

SUBCHAPTER B—GENERAL PROCEDURES

PART 21—BID PROTEST REGULATIONS

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§ 21.0 Definitions.

(a)(1) *Interested party* means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(2) In 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, *interested party* also means

(A) The official responsible for submitting the Federal agency tender, and

(B) Any one individual, designated as an agent by a majority of the employees performing that activity or function, who represents the affected employees.

(b)(1) *Intervenor* means an awardee if the award has been made or, if no award has been made, all bidders or

offerors who appear to have a substantial prospect of receiving an award if the protest is denied.

(2) If an interested party files a protest in connection with a public-private competition conducted under OMB Circular A-76 regarding an activity or function of a Federal agency, the official responsible for submitting the Federal agency tender, or the agent representing the Federal employees as described in paragraph (a)(2)(B) of this section, or both, may also be *intervenor*s.

(c) *Federal agency* or *agency* means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his direction.

(d) *Days* are calendar days. In computing any period of time described in Subchapter V, Chapter 35 of Title 31, United States Code, including those described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, when the Government Accountability Office (GAO), or another Federal agency where a submission is due, is closed for all or part of the last day, the period extends to the next day on which the agency is open.

(e) *Adverse agency action* is any action or inaction by an agency that is prejudicial to the position taken in a protest filed with the agency, including a decision on the merits of a protest; the opening of bids or receipt of proposals, the award of a contract, or the rejection of a bid or proposal despite a pending protest; or contracting agency acquiescence in continued and substantial contract performance.

(f) A document is *filed* on a particular day when it is received by GAO by 5:30 p.m., Eastern Time, on that day. Protests and other documents may be filed

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by hand delivery, mail, commercial carrier, facsimile transmission (202-512-9749), or e-mail (*protests@gao.gov*). Please check GAO's Web site (*http://www.gao.gov/legal/bidprotest.html*) for current filing information. Hand delivery and other means of delivery may not be practicable during certain periods due, for example, to security concerns or equipment failures. The filing party bears the risk that the delivery method chosen will not result in timely receipt at GAO.

(g) *Alternative dispute resolution* encompasses various means of resolving cases expeditiously, without a written decision, including techniques such as outcome prediction and negotiation assistance.

[61 FR 39042, July 26, 1996, as amended at 67 FR 79835, Dec. 31, 2002; 70 FR 19681, Apr. 14, 2005; 73 FR 32429, June 9, 2008]

§21.1 Filing a protest.

(a) An interested party may protest a solicitation or other request by a Federal agency for offers for a contract for the procurement of property or services; the cancellation of such a solicitation or other request; an award or proposed award of such a contract; and a termination of such a contract, if the protest alleges that the termination was based on improprieties in the award of the contract.

(b) Protests must be in writing and addressed as follows: General Counsel, Government Accountability Office, 441 G Street, NW., Washington, DC 20548, Attention: Procurement Law Control Group.

(c) A protest filed with GAO shall:

(1) Include the name, street address, electronic mail address, and telephone and facsimile numbers of the protester,

(2) Be signed by the protester or its representative,

(3) Identify the agency and the solicitation and/or contract number,

(4) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents,

(5) Set forth all information establishing that the protester is an interested party for the purpose of filing a protest,

(6) Set forth all information establishing the timeliness of the protest,

(7) Specifically request a ruling by the Comptroller General of the United States, and

(8) State the form of relief requested.

(d) In addition, a protest filed with GAO may:

(1) Request a protective order,

(2) Request specific documents, explaining the relevancy of the documents to the protest grounds, and

(3) Request a hearing, explaining the reasons that a hearing is needed to resolve the protest.

(e) The protester shall furnish a complete copy of the protest, including all attachments, to the individual or location designated by the agency in the solicitation for receipt of protests, or if there is no designation, to the contracting officer. The designated individual or location (or, if applicable, the contracting officer) must receive a complete copy of the protest and all attachments not later than 1 day after the protest is filed with GAO. The protest document must indicate that a complete copy of the protest and all attachments are being furnished within 1 day to the appropriate individual or location.

(f) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise and logically arranged, and should clearly state legally sufficient grounds of protest. Protests of different procurements should be separately filed.

(g) Unless precluded by law, GAO will not withhold material submitted by a protester from any party outside the government after issuing a decision on the protest, in accordance with GAO's rules at 4 CFR part 81. If the protester believes that the protest contains information which should be withheld, a statement advising of this fact must be on the front page of the submission. This information must be identified wherever it appears, and the protester must file a redacted copy of the protest which omits the information with GAO and the agency within 1 day after the filing of its protest with GAO.

(h) Parties who intend to file documents containing classified information should notify GAO in advance to obtain advice regarding procedures for filing and handling the information.