

dissolve an injunction under this subsection either in or out of court.

(c) A person adversely affected by a refusal to grant an injunction or by dissolving an injunction under subsection (b) of this section may petition a judge of a circuit court of appeals in which the district is located or the Supreme Court justice allotted to that circuit by giving the judge or justice a copy of the proceeding held before the district judge. The judge or justice may grant an injunction or allow an appeal if the judge or justice finds the case requires it. (Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 968.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3543(a) .....	31:517.	R.S. §3635.
3543(b) .....	31:518.	R.S. §3636.
3543(c) .....	31:519.	R.S. §3637.

In subsection (a), the words “With the approval of” and “the institution of” are omitted as surplus.

In subsections (b) and (c), the words “person adversely affected” are substituted for “person who considers himself aggrieved” for consistency in the revised title and with other titles of the United States Code.

In subsection (b)(1), the words “bring a civil action . . . court” are substituted for “prefer a bill of complaint . . . judge” for consistency in the revised title and with other titles of the Code. The words “of which he complains” are omitted as surplus. The words “any part of a distress warrant proceeding” are substituted for “proceedings on such warrant altogether, or for so much thereof as the nature of” to eliminate unnecessary words. The words “with sufficient security” and “as may be awarded against him” are omitted as surplus.

In subsection (b)(2), the words “in any manner” are omitted as surplus. The words “under section 3542(b)(1) of this title” are substituted for “produced by the issuing of the warrant” for clarity. The last sentence is substituted for 31:518(2d sentence words before semicolon) to eliminate unnecessary words.

In subsection (b)(3), the words “on a finding” are substituted for “it appears to the satisfaction of the judge” for clarity and consistency and to eliminate unnecessary words. The words “civil action” are substituted for “application” for consistency. The words “increase the interest rate imposed . . . to” are substituted for “add to the lawful interest assessed . . . such damages as, with such lawful interest, shall” to eliminate unnecessary words. The words “all” and “district” are omitted as surplus.

In subsection (c), the text of R.S. §3637(last sentence) is omitted as obsolete because of section 289 of the Act of March 3, 1911 (ch. 231, 36 Stat. 1167). The words “When the district judge”, “to stay proceedings on a distress warrant”, “after it is granted”, and “by the decision in the premises”, are omitted as surplus. The words “may petition . . . by giving the judge or justice” are substituted for “may lay before” for clarity. The words “judge of a circuit court of appeals” are substituted for “circuit judge of the circuit” for consistency with 28:43. The words “Supreme Court justice allotted to that district” are substituted for “circuit justice” for clarity and consistency with 28:42. The words “and thereupon”, “as the case may be”, and “the equity of” are omitted as surplus.

#### § 3544. Rights and remedies of the United States Government reserved

This subchapter does not affect a right or remedy the United States Government has by law to recover a tax, debt, or demand.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 969.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3544 .....	31:520.	R.S. §3638.

The words “relating to distress warrants” and “take away or” are omitted as surplus.

#### § 3545. Civil action to recover money

The Attorney General shall bring a civil action to recover an amount due to the United States Government on settlement of the account of a person accountable for public money when the person neglects or refuses to pay the amount to the Treasury. Any commission of that person and interest of 6 percent a year from the time the money is received by the person until repaid to the Treasury shall be added to the amount due on the account. The commission is forfeited when judgment is obtained.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 969.)

## HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
3545 .....	31:505.	R.S. §3624.

The functions of the First Comptroller of the Treasury, referred to in Revised Statutes section 3624, were as a matter of law vested in the Solicitor of the Treasury by Revised Statutes sections 377 and 379 (based on the Act of May 28, 1830, ch. 153, 45 Stat. 414). This function is now vested in the Attorney General. See 28:507 as enacted in 1948 and revision notes thereto and existing 28:519, 547, and 509. The words “bring a civil action” are substituted for “institute suit” for consistency in the revised title and with other titles of the United States Code. The word “amount” is substituted for “sum or balance” to eliminate unnecessary words. The words “reported to be” are omitted as surplus. The word “settlement” is substituted for “adjustment” for consistency. The words “by the person” are added for clarity. The words “stated to be”, “in every instance where suit is commenced and . . . thereon”, and “it shall be” are omitted as surplus.

### SUBCHAPTER V—PROCUREMENT PROTEST SYSTEM

#### § 3551. Definitions

In this subchapter:

(1) The term “protest” means a written objection by an interested party to any of the following:

(A) A solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services.

(B) The cancellation of such a solicitation or other request.

(C) An award or proposed award of such a contract.

