

General Accounting Office

§21.11

(2) The contracting agency shall issue a decision on the claim for costs as soon as practicable after the claim is filed. If the protester and the contracting agency cannot reach agreement within a reasonable time, GAO may, upon request of the protester, recommend the amount of costs the agency should pay in accordance with 31 U.S.C. 3554(c). In such cases, GAO may also recommend that the contracting agency pay the protester the costs of pursuing the claim for costs before GAO.

(3) The contracting agency shall notify GAO within 60 days after GAO recommends the amount of costs the agency should pay the protester of the action taken by the agency in response to the recommendation.

[61 FR 39042, July 26, 1996, as amended at 67 FR 79836, Dec. 31, 2002]

§21.9 Time for decision by GAO.

(a) GAO shall issue a decision on a protest within 100 days after it is filed.

(b) In protests where GAO uses the express option procedures in §21.10, GAO shall issue a decision on a protest within 65 days after it is filed.

(c) GAO, to the maximum extent practicable, shall resolve a timely supplemental protest adding one or more new grounds to an existing protest, or a timely amended protest, within the time limit established in paragraph (a) of this section for decision on the initial protest. If a supplemental or an amended protest cannot be resolved within that time limit, GAO may resolve the supplemental or amended protest using the express option procedures in §21.10.

§21.10 Express options, flexible alternative procedures, accelerated schedules, summary decisions, and status and other conferences.

(a) At the request of a party or on its own initiative, GAO may decide a protest using an express option.

(b) The express option will be adopted at the discretion of GAO and only in those cases suitable for resolution within 65 days.

(c) Requests for the express option shall be in writing and received in GAO not later than 5 days after the protest or supplemental/amended protest is

filed. GAO will promptly notify the parties whether the case will be handled using the express option.

(d) When the express option is used, the following schedule applies instead of those deadlines in §21.3 and §21.7:

(1) The contracting agency shall file a complete report with GAO and the parties within 20 days after it receives notice from GAO that the express option will be used.

(2) Comments on the agency report shall be filed with GAO and the other parties within 5 days after receipt of the report.

(3) Where circumstances demonstrate that a case is no longer suitable for resolution using the express option, GAO shall establish a new schedule for submissions by the parties.

(e) GAO, on its own initiative or upon request by the parties, may use flexible alternative procedures to promptly and fairly resolve a protest, including alternative dispute resolution, establishing an accelerated schedule, and/or issuing a summary decision.

(f) GAO may conduct status and other conferences by telephone or in person with all parties participating in a protest to promote the expeditious development and resolution of the protest.

[61 FR 39042, July 26, 1996, as amended at 67 FR 79836, Dec. 31, 2002]

§21.11 Effect of judicial proceedings.

(a) A protester must immediately advise GAO of any court proceeding which involves the subject matter of a pending protest and must file with GAO copies of all relevant court documents.

(b) GAO will dismiss any case where the matter involved is the subject of litigation before, or has been decided on the merits by, a court of competent jurisdiction. GAO may, at the request of a court, issue an advisory opinion on a bid protest issue that is before the court. In these cases, unless a different schedule is established, the times provided in this part for filing the agency report (§21.3(c)), filing comments on the report (§21.3(i)), holding a hearing

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and filing comments (§ 21.7), and issuing a decision (§ 21.9) shall apply.

[61 FR 39042, July 26, 1996, as amended at 67 FR 79836, Dec. 31, 2002]

§ 21.12 Distribution of decisions.

(a) Unless it contains protected information, a copy of a decision shall be provided to the protester, any intervenors, the head of the contracting activity responsible for the protested procurement, and the senior procurement executive of each Federal agency involved; a copy shall also be made available to the public. A copy of a decision containing protected information shall be provided only to the contracting agency and to individuals admitted to any protective order issued in the protest. A public version omitting the protected information shall be prepared wherever possible.

(b) Decisions may be distributed to the parties, and are available from GAO, by electronic means.

[61 FR 39042, July 26, 1996, as amended at 67 FR 79836, Dec. 31, 2002]

§ 21.13 Nonstatutory protests.

(a) GAO will consider protests concerning awards of subcontracts by or for a Federal agency, sales by a Federal agency, or procurements by agencies of the government other than Federal agencies as defined in § 21.0(c) if the agency involved has agreed in writing to have protests decided by GAO.

(b) The provisions of this part shall apply to nonstatutory protests except for the provision of § 21.8(d) pertaining to recommendations for the payment of costs. The provision for the withholding of award and the suspension of contract performance, 31 U.S.C. 3553(c) and (d), also does not apply to nonstatutory protests.

§ 21.14 Request for reconsideration.

(a) The protester, any intervenor, and any Federal agency involved in the protest may request reconsideration of a bid protest decision. GAO will not consider a request for reconsideration that does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any er-

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rors of law made or information not previously considered.

(b) A request for reconsideration of a bid protest decision shall be filed, with copies to the parties who participated in the protest, not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier.

(c) GAO will summarily dismiss any request for reconsideration that fails to state a valid basis for reconsideration or is untimely. The filing of a request for reconsideration does not require the withholding of award and the suspension of contract performance under 31 U.S.C. 3553 (c) and (d).

PART 22 [RESERVED]

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AUTHORITY: 31 U.S.C. 783.

SOURCE: 55 FR 2359, Jan. 24, 1990, unless otherwise noted.

§ 25.1 Applicability and governing laws.

These rules and regulations, and the laws of the United States and the District of Columbia, apply to the General Accounting Office (GAO) Building and its grounds, 441 G Street NW., in the District of Columbia, and to all persons while in the building or while entering or leaving it.