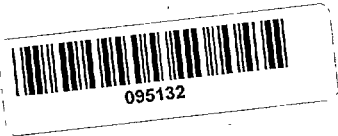
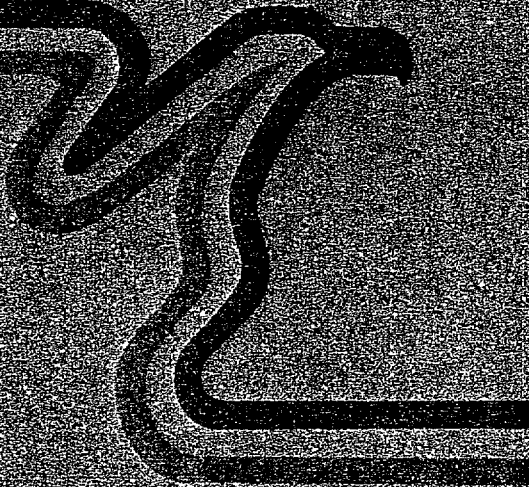


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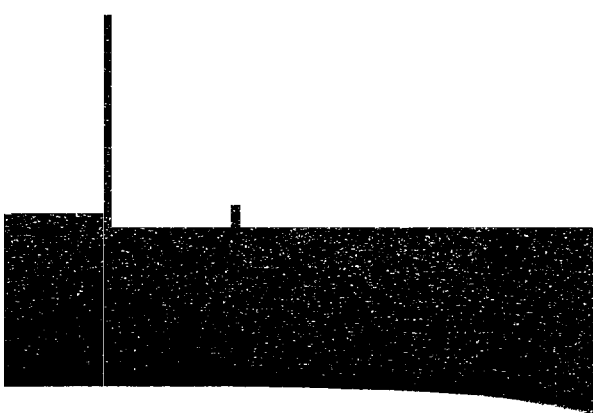
BID PROTESTS
AT GAO
A DESCRIPTIVE GUIDE



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"It seems to me that they partake of a judiciary quality as well as executive . . . The principal duty seems to be deciding upon the lawfulness and justice of the claims and accounts subsisting between the United States and particular citizens: this partakes strongly of the judicial character . . ."

Words of James Madison concerning the Office of the Comptroller, spoken in the debate on the Act of 1789 establishing the Department of the Treasury. 1 Annals of Congress 635-6.



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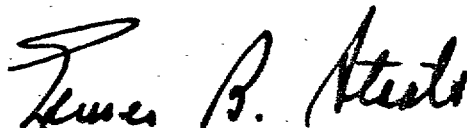
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INTRODUCTION

The Federal Government spends more than \$57 billion annually to obtain the supplies, services and building space it needs to carry out its widespread activities. This mammoth procurement operation is done through public contracting. The awarding of these contracts is governed by various laws and regulations which are generally designed to assure that Federal procurements are conducted in a fair and equitable manner, and, whenever possible, in accordance with procedures which maximize competition.

On occasion bidders or others interested in Government procurements may have reason to believe that a contract has been or is about to be improperly or illegally awarded or that in some way they have been unfairly denied a contract or an opportunity to compete for one. When that occurs, what avenues of relief are open to them? They can, of course, register their objections with the Government department or agency doing the buying. They can also turn to the courts (although a judicial remedy, when available, may be costly and time-consuming). Taking the matter to the United States General Accounting Office (GAO) is a third alternative. This procedure has become known as a "bid protest."

For over 50 years the GAO has provided an objective, independent, and impartial forum for the resolution of disputes concerning the award of contracts. Over the years it has developed a substantial body of law and a regularized procedure for consideration of these protests. There is a large and diverse group of persons--Members of Congress and congressional staff members, agency personnel, officials of business firms engaged in selling to the Government, private attorneys--who from time to time have need for quick and concise information about the nature of bid protests and the procedures that govern the protest process. In recognition of this need, GAO's Office of General Counsel has prepared this booklet as a handy guide and source of information.

