



COMDTINST 4200.14A
JAN 6 2005

COMMANDANT INSTRUCTION 4200.14A

Subj: COAST GUARD OMBUDSMAN PROGRAM FOR AGENCY PROTESTS

Ref: (a) Federal Acquisition Regulation (FAR)

1. PURPOSE. This Instruction establishes the Coast Guard Ombudsman Program for Agency Protests (OPAP). It is intended to encourage interested parties to seek resolution of their concerns informally within the Coast Guard as an Alternative Dispute Resolution (ADR) forum, rather than filing a protest with the General Accounting Office (GAO) or other external forum. It is designed to resolve contractor protests in a faster, less expensive manner than could be accomplished at an external forum. Concerns of interested parties can be resolved through independent, government binding adjudication taking place outside the procuring activity's chain of command.
2. ACTION. Area and district commanders, commanders of maintenance and logistics commands, commanding officers of headquarters units, assistant commandants for directorates, Chief Counsel and chiefs of special staff offices at Headquarters shall ensure compliance with the provisions of this Instruction. Internet release authorized.
3. DIRECTIVES AFFECTED. Coast Guard Ombudsman Program For Agency Protests, COMDINST 4200.14 is cancelled
4. DISCUSSION. An agency protest within the meaning of FAR 33.101 may be filed at the protester's option, at either one of the following:
 - a. With the contracting officer designated in the solicitation for receipt of protests.

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NON-STANDARD DISTRIBUTION:

- b. The Coast Guard Ombudsman for Agency Protests. The Coast Guard Ombudsman for Protests shall be the Head of the Contracting Activity (HCA). All solicitations for formal contracts shall have the Notice for Filing Enclosure (1) affixed as a cover page.
5. GENERAL PROCEDURES. In accordance with FAR 33.103(b), interested parties must **first** attempt **informal** resolution of their concerns with the responsible contracting officer. If resolution with the contracting officer cannot be achieved, the interested party may, at its option, seek an informal independent review by the Coast Guard Ombudsman for Agency Protests (paragraph 5a. below). It is highly encouraged that all concerns unresolved by the contracting officer be directed to the Ombudsman in the informal forum. If informal resolution is unsuccessful, interested parties may then file a **formal** agency protest with either the contracting officer or the Ombudsman, as referenced in FAR 33.103(d)(3) and (4), respectively. The Ombudsman for Agency Protests shall make inquiries and take appropriate action to resolve protest issues.
- a. Informal forum with the Ombudsman. Interested parties who believe that a Coast Guard procurement is unfair or otherwise defective should first direct their concerns to the cognizant contracting officer. This can be accomplished through informal discussion between the interested party and the contracting officer. If the contracting officer is unable to satisfy the concerns of the interested party, the interested party is encouraged to contact the Coast Guard Ombudsman for Agency Protest. Under this informal process, the agency is not required to suspend contract award or performance. Use of an informal forum does not suspend any time requirements for filing an agency protest or protest with another forum. Interested parties should provide the following information to the Ombudsman in order to ensure a timely response: solicitation/contract number, contracting office, contracting officer, and solicitation closing date (if applicable).
 - b. Formal Agency Protest with the Ombudsman. Prior to submitting a formal agency protest, protesters must first use their best efforts to resolve concerns through the contracting officer through open and frank discussion. If the protester's concerns are unresolved, an independent review is available by the Ombudsman. The protester may file a formal agency protest to either the contracting officer or the Ombudsman. Agency protests must be filed timely in accordance with FAR 33.103(e). Contract performance shall be suspended pending the agency's resolution of the protest, unless contract award is justified, in writing, for urgent and compelling reasons or is determined in writing to be in the best interest of the Government. The following information must be provided when filing a formal agency protest with the Ombudsman.
 - (1) Protest Filing Requirements. A copy of the protest must clearly indicate that it is being filed pursuant to the Coast Guard Ombudsman Program for Agency Protests (OPAP) procedures. The protest must contain all the information as set forth in FAR 33.103(d)(2). The OPAP protest shall be marked as being filed under OPAP. All protests filed with OPAP should be addressed as follows:

Commandant (CG-851)
2100 2nd Street, SW, Room 2606
Washington, DC 20593
Telephone (202) 267-2285
FAX (202) 267-4011

All mailed correspondence should be sent using a method that ensures traceability of receipt by OPAP

- (2) Time for Filing a Protest. All agency protests shall be filed in accordance with time frames set forth at FAR 33.103(e). The time for filing any document expires at 4:00 P.M., Eastern Time on the last day on which such filing may be made.
 - (3) Interested Parties. For the purpose of filing an agency protest, an interested party means an actual or prospective bidder or offeror whose direct economic interest would be affected by award of a contract or by failure to award a contract. Federal government employees, unions or commands are not considered interested parties for the purpose of filing an agency protest.
 - (4) Election of Forum. After an interested party protests a Coast Guard procurement to either the contracting officer or the Ombudsman and while the protest is pending, the protester agrees not to file a protest with the GAO or other external forum. If the protest is also filed with an external forum, the agency protest will be dismissed.
 - (5) Protest Decision Authority. The Coast Guard Ombudsman for Agency Protests shall be the Head of the Contracting Activity (HCA) for the Coast Guard, Commandant (CG-8D). The Competition Advocate Assistant, Commandant (CG-851), will serve as point of contact. The Office of Procurement Management, Commandant (CG-85) will provide administrative support to the Ombudsman. In such cases where the HCA is the Source Selection Authority (SSA), the Vice Commandant (G-CV) is the Ombudsman for Agency Protests (OPAP).
6. PROCESSING FORMAL AGENCY PROTESTS UNDER OPAP. The following procedures are set forth to ensure orderly processing of an OPAP protest:
- a. The protester shall provide a copy of the protest to both the contracting officer and the Ombudsman.
 - b. The contracting officer shall prepare an administrative report to the Ombudsman for review. The report shall be logically presented, concise, and address all of the protester's concerns. Only pertinent solicitation materials relevant to the protest should be appended to the report.
 - c. The contracting officer shall provide the administrative report to the Ombudsman 10 working days after receipt of the protest from the interested party. The report may be sent by fax, over-night mail, or hand-delivered.

