

2933.102

2933.270 Department of Labor Board of Contract Appeals.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c); E.O. 12979, 60 FR 55171, 3 CFR, 1995 Comp., p. 417.

SOURCE: 69 FR 22991, Apr. 27, 2004, unless otherwise noted.

Subpart 2933.1—Protests

2933.102 General.

(a) The Division of Acquisition Management Services, 200 Constitution Ave., NW., S-1513 B, Washington, DC 20210-0001, telephone (202) 693-7285, facsimile (202) 693-7290 (or the Office acting in that capacity), is responsible for coordinating procurement protests filed with the General Accounting Office.

(b) The authority of the Assistant Secretary for Administration and Management under FAR 33.102(b) to determine that a solicitation, proposed award, or award does not comply with the requirements of law or regulation may be delegated to the HCA.

2933.103 Protests to the agency.

(a) In accordance with Executive Order 12979, the following procedures apply to agency protests:

(1) The filing time frames in FAR 33.103(e) apply to agency protests. An agency protest is filed when the protest complaint is received at the location the solicitation designates for serving protests; or if none is designated, when filed with a contracting officer or HCA.

(2) An interested party filing an agency protest may request either that the contracting officer or the Agency Protest Official decide the protest. The “Agency Protest Official” is an individual above the level of the contracting officer and designated by the Assistant Secretary for Administration and Management, such as the Competition Advocate. The deciding official, whether a contracting officer or Agency Protest Official, must work in consultation with the Office of the Solicitor to resolve the protest.

(3) In addition to the information required by FAR 33.103(d)(2), the protest must:

(i) Indicate that it is a protest to the agency;

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(ii) Be contemporaneously filed with the contracting officer;

(iii) State whether the protestor chooses to have the contracting officer or the Agency Protest Official decide the protest. If the protest is silent on this matter, the contracting officer will decide the protest.

(b) “Interested Party” means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(c) If the Agency Protest Official is chosen by the protestor to decide the protest, this is an alternative to a decision by the contracting officer, not an appeal. The Agency Protest Official will not consider appeals from a contracting officer’s decision on an agency protest.

(d) The deciding official should consider conducting a scheduling conference with the protestor within five (5) days after the protest is filed. The scheduling conference will establish deadlines for written arguments in support of the agency protest and for agency officials to present information in response to the protest issues. Alternative Dispute Resolution techniques will be considered if determined appropriate by the deciding official.

(e) Oral conferences may take place either by telephone or in person. Other parties may attend at the discretion of the deciding official.

(f) Apart from its protest document, the protestor will be given only one opportunity to support or explain in writing the substance of its protest. Department of Labor procedures do not provide for any discovery. The deciding official has discretion to request additional information from either the agency or the protestor. However, the deciding official will normally decide protests on the basis of information provided by the protestor and the agency.

(g) The preferred practice is to resolve protests through informal oral discussion.

(h) An interested party may represent itself or be represented by legal counsel. The Department of Labor will not reimburse the protester for any legal fees or costs related to the agency protest.