(D) A termination or cancellation of an award of such a contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

(E) Conversion of a function that is being performed by Federal employees to private sector performance.

(2) The term “interested party”—

(A) with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

(B) with respect to a public-private competition conducted under Office of Management and Budget Circular A-76 with respect to the performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, includes—

(i) any official who is responsible for submitting the agency tender in such competition; and

(ii) any one individual who, for the purpose of representing the Federal employees engaged in the performance of the activity or function for which the public-private competition is conducted in a protest under this subchapter that relates to such public-private competition, has been designated as the agent of the Federal employees by a majority of such employees.

(3) The term “Federal agency” has the meaning given such term by section 102 of title 40.

(Added Pub. L. 98-369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1199; amended Pub. L. 99-145, title XIII, §1304(d), Nov. 8, 1985, 99 Stat. 742; Pub. L. 103-272, §4(f)(1)(K), July 5, 1994, 108 Stat. 1362; Pub. L. 103-355, title I, §1401, Oct. 13, 1994, 108 Stat. 3287; Pub. L. 104-106, div. D, title XLIII, §4321(d)(1), Feb. 10, 1996, 110 Stat. 674; Pub. L. 107-217, §3(h)(6), Aug. 21, 2002, 116 Stat. 1300; Pub. L. 108-375, div. A, title III, §326(a), Oct. 28, 2004, 118 Stat. 1848; Pub. L. 110-161, div. D, title VII, §739(c)(1)(A), Dec. 26, 2007, 121 Stat. 2030; Pub. L. 110-181, div. A, title III, §326(a), Jan. 28, 2008, 122 Stat. 62; Pub. L. 111-84, div. A, title III, §327(a), (b), Oct. 28, 2009, 123 Stat. 2255.)

#### AMENDMENTS

2009—Par. (1)(E). Pub. L. 111-84, §327(a), added subpar. (E).

Par. (2)(B)(i). Pub. L. 111-84, §327(b), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “any official who submitted the agency tender in such competition; and”.

2008—Par. (2). Pub. L. 110-181 amended par. (2) generally. Prior to amendment, par. (2) read as follows: “The term ‘interested party’—

“(A) with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract; and

“(B) with respect to a public-private competition conducted under Office of Management and Budget Circular A-76 regarding performance of an activity or function of a Federal agency, or a decision to convert a function performed by Federal employees to private sector performance without a competition under OMB Circular A-76, includes—

“(i) any official who submitted the agency tender in such competition; and

“(ii) any one person who, for the purpose of representing them in a protest under this subchapter

that relates to such competition, has been designated as their agent by a majority of the employees of such Federal agency who are engaged in the performance of such activity or function.”

2007—Par. (2). Pub. L. 110-161 amended par. (2) generally. Prior to amendment, par. (2) read as follows:

“(2)(A) The term ‘interested party’, with respect to a contract or a solicitation or other request for offers described in paragraph (1), means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract or by failure to award the contract.

“(B) The term includes the official responsible for submitting the Federal agency tender in a public-private competition conducted under Office of Management and Budget Circular A-76 regarding an activity or function of a Federal agency performed by more than 65 full-time equivalent employees of the Federal agency.”

2004—Par. (2). Pub. L. 108-375 designated existing provisions as subpar. (A) and added subpar. (B).

2002—Par. (3). Pub. L. 107-217 substituted “section 102 of title 40” for “section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)”.

1996—Pub. L. 104-106, §4321(d)(1)(A), substituted “subchapter:” for “subchapter—” in introductory provisions.

Par. (2). Pub. L. 104-106, §4321(d)(1)(B), substituted “or a solicitation or other request for offers” for “or proposed contract”.

1994—Par. (1). Pub. L. 103-355, §1401(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “‘protest’ means a written objection by an interested party to a solicitation by a Federal agency for bids or proposals for a proposed contract for the procurement of property or services or a written objection by an interested party to a proposed award or the award of such a contract;”.

Pub. L. 103-272 substituted “a Federal” for “an Federal”.

Par. (2). Pub. L. 103-355, §1401(b)(1), inserted “The term” after “(2)” and substituted a period for “; and” at end.

Par. (3). Pub. L. 103-355, §1401(b)(2), inserted “The term” after “(3)”.

1985—Par. (1). Pub. L. 99-145 substituted “Federal agency” for “executive agency”.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Pub. L. 111-84, div. A, title III, §327(d), Oct. 28, 2009, 123 Stat. 2255, provided that: “The amendments made by this section [amending this section and section 3554 of this title] shall apply—

“(1) to any protest or civil action that relates to a public-private competition conducted after the date of the enactment of this Act [Oct. 28, 2009] under Office of Management and Budget Circular A-76, or any successor circular; and

“(2) to a decision made after the date of the enactment of this Act to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76.”

