2852.233-70 Protests Filed Directly with the Department of Justice.

As prescribed in JAR 2833.102(d), insert a clause substantially as follows:

Protests Filed Directly With the Department of Justice (NOV 2020)

(a) The following definitions apply in this provision:

(1) “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 2833.103(b)

(2) “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.

(3) “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.

(b) Only interested parties may file a protest.

(c) An interested party filing a protest with the DOJ has the choice of requesting either that the Contracting Officer or the APO decide the protest.

(d) A protest filed directly with the DOJ shall:

(1) Indicate that it is a protest to DOJ.

(2) Be filed with the Contracting Officer.

(3) State whether the protestor chooses to have the Contracting Officer or the Agency Protest Official decide the protest. If the protestor 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.

(5) Include the information required by FAR 33.103(d)(2):

(i) Name, address, facsimile number and telephone number of the protestor.

(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 protestor.

(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 protestor is an interested party for the purpose of filing a protest.

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

(e) The decision by the APO is an alternative to a decision by the Contracting Officer. The APO will not consider appeals from the Contracting Officer's decision on an agency protest and a decision by the APO is final and not appealable.

(f) The Deciding Official may conduct a scheduling conference. The scheduling conference, if conducted, will establish deadlines for oral or written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. The deciding official may hear oral arguments in support of the agency protest at the same time as the scheduling conference, depending on availability of the necessary parties.

(g) Oral conferences may take place either by telephone or in person.

(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 may request additional information from the agency or the protestor. The deciding official will resolve the protest through informal presentations or meetings to the maximum extent practicable.

(i) A protestor may represent itself or be represented by legal counsel. The DOJ will not reimburse the protester for any legal fees related to the agency protest.

(j) The DOJ will stay award or suspend contract performance in accordance with FAR 33.103(f), unless the 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. The justification or determination shall be approved at a level above the Contracting Officer. The stay or suspension, unless over-ridden, remains in effect until the protest is decided, dismissed, or withdrawn.

(k) The deciding official will make a best effort to issue a decision on the protest within thirty-five (35) days after the filing date. The decision shall be written, and provided to the protestor using a method that provides for evidence of receipt.

(l) The DOJ may dismiss or stay proceedings on an agency protest if a protest on the same or similar basis is filed with a forum outside DOJ.

(End of Clause)

Parent topic: Subpart 2852.2—Text of Provisions and Clauses