

333.103 Protests to the agency.

(f)(1) The Contracting Officer is authorized to make the determination, using the criteria in *FAR 33.104(b)*, to award a contract notwithstanding the protest after obtaining the concurrence of the contracting activity's protest control officer and the OGC-GLD. If a protest has been lodged with the Secretary, is addressed to the Secretary, or requests referral to the Secretary, the Contracting Officer shall also obtain approval from Associate DAS for Acquisition and OGC-GLD before making the award.

(2) The Contracting Officer shall require written confirmation of any oral protest. To be considered timely, the protester must file a written confirmation in accordance with the applicable provisions in *FAR 33.102(d)(2) and (e)*. In the following cases, the Contracting Officer shall forward written protests received before award through appropriate acquisition channels, including the HCA, to OGC-GLD for processing:

(i) The protester requests referral to the Secretary of HHS.

(ii) The protest is known to have been lodged with GAO or the Secretary or is addressed to either.

(iii) The Contracting Officer entertains some doubt as to the proper action regarding the protest or believes it to be in the best interest of the Government that the Secretary or GAO consider the protest. Otherwise, the Contracting Officer may answer protests addressed to the Contracting Officer with the concurrence of the contracting activity's protest control officer and OGC-GLD.

The Contracting Officer shall submit files concerning these protests in duplicate, or as otherwise specified by OGC-GLD, within 5 calendar days after protest receipt; mark the files "IMMEDIATE ACTION—PROTEST BEFORE AWARD;" and include any documents relevant to issues raised in the protest.

(3) The Contracting Officer shall treat protests received after award as indicated in *FAR 33.103(f)(3)*.

333.104 Protests to GAO.

(a) *General procedures.*

(3)(ii) OGC-GLD shall process protests filed with GAO, whether pre- or post-award. The Contracting Officer

shall prepare protest files as follows: assemble them in a secure binder, fastened at the left side with a fastener that will permit the full page to be read; include a numerical document index, with the first two positions reserved for the Contracting Officer's Statement of Facts and Circumstances and the second for OGC-GLD's Memorandum of Law, that is paginated and, as necessary for sizable files, divided into two or more volumes; and the cover of the report shall identify it as the protest file and include the solicitation number and the GAO Bid Protest file number—*i.e.*, "B- number." In addition, the Contracting Officer shall fold drawings and place them in an envelope in the binder and the solicitation/contract shall constitute a separate exhibit, if it is voluminous in size. The Contracting Officer shall distribute protest files as follows: four copies to OGC-GLD and one copy to the contracting activity's protest control officer. In addition to the items listed in *FAR 33.104(a)(3)(ii)(A) through (G)*, the protest file shall include the following documents:

(H) The current status of award. (*Note:* When award has been made, this shall include whether performance has commenced, shipment or delivery has been made, or a stop work order has been issued.)

(I) A copy of any mutual agreement to suspend work on a no-cost basis, when appropriate—*see FAR 33.104(c)(4)*.

(J) Copies of the notice of protest given offerors and other parties when the notice is appropriate—*see FAR 33.104(a)(2)*.

(K) A copy of the negotiation memorandum, when applicable.

(L) The name and telephone number of the person in the contracting office who may be contacted for information relevant to the protest.

(M) A copy of the competitive range determination.

(N) The acquisition plan, source selection plan, and the source selection decision document.

(O) The Contracting Officer's statement of facts and circumstances, including numbered findings of fact prepared with complete documentation,