#### EFFECTIVE DATE OF 2008 AMENDMENT

Par. (2)(B) of this section, as added by Pub. L. 110-181, applicable to a protest or civil action that challenges final selection of the source of performance of an activity or function of a Federal agency made pursuant to a study under OMB Circular A-76 on or after Jan. 1, 2004, and to any other protest or civil action that relates to a public-private competition under Circular A-76 or to a decision to convert a function performed by Federal employees to private sector performance without a competition under Circular A-76, on or after Jan. 28, 2008, see section 326(d) of Pub. L. 110-181, set out as a note under section 1491 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Paragraph (2)(B) of this section applicable to protests and civil actions that challenge final selections of

sources of performance of an activity or function of a Federal agency that are made pursuant to studies initiated under Office of Management and Budget Circular A-76 on or after Jan. 1, 2004; and to any other protests and civil actions that relate to public-private competitions initiated under Office of Management and Budget Circular A-76, or a decision to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, on or after Dec. 26, 2007, see section 739(c)(3) of Pub. L. 110-161, set out as a note under section 501 of this title.

Amendment by Pub. L. 110-161 applicable with respect to fiscal year 2008 and each succeeding fiscal year, see section 739(e) of Pub. L. 110-161, set out as a note under section 501 of this title.

#### EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title III, §326(d), Oct. 28, 2004, 118 Stat. 1848, provided that: "The amendments made by this section [amending this section and sections 3552 and 3553 of this title] shall apply to protests filed under subchapter V of chapter 35 of title 31, United States Code, that relate to studies initiated under Office of Management and Budget Circular A-76 on or after the end of the 90-day period beginning on the date of the enactment of this Act [Oct. 28, 2004]."

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of Title 10, Armed Forces.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of Title 10, Armed Forces.

#### EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 2302 of Title 10, Armed Forces.

#### CONSTRUCTION OF 2004 AMENDMENT

Pub. L. 108-375, div. A, title III, §326(e), Oct. 28, 2004, 118 Stat. 1849, provided that: "The amendments made by this section [amending this section and sections 3552 and 3553 of this title] shall not be construed to authorize the use of a protest under subchapter V of chapter 35 of title 31, United States Code, with regard to a decision made by an agency tender official."

### § 3552. Protests by interested parties concerning procurement actions

(a) A protest concerning an alleged violation of a procurement statute or regulation shall be decided by the Comptroller General if filed in accordance with this subchapter.

(b)(1) In the case of an agency tender official who is an interested party under section 3551(2)(B) of this title, the official may file a protest in connection with the public-private competition for which the official is an interested party. At the request of a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to such public-private competition, the official shall file a protest in connection with such public-private competition unless the official determines that there is no reasonable basis for the protest.

(2) The determination of an agency tender official under paragraph (1) whether or not to file a

protest is not subject to administrative or judicial review. An agency tender official shall provide written notification to Congress whenever the official makes a determination under paragraph (1) that there is no reasonable basis for a protest.

(Added Pub. L. 98-369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1199; amended Pub. L. 103-272, §4(f)(1)(L), July 5, 1994, 108 Stat. 1362; Pub. L. 103-355, title X, §10005(d), Oct. 13, 1994, 108 Stat. 3408; Pub. L. 104-106, div. E, title LVII, §5603, Feb. 10, 1996, 110 Stat. 700; Pub. L. 108-375, div. A, title III, §326(b), Oct. 28, 2004, 118 Stat. 1848.)

#### AMENDMENTS

2004—Pub. L. 108-375 designated existing provisions as subsec. (a) and added subsec. (b).

1996—Pub. L. 104-106 struck out at end "An interested party who has filed a protest under section 111(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(f)) with respect to a procurement or proposed procurement may not file a protest with respect to that procurement under this subchapter."

1994—Pub. L. 103-272 and Pub. L. 103-355 amended section identically, substituting "section 111(f)" for "section 111(h)" and "759(f)" for "759(h)".

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 applicable to protests filed under this subchapter that relate to studies initiated under Office of Management and Budget Circular A-76 on or after the end of the 90-day period beginning on Oct. 28, 2004, see section 326(d) of Pub. L. 108-375, set out as a note under section 3551 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, div. E, title LVII, Feb. 10, 1996, 110 Stat. 702.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of Title 10, Armed Forces.

#### EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 2302 of Title 10, Armed Forces.

#### CONSTRUCTION OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 not to be construed to authorize the use of a protest under this subchapter with regard to a decision made by an agency tender official, see section 326(e) of Pub. L. 108-375, set out as a note under section 3551 of this title.

### § 3553. Review of protests; effect on contracts pending decision

(a) Under procedures prescribed under section 3555 of this title, the Comptroller General shall decide a protest submitted to the Comptroller General by an interested party.

(b)(1) Within one day after the receipt of a protest, the Comptroller General shall notify the Federal agency involved of the protest.

(2) Except as provided in paragraph (3) of this subsection, a Federal agency receiving a notice of a protested procurement under paragraph (1) of this subsection shall submit to the Comptroller General a complete report (including all rel-

evant documents) on the protested procurement—

(A) within 30 days after the date of the agency's receipt of that notice;

(B) if the Comptroller General, upon a showing by the Federal agency, determines (and states the reasons in writing) that the specific circumstances of the protest require a longer period, within the longer period determined by the Comptroller General; or

(C) in a case determined by the Comptroller General to be suitable for the express option under section 3554(a)(2) of this title, within 20 days after the date of the Federal agency's receipt of that determination.

(3) A Federal agency need not submit a report to the Comptroller General pursuant to paragraph (2) of this subsection if the agency is sooner notified by the Comptroller General that the protest concerned has been dismissed under section 3554(a)(4) of this title.

(c)(1) Except as provided in paragraph (2) of this subsection, a contract may not be awarded in any procurement after the Federal agency has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending.

(2) The head of the procuring activity responsible for award of a contract may authorize the award of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

(A) upon a written finding that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General under this subchapter; and

(B) after the Comptroller General is advised of that finding.

(3) A finding may not be made under paragraph (2)(A) of this subsection unless the award of the contract is otherwise likely to occur within 30 days after the making of such finding.

(d)(1) A contractor awarded a Federal agency contract may, during the period described in paragraph (4), begin performance of the contract and engage in any related activities that result in obligations being incurred by the United States under the contract unless the contracting officer responsible for the award of the contract withholds authorization to proceed with performance of the contract.

(2) The contracting officer may withhold an authorization to proceed with performance of the contract during the period described in paragraph (4) if the contracting officer determines in writing that—

(A) a protest is likely to be filed; and

(B) the immediate performance of the contract is not in the best interests of the United States.

(3)(A) If the Federal agency awarding the contract receives notice of a protest in accordance with this section during the period described in paragraph (4)—

(i) the contracting officer may not authorize performance of the contract to begin while the protest is pending; or

(ii) if authorization for contract performance to proceed was not withheld in accord-

ance with paragraph (2) before receipt of the notice, the contracting officer shall immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract.

(B) Performance and related activities suspended pursuant to subparagraph (A)(ii) by reason of a protest may not be resumed while the protest is pending.

(C) The head of the procuring activity may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

(i) upon a written finding that—

(I) performance of the contract is in the best interests of the United States; or

(II) urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

(ii) after the Comptroller General is notified of that finding.

(4) The period referred to in paragraphs (2) and (3)(A), with respect to a contract, is the period beginning on the date of the contract award and ending on the later of—

(A) the date that is 10 days after the date of the contract award; or

(B) the date that is 5 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.

(e) The authority of the head of the procuring activity to make findings and to authorize the award and performance of contracts under subsections (c) and (d) of this section may not be delegated.

(f)(1) Within such deadlines as the Comptroller General prescribes, upon request each Federal agency shall provide to an interested party any document relevant to a protested procurement action (including the report required by subsection (b)(2) of this section) that would not give that party a competitive advantage and that the party is otherwise authorized by law to receive.

(2)(A) The Comptroller General may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to a party under paragraph (1), that prohibit or restrict the disclosure by the party of information described in subparagraph (B) that is contained in such a document.

(B) Information referred to in subparagraph (A) is procurement sensitive information, trade secrets, or other proprietary or confidential research, development, or commercial information.

(C) A protective order under this paragraph shall not be considered to authorize the withholding of any document or information from Congress or an executive agency.

(g) If an interested party files a protest in connection with a public-private competition described in section 3551(2)(B) of this title, a person representing a majority of the employees of the Federal agency who are engaged in the per-

formance of the activity or function subject to the public-private competition may intervene in protest.

(Added Pub. L. 98-369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1200; amended Pub. L. 103-355, title I, §§1402, 1403(c), Oct. 13, 1994, 108 Stat. 3287, 3290; Pub. L. 104-106, div. D, title XLIII, §4321(d)(2), div. E, title LV, §5501(1), Feb. 10, 1996, 110 Stat. 674, 698; Pub. L. 108-375, div. A, title III, §326(c), Oct. 28, 2004, 118 Stat. 1848.)

