

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 1033—PROTESTS, DISPUTES, AND APPEALS

Subpart 1033.1—Protests

Sec.

1033.103 Protests to the Agency.

Subpart 1033.2—Appeals

1033.270 Treasury contract appeals.

AUTHORITY: 41 U.S.C. 418b (a) and (b), as delegated by Department of the Treasury Order 101-30 and Treasury Directive 12-11.

Subpart 1033.1—Protests

1033.103 Protests to the Agency.

(a) *Policy.* It is the Department's policy to resolve protests in an informal manner whenever possible. Protesters are strongly encouraged to address their concerns to the contracting officer prior to resorting to litigation or other formal, external means of resolution. The objectives of the following procedures are to resolve agency protests effectively, to help build confidence in the Department's procurement system, to reduce the need to file protests at GAO or GSBCA, and to provide both the Department and the protester maximum information regarding their respective positions.

(b) *Procedures.* (1) Agency protest may be submitted by interested parties to the contracting officer, who will normally be designated in FAR provision 52.233-2 of the solicitation.

(2) Protests based on alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In negotiated acquisitions, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(3) In cases other than those covered in paragraph (b)(2) of this section, protests shall be filed not later than 10

working days after the basis of protest is known or should have been known, whichever is earlier.

(4) Protests shall be in writing and shall include, as a minimum, the following information:

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

(ii) Solicitation or contract number;

(iii) Detailed statement of the legal and factual grounds for the protest, including copies of relevant documents;

(iv) Request for a ruling by the contracting officer to whom the protest is submitted;

(v) Statement as to the form of relief requested.

(5) Protest submissions shall be concise, logically arranged, and state sufficient grounds of protest. Failure to comply with any of the above requirements may be grounds for dismissal of the protest. A protester may request an informal conference with the contracting officer, which may be granted at the latter's sole discretion.

(6) Upon receipt of an agency protest, the contracting officer shall:

(i) Immediately notify legal counsel and the Departmental Office of Procurement (MMK) and provide each with a copy of the protest;

(ii) Prepare a report as prescribed in FAR 33.104(a)(2), except that, if the contract action or contract performance continues after receipt of the protest, the report shall include any determination prescribed in FAR 33.103(a) or 1033.103(b)(9);

(iii) Obtain review of the protest response by legal counsel and forward the protest response for MMK review and approval at least three working days prior to the due date; and

(iv) Ensure that the protest response is received by the protester no later than 25 working days after receipt of the protest.

(7) If the contracting officer and the protester agree on corrective action, a report is not required; however, in addition to amending the solicitation or taking other corrective action, the contracting officer shall inform the protester in writing of the proposed corrective action and shall obtain from

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the protester a written notice withdrawing the protest. A copy of this notice and any amendment shall be provided to MMK.

(8) If a written protest before award has been lodged with the contracting officer, only the bureau chief procurement officer may make the determination described in FAR 33.103(a). Prior to making an award of a contract under the circumstances in FAR 33.103(a), the advice of legal counsel shall be obtained.

(9) If a written protest after award has been lodged with the contracting officer, the bureau chief procurement officer may authorize contract performance notwithstanding the pending protest if he or she makes a written determination that (i) performance of the contract is in the Government's best interest, or (ii) urgent and compelling circumstances significantly affecting interests of the United States do not permit waiting for the protest decision. A copy of this determination shall be forwarded to MMK.

(Approved by the Office of Management and Budget under control number 1505-0107)

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Subpart 1033.2—Appeals

1033.270 Treasury contract appeals.

The General Services Administration Board of Contract Appeals has been designated to serve as the authorized representative of the Secretary of the Treasury in hearing, considering, and determining all appeals of decisions of contracting officers filed by contractors pursuant to Subpart 33.2 of the FAR (other than contracts of the Comptroller of the Currency). Where "agency Board of Contract Appeal" appears in FAR Subpart 33.2 this shall be deemed to mean the General Services Administration Board of Contract Appeals. Appeals of contracting officer decisions under FAR Subpart 33.2 shall be governed by the Rules of the General Services Administration Board of Contract Appeals (48 CFR chapter 61, (part 6101)).

[50 FR 31844, Aug. 7, 1985; 51 FR 6741, Feb. 26, 1986]