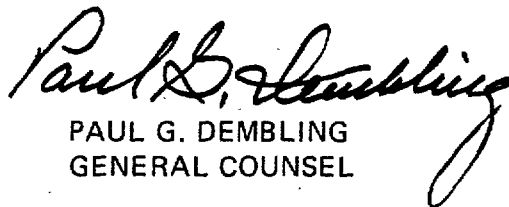


ELMER B. STAATS
COMPTROLLER GENERAL
OF THE UNITED STATES

BID PROTESTS AT GAO A DESCRIPTIVE GUIDE

This booklet responds to the need for greater familiarity with the bid protest process. In recent years our attorneys have noted an increase in the frequency of questions about where, when, and how to file protests, about how GAO handles the protests, and about what to expect in the way of remedies. Because the questions to be answered are basic, we have attempted to avoid detail and nuance. The format and style are clear and direct.

We hope that this guide will be useful.


PAUL G. DEMBLING
GENERAL COUNSEL

BACKGROUND

For over 50 years the GAO has provided an objective, independent, and impartial forum for the resolution of disputes concerning the award of contracts. Over the years the decisions of the Comptroller General of the United States (the head of the GAO) in these bid protest cases have resulted in a uniform body of law applicable to the procurement process which is relied upon by the Congress, the courts, contracting agencies, and the public. The filing of a bid protest with GAO is easy and inexpensive, and requires neither the services of an attorney (although many protesters do retain counsel) nor any particular expertise on the part of the protester with respect to procurement or administrative law. In addition, matters can usually be resolved more quickly by protests filed with GAO than by litigation.

Because GAO receives over a thousand bid protests annually, it has established procedures to provide for uniform and expeditious processing of such cases. These procedures inform protesters where and how to file, what to expect in the way of subsequent actions, and the time frames established for completion of those actions. When read in conjunction with the protest procedures of the Government departments and agencies they provide a comprehensive picture of the bid protest process. It is the purpose of this booklet to set forth, in nonlegal terms, the basic steps involved in that process together with the advantages and limitations.

LAWS AND REGULATIONS

Federal procurements are governed primarily by the Armed Services Procurement Act of 1947 and the Federal Property and Administrative Services Act of 1949. These statutes are implemented by the Armed Services Procurement Regulation, which is applicable to Department of Defense activities, and by the Federal Procurement Regulations, which are applicable to most civilian agencies. These regulations provide for consideration of bid protests by both the procurement agencies and the GAO.

GAO, in turn, has issued bid protest procedures which govern GAO's handling of protests and which impose certain requirements on protesters and others who participate in bid protests.

BID PROTESTS — GENERAL

A bid protest at GAO is initiated by filing a written protest with GAO's Office of General Counsel. GAO then requests a report on the matter from the procuring agency. When the agency report is received a copy is provided to the protester, who is given an opportunity to comment. Other parties may also be provided with copies of the protest and the agency report for comment. In some cases an informal conference may be held in which the protester and others are afforded an opportunity to present their views directly to GAO attorneys responsible for the case. GAO then considers the facts and issues raised by the protest and issues a decision in the name of the Comptroller General. A copy of the decision is sent to the protester, to interested parties, and to the agency involved. The agency normally takes action in accordance with the decision. Processing time from date of receipt of the protest to date of decision usually takes approximately 60 to 90 working days—depending on urgency and complexity.

WHO MAY PROTEST

Any interested party may file a protest with GAO. Usually protests are filed by disappointed bidders or offerors or by potential bidders or offerors. However, GAO will also consider protests filed by others who have some legitimate interest in the particular action.

WHAT MAY BE PROTESTED

GAO considers protests against the award or proposed award of both procurement contracts and sales contracts by Federal agencies whose accounts are subject to "settlement" (in effect, review and approval of expenditures) by GAO. Although most protests are against the acceptance or rejection of a bid or proposal, protests against solicitation defects are also considered. Allegedly restrictive specifications, omission of a required provision, or ambiguous or indefinite evaluation factors are bases for protest.

1. Subcontract awards

Protests against subcontract awards generally are not considered except in certain limited circumstances. These circumstances include cases in which a contractor acts as purchasing agent for the Government or in which the Government exercises a significant degree of control over the selection of subcontractors. However, if the Government's role is limited to approval of a subcontract award, as opposed to direct or active participation in the selection process, GAO will review the agency's action only if bad faith or fraud is shown.

2. Size and manufacturer/regular dealer determinations

GAO does not consider protests involving matters which, under the law, are to be determined by other agencies. For example, disputes over whether a firm is a regular dealer or manufacturer under the Walsh-Healey Act are resolved by the Department of Labor, while it is the Small Business Administration that has authority to establish industry size standards and to determine whether a firm is a small business when measured against the applicable standard.

