division for Litigation and Enforcement (GC/LE). The decision shall be in writing and constitutes the final decision of the Agency.

(b) *Contracting officer.* The contracting officer is responsible for requesting an extension of the time for acceptance of offers as described in (48 CFR) FAR 33.103(f)(2).

733.103-73 Protests excluded from Agency consideration.

(a) *Contract administration.* Disputes between a contractor and USAID are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978.

(b) *Small business size standards and standard industrial classification.* Challenges of established size standards or the size status of particular firms, and challenges of the selected standard industrial classification are for review solely by the Small Business Administration.

(c) *Procurement under Section 8(a) of the Small Business Act.* Contracts are let under Section 8(a) of the Small Business Act to the Small Business Administration solely at the discretion of the contracting officer, and are not subject to review.

(d) *Protests filed in the Government Accountability Office (GAO).* Protests filed with the GAO will not be reviewed.

(e) *Procurements funded by USAID to which USAID is not a party.* No protest of a procurement funded by USAID shall be reviewed unless USAID is a party to the acquisition agreement.

(f) *Subcontractor protests.* Subcontractor protests will not be considered.

(g) *Judicial proceedings.* Protests will not be considered when the matter involved is the subject of litigation before a court of competent jurisdiction or when the matter involved has been decided on the merits by a court of competent jurisdiction.

(h) *Determinations of responsibility by the contracting officer.* A determination by the contracting

officer that a bidder or offeror is or is not capable of performing a contract will not be reviewed by the M/OAA Director.

(i) *Small Business Certificate of Competency Program.* Any referral made to the Small Business Administration pursuant to section 8(b)(7) of the Small Business Act, or any issuance of, or refusal to issue, a certificate of competency under that section will not be reviewed by the M/OAA Director.

Subpart 733.27—USAID Procedures for Disputes and Appeals

733.270 Designation of Civilian Board of Contract Appeals (CBCA) to hear and determine appeals under USAID contracts.

(a) The Civilian Board of Contract Appeals (CBCA) was established by section 847 of the National Defense Authorization Act for Fiscal Year 2006 to hear and decide contract disputes between Government contractors and executive civilian agencies under the provisions of the Contract Disputes Act of 1978, 41 U.S.C. 7101-7109, and regulations and rules issued under that statute. The CBCA is USAID's board for hearing and deciding appeals to contracting officer decisions.

(b) USAID must follow CBCA Rules of Procedure (see *www.cbca.gsa.gov*).

(c) The Office of the General Counsel's Division of Litigation and Enforcement (GC/LE) will assure representation of the interests of the Government in proceedings before the CBCA.

(d) All officers and employees of USAID must cooperate with the CBCA and GC/LE in the processing of appeals so as to assure their speedy and just determination.