#### AMENDMENTS

2004—Subsec. (g). Pub. L. 108-375 added subsec. (g).  
1996—Subsec. (b)(2)(A). Pub. L. 104-106, §5501(1), substituted “30 days” for “35 days”.

Subsec. (b)(3). Pub. L. 104-106, §4321(d)(2), substituted “3554(a)(4)” for “3554(a)(3)”.

1994—Subsec. (b)(1). Pub. L. 103-355, §1402(a)(1)(A), substituted “one day after” for “one working day of”.

Subsec. (b)(2)(A). Pub. L. 103-355, §1402(a)(1)(B)(i), substituted “35 days after” for “25 working days from”.

Subsec. (b)(2)(C). Pub. L. 103-355, §1402(a)(1)(B)(ii), substituted “20 days after” for “10 working days from”.

Subsec. (c)(3). Pub. L. 103-355, §1402(a)(2), substituted “after the making of such finding” for “thereafter”.

Subsec. (d). Pub. L. 103-355, §1402(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

“(d)(1) If a Federal agency receives notice of a protest under this section after the contract has been awarded but within 10 days of the date of the contract award, the Federal agency (except as provided under paragraph (2)) shall, upon receipt of that notice, immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract. Performance of the contract may not be resumed while the protest is pending.

“(2) The head of the procuring activity responsible for award of a contract may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

“(A) upon a written finding—

“(i) that performance of the contract is in the best interests of the United States; or

“(ii) that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

“(B) after the Comptroller General is notified of that finding.”

Subsec. (f). Pub. L. 103-355, §1403(c), designated existing provisions as par. (1) and added par. (2).

#### EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 applicable to protests filed under this subchapter that relate to studies initiated under Office of Management and Budget Circular A-76 on or after the end of the 90-day period beginning on Oct. 28, 2004, see section 326(d) of Pub. L. 108-375, set out as a note under section 3551 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(d)(2) of Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of Title 10, Armed Forces.

Amendment by section 5501(1) of Pub. L. 104-106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, div. E, title LVII, Feb. 10, 1996, 110 Stat. 702.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of Title 10, Armed Forces.

#### EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 2302 of Title 10, Armed Forces.

#### CONSTRUCTION OF 2004 AMENDMENT

Amendment by Pub. L. 108-375 not to be construed to authorize the use of a protest under this subchapter with regard to a decision made by an agency tender official, see section 326(e) of Pub. L. 108-375, set out as a note under section 3551 of this title.

#### § 3554. Decisions on protests

(a)(1) To the maximum extent practicable, the Comptroller General shall provide for the inexpensive and expeditious resolution of protests under this subchapter. Except as provided under paragraph (2) of this subsection, the Comptroller General shall issue a final decision concerning a protest within 100 days after the date the protest is submitted to the Comptroller General.

(2) The Comptroller General shall, by regulation prescribed pursuant to section 3555 of this title, establish an express option for deciding those protests which the Comptroller General determines suitable for resolution within 65 days after the date the protest is submitted.

(3) An amendment to a protest that adds a new ground of protest, if timely made, should be resolved, to the maximum extent practicable, within the time limit established under paragraph (1) of this subsection for final decision of the initial protest. If an amended protest cannot be resolved within such time limit, the Comptroller General may resolve the amended protest through the express option under paragraph (2) of this subsection.

(4) The Comptroller General may dismiss a protest that the Comptroller General determines is frivolous or which, on its face, does not state a valid basis for protest.

(b)(1) With respect to a solicitation for a contract, or a proposed award or the award of a contract, protested under this subchapter, the Comptroller General may determine whether the solicitation, proposed award, or award complies with statute and regulation. If the Comptroller General determines that the solicitation, proposed award, or award does not comply with a statute or regulation, the Comptroller General shall recommend that the Federal agency—

(A) refrain from exercising any of its options under the contract;

(B) recompile the contract immediately;

(C) cancel the solicitation issued pursuant to the public-private competition conducted under Office of Management and Budget Circular A-76 or any successor circular;

(D) issue a new solicitation;

(E) terminate the contract;

(F) award a contract consistent with the requirements of such statute and regulation;

(G) implement any combination of recommendations under clauses (A), (B), (C), (D), (E), and (F); or

(H) implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations.

