

§ 17.15

§ 17.15 Filing a protest.

(a) Only an interested party may file a protest, and shall initiate a protest by filing a written protest with the Office of Dispute Resolution for Acquisition within the times set forth below, or the protest shall be dismissed as untimely:

(1) Protests based upon alleged improprieties in a solicitation or a SIR that are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed prior to bid opening or the time set for the receipt of initial proposals.

(2) In procurements where proposals are requested, alleged improprieties that do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation;

(3) For protests other than those related to alleged solicitation improprieties, the protest must be filed on the later of the following two dates:

(i) Not later than seven (7) business days after the date the protester knew or should have known of the grounds for the protest; or

(ii) If the protester has requested a post-award debriefing from the FAA Product Team, not later than five (5) business days after the date on which the Product Team holds that debriefing.

(b) Protest shall be filed at:

(1) Office of Dispute Resolution for Acquisition, AGC-70, Federal Aviation Administration, 400 7th Street, SW., Room 8332, Washington, DC 20590, Telephone: (202) 366-6400, Facsimile: (202) 366-7400; or

(2) Other address as shall be published from time to time in the FEDERAL REGISTER.

(c) A Protest shall be in writing, and set forth:

(1) The protester's name, address, telephone number, and facsimile (FAX) number;

(2) The name, address, telephone number, and FAX number of a person designated by the protester (Protester Designee), and who shall be duly authorized to represent the protester, to be the point of contact;

(3) The SIR number or, if available, the contract number and the name of the CO;

(4) The basis for the protester's status as an interested party;

(5) The facts supporting the timeliness of the protest;

(6) Whether the protester requests a protective order, the material to be protected, and attach a redacted copy of that material;

(7) A detailed statement of both the legal and factual grounds of the protest, and attach one (1) copy of each relevant document;

(8) The remedy or remedies sought by the protester, as set forth in §17.21;

(9) The signature of the Protester Designee, or another person duly authorized to represent the protester.

(d) If the protester wishes to request a suspension or delay of the procurement, in whole or in part, and believes there are compelling reasons that, if known to the FAA, would cause the FAA to suspend or delay the procurement because of the protested action, the protester shall:

(1) Set forth each such compelling reason, supply all facts supporting the protester's position, identify each person with knowledge of the facts supporting each compelling reason, and identify all documents that support each compelling reason.

(2) Clearly identify any adverse consequences to the protester, the FAA, or any interested party, should the FAA not suspend or delay the procurement.

(e) At the same time as filing the protest with the Office of Dispute Resolution for Acquisition, the protester shall serve a copy of the protest on the CO and any other official designated in the SIR for receipt of protests by means reasonably calculated to be received by the CO on the same day as it is to be received by the Office of Dispute Resolution for Acquisition. The protest shall include a signed statement from the protester, certifying to the Office of Dispute Resolution for Acquisition the manner of service, date, and time when a copy of the protest was served on the CO and other designated official(s).

(f) Upon receipt of the protest, the CO shall inform the Office of Dispute Resolution for Acquisition of the

names, addresses, and telephone and facsimile numbers of the awardee and/or other interested parties, if known, and shall, in such notice, designate a person as the point of contact for the Office of Dispute Resolution for Acquisition by facsimile. The CO shall also notify the awardee and/or interested parties in writing of the existence of the protest the same day as the CO provides the foregoing information to the Office of Dispute Resolution for Acquisition. The awardee and/or interested parties shall notify the ODRA in writing, of their interest in participating in the protest as intervenors within two (2) business days of receipt of the CO's notification, and shall, in such notice, designate a person as the point of contact for the ODRA. Such notice may be submitted to the ODRA by facsimile.

(g) The Office of Dispute Resolution for Acquisition has discretion to designate the parties who shall participate in the protest as intervenors. For awarded contracts, only the awardee may participate as an intervenor.

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§ 17.17 Initial protest procedures.

(a) If, as part of a protest, the protester requests a suspension or delay of procurement, in whole or in part, pursuant to § 17.15(d), the Product Team shall submit a response to the request to the Office of Dispute Resolution for Acquisition within two (2) business days of receipt of the protest. Copies of the response shall be furnished to the protester and any intervenor(s) so as to be received within the same two (2) business days. The protester and any intervenor(s) shall have the opportunity of providing additional comments on the response within an additional period of two (2) business days. Based on its review of such submissions, the Office of Dispute Resolution for Acquisition, in its discretion, may recommend such suspension or delay to the Administrator or the Administrator's designee.

(b) Within five (5) business days of the filing of a protest, or as soon thereafter as practicable, the Office of Dispute Resolution for Acquisition shall convene a status conference to—

(1) Review procedures;

(2) Identify and develop issues related to summary dismissal and suspension recommendations;

(3) Handle issues related to protected information and the issuance of any needed protective order;

(4) Encourage the parties to use ADR;

(5) Conduct or arrange for early neutral evaluation of the protest by a DRO or Neutral or Compensated Neutral, at the discretion of the Office of Dispute Resolution for Acquisition and/or based upon the agreement or request of any party(ies) seeking such evaluation; and

(6) For any other reason deemed appropriate by the DRO or by the Office of Dispute Resolution for Acquisition.

(c) On the fifth business day following the status conference, the Product Team and protester will file with the Office of Dispute Resolution for Acquisition—

(1) A joint statement that they have decided to pursue ADR proceedings in lieu of adjudication in order to resolve the protest; or

(2) Joint or separate written explanations as to why ADR proceedings will not be used and why the Default Adjudicative Process will be needed.

(d) Should the Product Team and protester elect to utilize ADR proceedings to resolve the protest, they will agree upon the neutral to conduct the ADR proceedings (either an Office of Dispute Resolution for Acquisition-designated Neutral or a Compensated Neutral of their own choosing) pursuant to § 17.33(c), and shall execute and file with the Office of Dispute Resolution for Acquisition a written ADR agreement within five (5) business days after the status conference. Agreement of any intervenor(s) to the use of ADR or the resolution of a dispute through ADR shall not be required.

(e) Should the Product Team or protester indicate at the status conference that ADR proceedings will not be used, then within ten (10) business days following the status conference, the Product Team will file with the Office of Dispute Resolution for Acquisition a Product Team Response to the protest. The Office of Dispute Resolution for Acquisition may alter the schedule for filing of the Product Team Response to accommodate the requirements of a particular protest.