3. Responsibility

As a matter of policy, GAO does not consider protests against an agency's determination that a firm is a responsible bidder or offeror, except in cases where fraud is alleged, because such a determination is almost entirely a matter of discretion. However, if objective standards for determining responsibility are set forth in a solicitation, GAO will consider a protest against an affirmative responsibility determination when it is claimed that the determination is contrary to those standards.

4. Matter in court

Also as a matter of policy, GAO generally will not render a decision on a protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court. However, if the court requests, expects, or otherwise expresses interest in a Comptroller General decision, the protest will be ruled upon. Thus, GAO will issue a decision in cases where a protester obtains a temporary restraining order or preliminary injunction enjoining agency procurement action until GAO has decided the matter.

5. Exempt agencies and activities

GAO has no authority to issue decisions on bid protests involving procurement actions of agencies or activities whose accounts are not subject to settlement by GAO. Such agencies include the U.S. Postal Service, the Tennessee Valley Authority, the Government of Puerto Rico, and certain Government corporations. Also included in this category are nonappropriated fund activities, such as the Army and Air Force Exchange Service, Navy Exchange, and military clubs, commissaries and theatres.

WHERE TO PROTEST

Protests must be addressed to the Office of General Counsel, General Accounting Office, Washington, D.C. 20548, Attention: Bid Protest Control Unit. Protests may be sent by mail or by wire, or may be delivered in person. A copy of the protest must be filed concurrently with the contracting officer.

FORM OF PROTEST

There is no prescribed form for filing a protest; formal briefs and other technical forms of pleading are not required. However, protests must be in writing, and should be concise and logically arranged. Protests filed with GAO are required to contain the following:

1. name and address of the protester,
2. identity of the contracting activity and the number of the solicitation or contract,
3. a statement of the grounds for protest, with reasons why the protest should be sustained,
4. a specific request for a ruling by the Comptroller General, and
5. indication that a copy of the protest was filed concurrently with the contracting officer.

ACKNOWLEDGMENT OF PROTEST, REQUIREMENT FOR ADDITIONAL INFORMATION

All protests filed with GAO are acknowledged. If additional information concerning the protest is required, GAO will so notify the protester. The additional information must be mailed to or otherwise furnished GAO not later than 5 days after the protester receives notification from GAO that such additional information is required. A copy of such information must also be furnished to the contracting officer. If this additional information is not provided, GAO may refuse to consider the protest.

TIME FOR FILING

The bid protest process may delay the procurement of goods and services needed by the Government. In order to minimize the possible adverse effect of these delays GAO has established time limits for bid protest actions. GAO believes that these time limits provide would-be protesters with a reasonable opportunity to submit protests, and therefore it will normally refuse to consider protests that are not filed in accordance with those time limits. However, under certain circumstances GAO will consider protests that are not filed timely. The various time frames established, the manner in which timeliness is determined, and the exceptions to the timeliness requirement are described below.

1. Time for filing protests

a. Protests filed initially with contracting agencies.

Protesters are urged to seek resolution of their complaints initially with the contracting agencies. If a protest is filed initially with a contracting agency, any subsequent protest to GAO must be filed within 10 working days of the protester's learning of initial adverse agency action. In many cases, this adverse agency action will be formal notification that the protest is denied. However, adverse agency action may also be indicated by the award of a contract to another party, rejection of a bid, or agency acquiescence in continued performance. Therefore, those who initially file protests with the contracting agencies cannot sit back and wait for a formal agency response to the protest, but must be alert to any possible agency action which is adverse to the protest.

b. Protests based upon solicitation improprieties.

Protests which are based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of proposals must be filed prior to such bid opening or the closing date. If, in the case of a negotiated procurement, an alleged impropriety did not exist in the initial solicitation but is subsequently incorporated into it, a protest based on that impropriety must be filed prior to the next closing date established for submission of revised proposals. This requirement is also applicable to the protests filed initially with the contracting agency. Thus, if a protest based on an apparent solicitation defect is filed with an agency after bid opening, a protest subsequently lodged with GAO will not be considered timely even if it is filed within 10 working days of adverse agency action.

c. All other cases.

In all other cases, protests must be filed not later than 10 days after the basis for protest is known or should have been known. For example, if a bidder believes the low bid to be nonresponsive, a protest based on the alleged nonresponsiveness must be filed within 10 working days after the bidder learns or should have learned that the contracting officer does not regard the bid as nonresponsive. This requirement is also applicable to protests filed initially with the contracting agency, which means that a subsequent protest filed with GAO will not be considered timely unless the protest initially lodged with the agency was filed within the 10 working day period.