(2) If the head of the procuring activity responsible for a contract makes a finding under

section 3553(d)(3)(C)(i)(I) of this title, the Comptroller General shall make recommendations under this subsection without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

(3) If the Federal agency fails to implement fully the recommendations of the Comptroller General under this subsection with respect to a solicitation for a contract or an award or proposed award of a contract within 60 days after receiving the recommendations, the head of the procuring activity responsible for that contract shall report such failure to the Comptroller General not later than 5 days after the end of such 60-day period.

(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may recommend that the Federal agency conducting the procurement pay to an appropriate interested party the costs of—

(A) filing and pursuing the protest, including reasonable attorneys' fees and consultant and expert witness fees; and

(B) bid and proposal preparation.

(2) No party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be paid, pursuant to a recommendation made under the authority of paragraph (1)—

(A) costs for consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Federal Government; or

(B) costs for attorneys' fees that exceed \$150 per hour unless the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

(3) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency shall—

(A) pay the costs promptly; or

(B) if the Federal agency does not make such payment, promptly report to the Comptroller General the reasons for the failure to follow the Comptroller General's recommendation.

(4) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency and the interested party shall attempt to reach an agreement on the amount of the costs to be paid. If the Federal agency and the interested party are unable to agree on the amount to be paid, the Comptroller General may, upon the request of the interested party, recommend to the Federal agency the amount of the costs that the Federal agency should pay.

(d) Each decision of the Comptroller General under this subchapter shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to the interested parties, the head of the procuring activity responsible for the solicitation, proposed award, or award of the contract,

and the senior procurement executive of the Federal agency involved.

(e)(1) The Comptroller General shall report promptly to the Committee on Governmental Affairs and the Committee on Appropriations of the Senate and to the Committee on Government Reform and Oversight and the Committee on Appropriations of the House of Representatives any case in which a Federal agency fails to implement fully a recommendation of the Comptroller General under subsection (b) or (c). The report shall include—

(A) a comprehensive review of the pertinent procurement, including the circumstances of the failure of the Federal agency to implement a recommendation of the Comptroller General; and

(B) a recommendation regarding whether, in order to correct an inequity or to preserve the integrity of the procurement process, the Congress should consider—

(i) private relief legislation;

(ii) legislative rescission or cancellation of funds;

(iii) further investigation by Congress; or

(iv) other action.

(2) Not later than January 31 of each year, the Comptroller General shall transmit to the Congress a report containing a summary of each instance in which a Federal agency did not fully implement a recommendation of the Comptroller General under subsection (b) or (c) during the preceding year. The report shall also describe each instance in which a final decision in a protest was not rendered within 100 days after the date the protest is submitted to the Comptroller General.

(Added Pub. L. 98-369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1201; amended Pub. L. 100-463, title VIII, § 8139, Oct. 1, 1988, 102 Stat. 2270-47; Pub. L. 103-355, title I, § 1403(a)-(b)(3), Oct. 13, 1994, 108 Stat. 3289, 3290; Pub. L. 104-106, div. D, title XLIII, § 4321(d)(3), div. E, title LV, § 5501(2), Feb. 10, 1996, 110 Stat. 674, 698; Pub. L. 111-84, div. A, title III, § 327(c), Oct. 28, 2009, 123 Stat. 2255.)

#### REFERENCES IN TEXT

Section 3(a) of the Small Business Act, referred to in subsec. (c)(2), is classified to section 632(a) of Title 15, Commerce and Trade.

#### AMENDMENTS

2009—Subsec. (b)(1)(C) to (H). Pub. L. 111-84 added subpar. (C), redesignated former subpars. (C) to (G) as (D) to (H), respectively, and substituted “, (E), and (F)” for “, and (E)” in subpar. (G).

1996—Subsec. (a)(1). Pub. L. 104-106, § 5501(2)(A), substituted “100 days” for “125 days”.

Subsec. (b)(2). Pub. L. 104-106, § 4321(d)(3), substituted “section 3553(d)(3)(C)(i)(I)” for “section 3553(d)(2)(A)(i)”.

Subsec. (e)(1). Pub. L. 104-106, § 5501(2)(B)(i), substituted “Government Reform and Oversight” for “Government Operations”.

Subsec. (e)(2). Pub. L. 104-106, § 5501(2)(B)(ii), substituted “100 days” for “125 days”.

1994—Subsec. (a)(1). Pub. L. 103-355, § 1403(a)(1), substituted “125 days after” for “90 working days from”.

Subsec. (a)(2). Pub. L. 103-355, § 1403(a)(2), substituted “65 days after” for “45 calendar days from”.

