PART 2833—PROTESTS, DISPUTES, AND APPEALS

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Subpart 2833.1—Protests

2833.101 Definitions.

(a) *Agency Protest Official (APO)* means the Deciding Official for a procurement protest filed with a contracting activity of DOJ when the contracting officer will not be the Deciding Official because of the protestor's election under JAR 22833.103(b). The HCA will designate the individual who will serve as the APO for a given protest subject to the following:

(1) The APO will be at an organizational level above that of the contracting officer, will be knowledgeable about the acquisition process in general, and will not have had any previous personal involvement or programmatic interest in the procurement that is the subject of the protest.

(2) The departmental or bureau Competition Advocate may serve as the APO.

(b) *Deciding Official* means the official who will review and decide a procurement protest filed with the agency. The Deciding Official will be the contracting officer unless the protestor requests pursuant to JAR 2833.103(b) that the protest be decided by an individual above the level of the contracting officer, in which case the HCA will designate an APO to serve as the Deciding Official.

(c) *Interested party* means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

2833.102 General.

(a) This part prescribes policies and procedures for processing protests to DOJ in accordance with with FAR 33.103 and Executive Order 12979, Agency Procurement Protests, dated October 25, 1995.

(b) Contracting officers and contractors are encouraged to use their best efforts to resolve concerns outside of the protest process through frank and open discussion as required by FAR 33.103(b) or through alternative dispute resolution techniques where appropriate.

(c) Responsibilities are as follows:

(1) *Contracting officers.*

(i) Include the provision at JAR 2852.233-70 in all solicitations that are expected to exceed the simplified acquisition threshold.

(ii) When serving as the Deciding Official, decide the protest using the procedures in this subpart and FAR 33.103(d)(2).

(iii) If the protestor requests that the protest be decided at a level above the contracting officer, the contracting officer shall ensure that the Agency Protest Official, once designated, receives a copy of the protest and any other materials the protestor has provided to the contracting officer in support of the protest.

(2) *Agency Protest Official.* The APO shall use the procedures in this subpart and FAR 33.103 to provide an independent review of and decision on the issues raised in the protest.

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.

Subpart 2833.2—Disputes and Appeals

2833.203 Applicability.

The SPE is the agency head for the purposes of FAR 33.203(b).

2833.209 Suspected fraudulent claims.

Contracting officers shall report suspected fraudulent claims to the OIG for investigation.

2833.211 Contracting officer's decision.

The Civilian Board of Contract Appeals (CBCA) hears and decides contract disputes originating from DOJ.

2833.214 Alternative dispute resolution (ADR).

2833.214-70 Policy.

It is DOJ's goal to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Therefore, contracting officers will consider all possible means of reaching a negotiated settlement consistent with the Government's best interest, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.