2. Determining timeliness

The time periods for filing protests are based on the working days of the Federal Government rather than on calendar days. This means that protests lodged with GAO after notification of initial adverse agency action or after the basis for protest becomes known will be considered timely if filed within 10 working days of those occurrences. The term "filed" means receipt in the contracting agency or GAO, as the case may be, and not merely the mailing or other transmission of the protest. However, to avoid penalizing protesters because of possible delays in the mail over which they have no control, GAO will

consider protests sent by registered or certified mail not later than the fifth day prior to the final date for filing a timely protest, regardless of when they are actually received. GAO will also consider protests submitted by mailgram not later than the third day prior to the final date for filing a protest without regard to the actual date of receipt.

3. Consideration of untimely protests

GAO may consider any protest which is not filed timely "for good cause shown" or where a protest raises issues which are significant to procurement practices or procedures. Good cause generally refers to some compelling reason beyond the protester's control which caused the protest to be filed late. A significant issue is not necessarily dependent upon the amount of money involved, but rather upon the presence of a principle of widespread interest. For example, GAO considered an untimely protest which called into question the legality of a contract which did not include Service Contract Act clauses, even though the Department of Labor, the agency primarily responsible for administering the act, believed the contract was subject to the act.

PROCESSING OF PROTEST

Upon receipt of a protest, GAO will notify the contracting agency immediately by telephone. This will be confirmed in writing the same day. At that time GAO will request the agency to give notice of the protest to the contractor if award has been made, or, if no award has been made, to all bidders or proposers who might be adversely affected if the protest is sustained. GAO will also request the agency to furnish copies of the protest documents to those parties. GAO will further request the agency to prepare a documented report which is responsive to the protest and to furnish the report to GAO with a copy of the protester and other interested parties. A period of 25 working days is regarded as sufficient time, in most cases, for an agency to prepare and furnish a report.

Once the report is furnished, the protester and others are given 10 working days to submit comments on the report. A copy of these comments must be furnished to the agency office which furnished the report and to all other interested parties of record. Five additional working days from receipt of the comments are

permitted for submission of any rebuttal comments a party may wish to file. Five days are also allowed for submission of any additional information that GAO requests from the protester or an interested party. If these time limits are not complied with, GAO may resolve the protest without consideration of the comments untimely filed.

CONFERENCE

GAO procedures provide for the holding of a conference at the request of the protester, the agency involved, or any interested party. Although the majority of bid protest cases are decided without a conference, the conference can serve to clarify issues and factual situations and provide a better understanding of each party's positions. These conferences are informal and do not involve such formal procedures as transcripts, sworn testimony, and cross examination. However, all interested parties are invited to attend.



The conference should be requested prior to expiration of the time permitted for filing comments on the agency report, and except in unusual circumstances, requests received after that time will not be honored. Conferences should normally be held prior to expiration of the period allowed for filing comments on the report, although the GAO attorney assigned to the case may determine that the conference would be more beneficial if held after the comments are filed. Ordinarily, only one conference will be permitted for a bid protest.

PROTECTION OF PROPRIETARY INFORMATION

As indicated above, protesters can expect that copies of their protests will be furnished to Government agencies involved in the protests and to other parties having an interest in the protests. In cases where copies of protests and supplemental material have not been furnished to other parties by the contracting agency or by the protester directly, GAO will, upon request of another party, furnish a copy of the requested material, except to the extent that the withholding of information is permitted or required by law or regulation. Accordingly, if a protester considers that the protest documents contain material which may properly be withheld from other parties, a statement advising of this fact must be placed on the front page of the document and the allegedly proprietary information must be identified wherever it appears. Where the agency indicates that material in its report or other submissions is not to be released, GAO will not release the material and will advise the protester to raise the issue directly with the contracting agency in the event the protester does not agree that the information should not be released.

EFFECT OF PROTEST ON AWARD

When a protest has been filed prior to contract award, agency regulations preclude the making of an award prior to resolution of the protest unless certain conditions exist. For most agencies these conditions are:

- a. the items to be procured are urgently needed,
- b. delivery or performance will be unduly delayed, or
- c. a prompt award will otherwise be advantageous to the Government.