Subsec. (a)(3), (4). Pub. L. 103-355, § 1403(a)(3), (4), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(3). Pub. L. 103-355, §1403(b)(1), added par. (3).

Subsec. (c). Pub. L. 103-355, §1403(b)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may declare an appropriate interested party to be entitled to the costs of—

“(A) filing and pursuing the protest, including reasonable attorneys’ fees; and

“(B) bid and proposal preparation.

“(2) Monetary awards to which a party is declared to be entitled under paragraph (1) of this subsection shall be paid promptly by the Federal agency concerned out of funds available to or for the use of the Federal agency for the procurement of property and services.”

Subsec. (e). Pub. L. 103-355, §1403(b)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

“(e)(1) The head of the procuring activity responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General, if the Federal agency has not fully implemented those recommendations within 60 days of receipt of the Comptroller General’s recommendations under subsection (b) of this section.

“(2) Not later than January 31 of each year, the Comptroller General shall transmit to Congress a report describing each instance in which a Federal agency did not fully implement the Comptroller General’s recommendations during the preceding fiscal year.”

1988—Subsec. (a)(1). Pub. L. 100-463 struck out “unless the Comptroller General determines and states in writing the reasons that the specific circumstances of the protest require a longer period” after “submitted to the Comptroller General” before period at end.

#### CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-84 applicable to any protest or civil action that relates to a public-private competition conducted after Oct. 28, 2009, under Office of Management and Budget Circular A-76, or any successor circular, and to a decision made after Oct. 28, 2009, to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, see section 327(d) of Pub. L. 111-84, set out as a note under section 3551 of this title.

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(d)(3) of Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of Title 10, Armed Forces.

Amendment by section 5501(2) of Pub. L. 104-106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104-106, div. E, title LVII, Feb. 10, 1996, 110 Stat. 702.

#### EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set

out as a note under section 2302 of Title 10, Armed Forces.

#### EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 2302 of Title 10, Armed Forces.

#### PROMPT PAYMENT OF COSTS UNDER PRIOR LAW

Section 1403(b)(4) of Pub. L. 103-355 provided that: “Costs to which the Comptroller General declared an interested party to be entitled under section 3554 of title 31, United States Code, as in effect immediately before the enactment of this Act [Oct. 13, 1994], shall, if not paid or otherwise satisfied by the Federal agency concerned before the date of the enactment of this Act, be paid promptly.”

#### § 3555. Regulations; authority of Comptroller General to verify assertions

(a) The Comptroller General shall prescribe such procedures as may be necessary to the expeditious decision of protests under this subchapter, including procedures for accelerated resolution of protests under the express option authorized by section 3554(a)(2) of this title. Such procedures shall provide that the protest process may not be delayed by the failure of a party to make a filing within the time provided for the filing.

(b) The procedures shall provide that, in the computation of any period described in this subchapter—

(1) the day of the act, event, or default from which the designated period of time begins to run not be included; and

(2) the last day after such act, event, or default be included, unless—

(A) such last day is a Saturday, a Sunday, or a legal holiday; or

(B) in the case of a filing of a paper at the Government Accountability Office or a Federal agency, such last day is a day on which weather or other conditions cause the closing of the Government Accountability Office or Federal agency, in which event the next day that is not a Saturday, Sunday, or legal holiday shall be included.

(c) The Comptroller General may prescribe procedures for the electronic filing and dissemination of documents and information required under this subchapter. In prescribing such procedures, the Comptroller General shall consider the ability of all parties to achieve electronic access to such documents and records.

(d) The Comptroller General may use any authority available under chapter 7 of this title and this chapter to verify assertions made by parties in protests under this subchapter.

(Added Pub. L. 98-369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1202; amended Pub. L. 103-355, title I, §1404, Oct. 13, 1994, 108 Stat. 3291; Pub. L. 108-271, §8(b), July 7, 2004, 118 Stat. 814.)

#### AMENDMENTS

2004—Subsec. (b)(2)(B). Pub. L. 108-271 substituted “Government Accountability Office” for “General Accounting Office” in two places.

1994—Subsec. (a). Pub. L. 103-355, §1404(c), substituted “The Comptroller General” for “Not later than January 15, 1985, the Comptroller General”.

Subsecs. (b) to (d). Pub. L. 103-355, §1404(a), (b), added subsecs. (b) and (c) and redesignated former subsec. (b) as (d).

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 2302 of Title 10, Armed Forces.

EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 2302 of Title 10, Armed Forces.