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- d. The Ombudsman shall perform a thorough evaluation and take appropriate action to resolve the protest issue.
- e. All protest issues shall be coordinated with the Chief Trial Attorney, Office of Procurement Law, Commandant (G-LPL).
- f. The Ombudsman's goal is to render a written decision within 35 calendar days from the date of filing a protest with the Ombudsman.
- g. Extensions of time for filing the administrative report and/or for the issuance of the written decision may be granted under extenuating circumstances. When an extension is granted, the protester and all interested parties shall be notified within one working day of the decision to grant an extension.
- h. The contracting officer's administrative report generally will not be provided to the protester. However, in appropriate cases, to facilitate evidentiary record development, a copy of the report may be provided to the protester. The administrative report may be redacted as necessary to protect competition sensitive information. In such cases, the protester will be allowed to comment on the report and the time frames set forth above may be extended.

7. EFFECT OF PROTEST ON AWARD AND PERFORMANCE.

- a. Protest before award. When a protest is filed with the agency prior to award, a contract may not be awarded unless authorized by the HCA in accordance with FAR 33.103
- b. Protests after award. When a protest is filed with the agency within 10 calendar days after award, or within five calendar days after debriefing for any debriefing that is required by FAR 15.506, the contracting officer shall suspend performance. The HCA may authorize contract performance, notwithstanding the protest, upon a written finding that:
 - (1) the contract performance will be in the best interest of the Government; or
 - (2) urgent and compelling circumstances that significantly affect the Government will not permit waiting for a decision from the OPAP.

8. REMEDIES. The Coast Guard Ombudsman for Agency Protests may direct any one or combination of the following remedies:

- a. Terminate the contract;
- b. Re-compete the requirement;

- c. Issue an amended or new solicitation;
 - d. Refrain from exercising the options under the contract;
 - e. Award the contract consistent with statute and regulation;
 - f. Pay appropriate costs as stated in FAR 33.102 (b) (2); and/or
 - g. Such other remedies as the Ombudsman determines necessary to correct a defect.
9. OMBUDSMAN DECISION FOR AGENCY PROTESTS. A protester or other interested party, if not satisfied with the agency protest decision, may file a subsequent protest at any external forum, to the extent otherwise authorized by law. The Ombudsman decision is binding upon the Coast Guard and its contracting activities unless the protester or other interested party files a subsequent protest on the same matter in another forum.

Robert S. Horowitz /s/
Head of the Contracting Activity

Encl: (1) [Notification Filing Agency Protests](#)

NOTICE FOR FILING AGENCY PROTESTS

It is the policy of the Coast Guard to issue solicitations and make contract awards in a fair and timely manner. The Ombudsman Program for Agency Protests (OPAP) was established to investigate agency protest issues and resolve them without expensive and time-consuming litigation. OPAP is an independent reviewing authority that is empowered to grant a prevailing protester essentially the same relief as the General Accounting Office (GAO).

Interested parties are encouraged to seek resolution of their concerns within the Coast Guard as an Alternative Dispute Resolution (ADR) forum, rather than filing a protest with the GAO or some external forum. Interested parties may seek resolution of their concerns **informally** or opt to file a **formal** agency protest with the contracting officer or Ombudsman.

Informal forum with the Ombudsman. Interested parties who believe that a Coast Guard procurement is unfair or otherwise defective should first direct their concerns to the cognizant contracting officer. If the contracting officer is unable to satisfy the concerns, the interested party is encouraged to contact the Coast Guard Ombudsman for Agency Protests. Under this informal process, the agency is not required to suspend contract award performance. Use of an informal forum does not suspend any time requirement for filing a protest with the agency or other forum. In order to ensure a timely response, interested parties should provide the following information to the Ombudsman: solicitation/contract number, contracting office, contracting officer, and solicitation closing date (if applicable).

Formal Agency Protest with the Ombudsman. Prior to submitting a formal agency protest, protesters must first use their best efforts to resolve their concerns with the contracting officer through open and frank discussions. If the protester's concerns are unresolved, an independent review is available by the Ombudsman. The protester may file a formal agency protest to either the contracting officer or as an alternative to that, the Ombudsman under the OPAP program. Contract award or performance will be suspended during the protest period unless contract award or performance is justified, in writing, for urgent and compelling reasons or is determined in writing to be in the best interest of the Government. The agency's goal is to resolve protests in less than 35 calendar days from the date of filing. Protests shall include the information set forth at FAR 33.103(d)(2). If the protester fails to submit the required information, resolution of the protest may be delayed or the protest may be dismissed. This will not preclude re-filing of the protest to meet the requirement. To be timely, protests must be filed within the period specified in FAR 33.103(e). **Formal** protests filed under the OPAP program should be forwarded to the address below:

Commandant (CG-851)
2100 2nd Street, SW, Room 2606
Washington, D. C. 20593
Telephone (202) 267-2285
Fax: (202) 267-4011