In the event the agency decides to award a contract prior to protest resolution, the agency will notify GAO. It should be noted that GAO does not have the authority to direct agencies not to make award or, if a contract has been awarded, to suspend performance pending resolution of the protest.

DECISION

After all submissions have been received and after the holding of a conference if one was requested, the GAO attorney assigned to the case then drafts a decision which is reviewed at several levels within the Office of General Counsel. After any necessary revisions are made, the draft decision is submitted to the Comptroller General or Deputy Comptroller General for signature and issuance. The Comptroller General has established a goal of 25 working days from the date all submissions have been received for issuance of a decision.

When a decision is issued, a copy is sent (usually by mail) to the protester, the head of the agency involved, and other interested parties.

The decision will either deny or sustain the protest. A protest is denied unless it is shown that the award or proposed award was improper or illegal and the protester was prejudiced as a result. Where a protest is sustained, the Comptroller General normally recommends appropriate corrective action. If the issue is decided before award, it can be expected that the contracting agency will take no procurement action inconsistent with the decision on the protest. Where the case is decided after award consideration is given to the extent of performance, the Government's need for the supplies or services and similar factors. In appropriate circumstances an improper award will be recommended for termination. In other cases where this is not feasible the Comptroller General may recommend that any renewal options in the contract not be exercised.

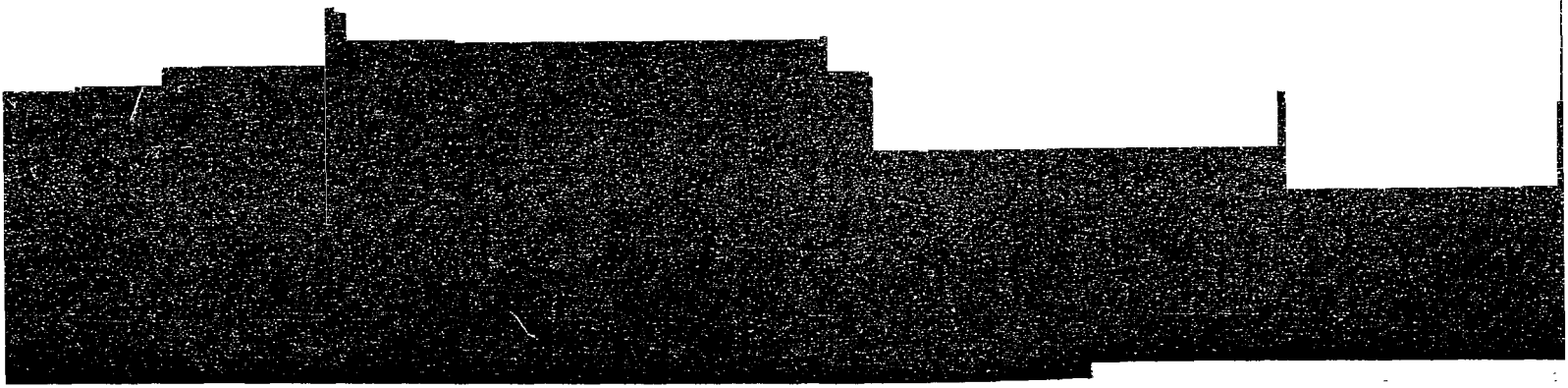
When corrective action is recommended, the Comptroller General is required by law (the Legislative Reorganization Act of 1970) to notify certain committees of the Congress, and the Federal departments and agencies in turn are required to report to those same committees on the action taken in response to the recommendation.

REQUEST FOR RECONSIDERATION

GAO will consider requests for reconsideration of a decision from the protester, any agency involved in the protest, and from any interested party who submitted comments during consideration of the protest. However, the request for reconsideration

must be received in GAO not later than 10 working days after the basis for requesting reconsideration is known or should have been known, and must contain a detailed statement of the factual and legal grounds upon which reversal or modification of the decision is deemed warranted. Requests for reconsideration which indicate only that the requester disagrees with the decision will not be honored.





"It seems to me that they
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rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 4—Accounts

CHAPTER 1—GENERAL ACCOUNTING OFFICE

SUBCHAPTER A—GENERAL PROCEDURES

PART 20—BID PROTEST PROCEDURES

In deciding protests against procurement actions by agencies of the Federal Government, the General Accounting Office recognizes that the expeditious handling of bid protests is indispensable to the orderly process of Government procurement and to the protection of protesters and other parties. Detailed procedures providing for consideration of bid protests are necessary to insure equality of treatment for all parties. These bid protest procedures apply to both formally advertised and negotiated procurements and sales. They are intended to provide fair consideration of bid protests in a timely manner.