**§ 3556. Nonexclusivity of remedies; matters included in agency record**

This subchapter does not give the Comptroller General exclusive jurisdiction over protests, and nothing contained in this subchapter shall affect the right of any interested party to file a protest with the contracting agency or to file an action in the United States Court of Federal Claims. In any such action based on a procurement or proposed procurement with respect to which a protest has been filed under this subchapter, the reports required by sections 3553(b)(2) and 3554(e)(1) of this title with respect to such procurement or proposed procurement and any decision or recommendation of the Comptroller General under this subchapter with respect to such procurement or proposed procurement shall be considered to be part of the agency record subject to review.

(Added Pub. L. 98-369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1202; amended Pub. L. 102-572, title IX, §902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-320, §12(f), Oct. 19, 1996, 110 Stat. 3876.)

AMENDMENTS

1996—Pub. L. 104-320, which directed the amendment of this section by striking “a court of the United States or” in first sentence, was executed by striking “a district court of the United States or” after “to file an action in” in first sentence to reflect the probable intent of Congress.

1992—Pub. L. 102-572 substituted “United States Court of Federal Claims” for “United States Claims Court”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-320 effective Jan. 1, 2001, see section 12(f) of Pub. L. 104-320, set out as a Non-exclusivity of GAO Remedies note below.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98-369, set out as a note under section 2302 of Title 10, Armed Forces.

NONEXCLUSIVITY OF GAO REMEDIES

Section 12(f) of Pub. L. 104-320 provided that: “In the event that the bid protest jurisdiction of the district courts of the United States is terminated pursuant to subsection (d) [set out as a Sunset Provision note under

section 1491 of Title 28, Judiciary and Judicial Procedure], then section 3556 of title 31, United States Code, shall be amended by striking ‘a court of the United States or’ in the first sentence.” [Bid protest jurisdiction of the district courts of the United States terminated on Jan. 1, 2001, pursuant to section 12(d) of Pub. L. 104-320.]

**§ 3557. Expedited action in protests of public-private competitions**

For any protest of a public-private competition conducted under Office of Management and Budget Circular A-76 with respect to the performance of an activity or function of a Federal agency, the Comptroller General shall administer the provisions of this subchapter in the manner best suited for expediting the final resolution of the protest and the final action in the public-private competition.

(Added Pub. L. 110-181, div. A, title III, §326(b)(1), Jan. 28, 2008, 122 Stat. 63; amended Pub. L. 110-417, [div. A], title X, §1061(c)(2), Oct. 14, 2008, 122 Stat. 4613.)

CODIFICATION

Another section 3557, added Pub. L. 110-161, div. D, title VII, §739(c)(1)(B)(i), Dec. 26, 2007, 121 Stat. 2030, related to an expedited action in protests for public-private competitions, prior to repeal by Pub. L. 110-417, [div. A], title X, §1061(c)(1), Oct. 14, 2008, 122 Stat. 4613.

AMENDMENTS

2008—Pub. L. 110-417 substituted “public-private” for “Public-Private” in section catchline.

SUBCHAPTER VI—RECOVERY AUDITS<sup>1</sup>

AMENDMENTS

2010—Pub. L. 111-204, §2(h)(6)(A)(i), July 22, 2010, 124 Stat. 2231, struck out heading “SUBCHAPTER VI—RECOVERY AUDITS”.

**[§ 3561. Repealed. Pub. L. 111-204, §2(h)(6)(A)(i), July 22, 2010, 124 Stat. 2231]**

Section, added Pub. L. 107-107, div. A, title VIII, §831(a)(1), Dec. 28, 2001, 115 Stat. 1186, related to identification of errors made by executive agencies in payments to contractors and recovery of amounts erroneously paid.

**§ 3562. Disposition of recovered funds**

(a) AVAILABILITY OF FUNDS FOR RECOVERY AUDITS AND ACTIVITIES PROGRAM.—Funds collected under a program carried out by an executive agency under section 3561<sup>1</sup> of this title shall be available to the executive agency for the following purposes:

(1) To reimburse the actual expenses incurred by the executive agency in the administration of the program.

(2) To pay contractors for services under the program in accordance with the guidance issued under section 3561(c)(5)<sup>1</sup> of this title.

[(b), (c). Repealed. Pub. L. 111-204, §2(h)(6)(A)(i), July 22, 2010, 124 Stat. 2231.]

(Added Pub. L. 107-107, div. A, title VIII, §831(a)(1), Dec. 28, 2001, 115 Stat. 1187; Pub. L. 111-204, §2(h)(6)(A), July 22, 2010, 124 Stat. 2231.)

<sup>1</sup> Editorially supplied.

<sup>1</sup> See References in Text and Codification notes below.