

# JAR PART 2833 PROTESTS, DISPUTES, AND APPEALS

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Authority: 28 U.S.C. 510; 40 U.S.C 486(c); 28 CFR 0.75(j) and 28 CFR 0.76(j).

## **PART 2833 PROTESTS, DISPUTES, AND APPEALS**

### **SUBPART 2833.1 - PROTESTS**

#### **2833.101 Definitions**

(a) "Agency Protest Official" means the official, other than the contracting officer, designated to review and decide procurement protests filed with a contracting activity of the Department of Justice.

(1) This person will be at a level above that of the Contracting Officer, will be knowledgeable about the acquisition process in general and will have no programmatic interest in the procurement.

(2) This official shall be an individual designated by the head of the contracting activity and may be the Competition Advocate.

(b) "Deciding Official" means the person chosen by the protestor to decide the agency protest; it

may be either the Contracting Officer or the Agency Protest 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 the Department of Justice in accordance with Executive Order 12979, Agency Procurement Protests, dated October 25, 1995 and [FAR 33.103](#). They are intended to be flexible and to provide for fair, quick, and inexpensive resolution of agency protests.

(b) Interested parties have the option of protesting to the Contracting Officer or to the Agency Protest Official.

(c) Contracting officers and potential protestors are encouraged to use their best efforts to resolve concerns through frank and open discussion, as required by [FAR 33.103\(b\)](#). In resolving concerns and/or protests, consideration should be given to the use of alternative dispute resolution techniques where appropriate.

(d) Responsibilities:

(1) Contracting Officers: (i) Include the provision at [2852.233-70](#) in all solicitations that are expected to exceed the simplified acquisition threshold. (ii) If the protestor requests that the Contracting Officer decide the protest, or if the protest is silent on this issue, the Contracting Officer decides the protest using the procedures in this Subpart and [FAR 33.103](#). (iii) If the protestor requests that the Agency Protest Official decide the protest, the Contracting Officer must ensure that the Agency Protest Official receives a copy of the materials served on the Contracting Officer within one business day after the filing date.

(2) Agency Protest Official: If the protestor requests that the Agency Protest Official decide the protest, the Official must use the procedures in this Subpart and [FAR 33.103](#) to provide an independent review of 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 complaint is received at the location the solicitation designates for serving protests.

(b) An interested party filing an agency protest has the choice of requesting either that the contracting Officer or the Agency Protest Official decide the protest.

(c) In addition to the information required by [FAR 33.103\(d\)\(2\)](#), the protest must:

(1) Indicate that it is a protest to the agency.

(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 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.

(d) 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.

(e) The deciding official must conduct a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference 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.

(f) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(g) The protestor has only one opportunity to support or explain the substance of its protest. Department of Justice procedures do not provide for any discovery. The deciding official has discretion to request additional information from either the agency or the protestor. However, the deciding official will normally decide protests on the basis of information provided by the protestor and the agency.

(h) The preferred practice is to resolve protests through informal oral discussion.

(i) An interested party may represent itself or be represented by legal counsel. The Department of Justice will not reimburse the protester for any legal fees related to the agency protest.

(j) If an agency protest is received before contract award, the Contracting Officer must not make award unless the Head of the Contracting Activity makes a determination to proceed under [FAR 33.103\(f\)\(1\)](#). Similarly, if an agency protest is filed within ten (10) days after award, the Contracting Officer must stay performance unless the Head of the Contracting Activity makes a determination to proceed under [FAR 33.103\(f\)\(3\)](#). Any stay of award or suspension of performance remains in effect until the protest is decided, dismissed, or withdrawn.

(k) The deciding official must make a best effort to issue a decision on the protest within twenty (20) days after the filing date. The decision may be oral or written. If oral, the deciding official must send a confirming letter within three (3) days after the decision using a means that provides receipt. The confirming letter must include the following information:

(1) State whether the protest was denied, sustained or dismissed.

(2) Indicate the date the decision was provided.

(l) If the deciding official sustains the protest, relief may consist of any of the following:

(1) Recommendation that the contract be terminated for convenience or cause.

- (2) Recompeting the requirement.
- (3) Amending the solicitation.
- (4) Refraining from exercising contract options.
- (5) Awarding a contract consistent with statute, regulation, and the terms of the solicitation.
- (6) Other action that the deciding official determines is appropriate.

(m) If the Agency Protest Official sustains a protest, then within 30 days after receiving the Official's recommendations for relief, the Contracting Officer must either:

(1) Fully implement the recommended relief; or

(2) Notify the Agency Protest Official in writing if any recommendations have not been implemented and explain why.

(n) Proceedings on an agency protest may be dismissed or stayed if a protest on the same or similar basis is filed with a protest forum outside of the Department of Justice.

## **SUBPART 2833.2 - DISPUTES AND APPEALS**

### **2833.209 Suspected fraudulent claims.**

Contracting officers shall report suspected fraudulent claims to the Office of the Inspector General.

### **2833.211 Contracting officer's decision.**

(a) The Agency Board of Contract Appeals (BCA), which will hear appeals from the decisions of bureau contracting officers, is the Department of Transportation BCA. The procedures set forth in 48 CFR chapter 63 shall apply.

(b) Pursuant to 28 CFR 0.45(i), the contact for all appeals of decisions of DOJ contracting officers which will be forwarded to the BCA under paragraph (a) of this section, is the Deputy Assistant Attorney General, Commercial Litigation Branch, Civil Division.