PART 933—PROTESTS, DISPUTES, AND APPEALS

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

Source: 51 FR 31336, Sept. 3, 1986, unless otherwise noted.

Subpart 933.1—Protests

933.102 General.

933.103 Protests to the agency.

933.104 Protests to GAO.

933.106 Solicitation provisions and contract clauses.

Parent topic: SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Subpart 933.1—Protests

Source: 61 FR 41708, Aug. 9, 1996, unless otherwise noted.

933.102 General.

(b) The Heads of Contracting Activities (HCA), for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, provide corrective relief in response to a protest in accordance with 48 CFR 33.102(b).

933.103 Protests to the agency.

(a) *Reference.* The Department of Energy (DOE) does not accept or adjudicate protests from prospective subcontractors.

(c) The Department of Energy encourages direct negotiations between an offeror and the contracting officer, including alternative dispute resolution (ADR) techniques. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral party. Both the protester and the Department must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR techniques to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraphs (f) and (g) of this section.

(f)(5) Upon receipt of a protest filed against DOE, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iv).

(6) Protests filed with the contracting officer before or after award shall be decided by the HCA

except for the following cases, which shall be decided by the Senior Procurement Executive:

(i) The protester requests that the protest be decided by the Senior Procurement Executive;

(ii) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made;

(iii) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on Department of Energy (DOE) acquisition policy; or

(iv) The SPE elects to decide the protest.

(g) The official identified in paragraph (f)(6) of this section will render a decision on a protest within 35 calendar days, unless a longer period of time is deemed necessary.

933.104 Protests to GAO.

The GAO does not have jurisdiction over protests from subcontractors.

(a)(2) The contracting officer shall provide the notice of protest.

(b)

(1) The finding required under FAR 33.104(b)

(1) shall be concurred upon by the local DOE counsel with cognizance over the underlying procurement and the Senior Program Official, and approved by the SPE before the HCA authorizes a contract award. The finding shall also address the likelihood that the protest will be sustained by the GAO.

(c)(2) The finding required by FAR 33.104(c)(2) shall be concurred upon by the local DOE counsel with cognizance over the underlying procurement and the Senior Program Official, and approved by the SPE before the HCA authorizes contract performance.

(g) *Notice to GAO.* DOE's policy is to comply promptly with the recommendations in Comptroller General decisions unless compelling reasons exist. Any decision to not comply shall be substantiated by the HCA making the award, after approval by the SPE. The report to the GAO regarding a decision to not comply with the GAO's recommendation shall be transmitted to the GAO by the HCA making the award or, if a DOE-wide policy issue is involved, the report shall be provided by the SPE.

933.106 Solicitation provisions and contract clauses.

(a) When using the provision at FAR 52.233-2, Service of Protest, the Contracting Officer shall insert the provision at 952.233-2, Service of Protest.