



Federal Protests

NCMA Aloha Chapter Presentation

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Introduction

- Why Protest?
 - Compel government compliance with law and rules
 - Ensure fairness and reasonable actions
- Is there a "cost"?
 - "Black Ball?"
 - Legal fees?
- "Respect?"



Who Can "Hear" Protests

- Court of Federal Claims
- Small Business Administration
 - Status
 - Small – Disadvantaged
 - HUB Zone
 - SDVOB
 - See FAR 19.302 through 19.307
 - See 13 CFR Parts 124 & 125



Small Business Administration

- Timing – Move Fast
 - "5th Day" after bid opening or receipt of notice of "apparent successful offeror"
 - "Exclusive of" weekends and holidays
- Subject Matter
 - Status only
 - SBA "turnaround" fast (15 days)
- Agency may go forward if too slow



Agency Protests

- Authority
 - E.O. 12979
 - FAR 33.103
- Goal
 - "Best efforts to resolve concerns"
 - Avoid mistakes
 - Stays of award and performance



Agency Protests

- Time

- Within 10 days after basis known;
- For "content of solicitation" – before bid opening/or receipt of proposals;
- After debriefing (FAR Part 15 – Request in 3 days) within 5 days after date offered for debriefing

- Bottom Line:

- Must protest promptly
- Waiver seldom provided



Agent Protest

Content of Protest

- FAR 33.103(d)
 - Content is critical – "substantially comply"
 - Normal info
 - Name, address, contact info
 - ID solicitation by number
 - "Legal" Part
 - "Detailed statement of legal and factual grounds"
 - "description of resulting prejudice"



Agency Protest

Content of Protest

- FAR 33.103(d) – (continued)
 - Evidence – relevant documents
 - Request for "ruling" and "statement of relief"
 - Info "establishing" "interested party" status
 - Economic interest affected
 - "in line" for award
 - Reasonably susceptible of award



Agency Protest

Content of Protest (cont.)

- Info "establishing timeliness"
 - 10 days
 - 5 days after debrief
 - Before bid opening or proposal submission



Agency Protest Service of Protest

- FAR Clause 52.233-2
 - Provides notice of who is eligible to receive protest
 - Must deliver to correct official
 - "Timeliness" – determined when agency served



Agency Protest

- Settlement/Resolution
 - Seek resolution
 - Be reasonable
 - BUT --
 - Assert rights
 - Right to have review at level above contracting officer
- Agency will prepare written decision



GAO Protest

- Principal method for addressing protests [4 CFR Part 21]
- Fast – 100 days and "**stay**"
- "Inexpensive" – sort of – compared to court
- Standards
 - Compliance with law and rules
 - "Reasonableness"



GAO Protest

- Timeliness

- Protest against content – before bid opening or submission of proposals
- NLT 10 days after "know or should have known"
- Within 10 days after "debriefing date offered"

*** BUT for **stay** – Must be within 5 days after offered date of debriefing



GAO Protest

- Content of Protest
 - 4 CFR 21.1(b) and (c)
 - ⇒ Consistent with agency protest
 - Name, address, contact info
 - "**Be Signed**"
 - ID contracting agency & contract number
 - Ask for discovery
 - Ask for ruling and define relief
 - Ask for hearing (?)



GAO Protest

Content of Protest

- Legal argument
 - Legal and factual grounds
 - Evidence
- Standing
 - "interested party"
 - * * economic interest * *
- Promise to serve agency within 1 day
 - Confirm GAO notice to agency



GAO Protest

Content of Protest

- Show timeliness
 - "**Stay**" [5 days after offered debriefing]

Otherwise:

- Within 10 days knew or should have known
- Before bid opening/receipt of proposal for content of solicitation
- Within 10 days after debriefing



GAO Protest Service of Protest

1. GAO

- 4CFR 21.1 (b) – street address
- protest@gao.gov
- GAO website

2. Within 1 day – agency

- Address in FAR Clause 52.233-2



GAO Protest

- Special Aspects of Process
 - GAO orders date for Agency Report
 - Agency serves report on protester and any intervener
 - Parties have 10 days to comment
 - Parties may request additional comment period
 - Protective Order – allows reps to see all protected material



GAO Protest

- Decision
 - 100 days or 65 days "express procedures"
 - Review for reasonableness of actions
 - Protester must show
 - Prejudice
 - Caused by unreasonable agency actions



Summation

- Importance of Debriefing in avoiding/resolving protest issues
 - Explanation of perceived unfair actions
 - Coaching to improve competitiveness
 - Enhancement of perception of fairness



QUESTIONS

