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Are You Thinking of Filing a Post Award Bid Protest? You Must Be Aware of the These Critical Time Deadlines!

Part One

Protester’s Post Award Bid Protest Awareness of Time limits for filing with the GAO.

The GAO Bid Protest Regulations, the U.S.C. and C.F.R. regulate the time limits and deadlines for a protester filing a post award bid protest. If these time limits are not followed, then the protest is in jeopardy of being dismissed. Below is an outline of the time allowances and deadlines that must be adhered to in a post award bid protest, plus other elements that are important in filing a post award bid protest.

I. Timeliness of Post Award Bid Protest

If you elect to protest a contract award to the GAO (FAR 33.103), then you must be aware of the short time frames involved.

- a. 3 Days to formally request a Debriefing. FAR 15.506(a)(1)
- b. 10 days after contract award to file a Protest. FAR 33.104 (c)(1)
FAR 33.104(c)(1):
“(1) When the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by FAR 15.505 or FAR 15.506, whichever is later, the contracting officer shall immediately suspend performance or terminate the awarded contract, except as provided in paragraphs (c)(2) and (3) of this section.”
- c. or 5 Days after the first Debriefing date offered to Request a Stay of Performance, 4 U.S.C. 3553 (d)(4)(B)
 - i. Statutory Debriefing – when requested debriefing is required. 4 C.F.R. 21.2(a)(2)
 - ii. You cannot file the initial protest until after the requested debriefing is held. 4 C.F.R.(a)(2)
- d. File before 5:30 pm, eastern time. 4 C.F.R. 21.0(g)

II. Post Award Protest Grounds

Some post award bid protest grounds which will not be considered by GAO include:

- a. Any contract administration of the contract. 4 C.F.R. 21.5(a)
- b. Small business size standards. 4 C.F.R. 21.5(b)(1)

- c. Small business issuance or refusal to issue a certificate of competency. 4 C.F.R. 21.5(b)(2)
- d. SBA 8(a) procurements. 4 C.F.R. 21.5(b)(3)
- e. Competitive range determinations. 4 C.F.R. 21.5(j)
- f. Protest that do not contain a detailed statement of the legal and factual grounds of protest. 4 C.F.R. 21.5(f).

III. Request for Withholding of Award and Suspension of Contract Performance

- a. Where the filing of a protest is timely, either 10 days after contract award or within 5 days of a requested debriefing (31 U.S.C. 3553(c) and (d)), the agency may be required to withhold award of the contract or suspend its performance. 4 C.F.R. 21.6

IV. Requesting a Hearing

A party may request a hearing or the GAO may require a hearing per 4 C.F.R. 21.7 if it is determined that a hearing is necessary to determine the issues of the bid protest.

V. Request for Documents

The protester may request specific documents from the agency and needs to explain the relevancy of the documents to the protest. 4 C.F.R. 21.1(d)(2). However, the agency 5 days prior to filing its agency report must produce a list of the documents it plans to submit and those it plans to withhold and the reasons for withholding. The protester or intervenor must object within 2 days. 4 C.F.R. 21.3(c).

VI. Request for Protective Order

Protester may request or the GAO may grant a protective order per 4 C.F.R. 21.4 to protect proprietary or confidential information including source selection sensitive information which if released could cause competitive advantage or disadvantage of protester or intervenor.

VII. Agency Report and Timelines

- a. 21.3(b) Agency report need not be filed if prior to that the agency makes a motion to dismiss
 - i. (b) A contracting agency or intervenor which believes that the protest or specific protest allegations should be dismissed before submission of an agency report should file a request for dismissal as soon as practicable
- b. The contracting agency shall file a report on the protest with GAO within 30 days after the telephone notice of the protest from GAO. 4 C.F.R. 21.3(c)
- c. The protester must file comments on the agency report within 10 days or the protest will be dismissed except where the GAO has granted an extension. 4 C.F.R. 21.3(i)

VIII. Remedies

If the GAO determines that the solicitation or proposed award or award does not comply with statutes or regulations, then remedies per 4 C.F.R. 21.8 may include terminating the contract, re-competing or re-issuing a contract compliant with statutes and regulations. The agency

could also take corrective action in lieu of a GAO decision, and the GAO may offer its recommendations as to the type of corrective action.

IX. Award of Protest Costs 4 C.F.R. 21.8(d)

“(d) If GAO determines that a solicitation, proposed award, or award does not comply with statute or regulation, it may recommend that the contracting agency pay the protester the costs of:

- (1) Filing and pursuing the protest, including attorneys' fees and consultant and expert witness fees; and
- (2) Bid and proposal preparation.”

X. Agency Protest

Filing a protest directly with the issuing Agency Protest is regulated per FAR 33.103.

XI. Subcontractor Protest

Subcontractor allowed to protest if agency awarding the prime contract has a written request that subcontractor protest be decided pursuant to 4 C.F.R. 21.13. See 4 C.F.R. 21.5(h)

XII. GAO Decisions:

The GAO will issue a decision within 100 days after a protest is filed, 4 C.F.R. 21.9(a), unless the GAO uses the express option procedures in 4 C.F.R. 21.10, and then shall issue a decision on a protest within 65 days after it is filed.