These procedures supersede the "Interim Bid Protest Procedures and Standards" promulgated on December 23, 1971, and effective as of February 7, 1972. The experience obtained under those procedures during the past 3 years provides the basis for the revisions made. These new procedures also reflect the requirements expected to be set forth in the regulations applicable to the various Federal contracting agencies. This approach is intended to provide a comprehensive regulatory scheme for processing bid protests.

Based on our experience with the Interim procedures, the requirement for a 5-day period for filing bid protests with the General Accounting Office should be changed. We are now establishing a 10-day period. Our experience also indicates that the requirement for issuing decisions within 20 days of receipt of all necessary information should be replaced and we are substituting a goal of 25 days.

Other changes include clarification of provisions dealing with bid protest conferences and the effect of judicial proceedings and the addition of a provision applicable to requests for reconsideration of bid protest decisions.

The procedures apply to bid protests received by the General Accounting Office on or after June 2, 1975.

Part 20, including the part heading, is revised as follows:

Sec.	
20.0	Definitions.
20.1	Filing of protest.
20.2	Time for filing.
20.3	Notice of protest, submission of agency report and time for submission of comments on report.
20.4	Withholding of award.
20.5	Furnishing of information on protests.

Sec.	
20.6	Time for submission of additional information.
20.7	Conference on protest.
20.8	Time for decision by Comptroller General.
20.9	Request for reconsideration.
20.10	Effect of judicial proceedings.

AUTHORITY: Sec. 311, 42 Stat. 25, as amended (31 U.S.C. 52). Interpret or apply sec. 305, 42 Stat. 24 (31 U.S.C. 71); sec. 304, 42 Stat. 24, as amended (31 U.S.C. 74).

§ 20.0 Definitions.

(a) All "days" referred to in this part are deemed to be "working days" of the Federal Government. The term "file" or "submit" in all sections except § 20.2 and § 20.9(b) refers to the date of transmission.

(b) "Adverse agency action" is any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with an agency. It may include but is not limited to: a decision on the merits of the protest; a procurement action such as the award of a contract or the rejection of a bid despite the pendency of a protest; or contracting agency acquiescence in and active support of continued and substantial contract performance.

§ 20.1 Filing of protest.

(a) An interested party may protest to the General Accounting Office the award or the proposed award of a formally advertised or negotiated contract of procurement or sale by or for an agency of the Federal Government whose accounts are subject to settlement by the General Accounting Office.

(b) Such protests must be in writing and addressed to the General Counsel, General Accounting Office, Washington, D.C. 20548. To expedite handling within the General Accounting Office, the address should include "Attn: Bid Protest Control Unit."

(c) The initial protest filed with the General Accounting Office shall (1) include the name and address of the protester, (2) identify the contracting activity and the number of the solicitation and/or contract, (3) contain a statement of the grounds of protest, and (4) specifically request a ruling by the Comptroller General. A copy of the protest shall also be filed concurrently with the contracting officer and the communication to the General Accounting Office should so indicate. The grounds for protest filed with the General Accounting Office must be fully supported to the extent feasible. See § 20.2(d) with respect to time for filing any additional statement required in support of an initial protest.

(d) No formal briefs or other technical forms of pleading or motion are re-

quired, but a protest and other submissions should be concise, logically arranged, and direct.

§ 20.2 Time for filing.

(a) Protesters are urged to seek resolution of their complaints initially with the contracting agency. If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraph (b) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In any case, a protest will be considered if filed with the General Accounting Office within the time limits prescribed in paragraph (b).

(b) (1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In the case of negotiated procurements, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated therein must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in subparagraph (b) bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier.

(3) The term "filed" as used in this section means receipt in the contracting agency or in the General Accounting Office as the case may be. Protesters are cautioned that protests should be transmitted or delivered in the manner which will assure earliest receipt. Except as provided in paragraph (c) of this section, any protest received in the General Accounting Office after the time limits prescribed in this section shall not be considered unless it was sent by registered or certified mail not later than the fifth day, or by mailgram not later than the third day, prior to the final date for filing a protest as specified herein. The only acceptable evidence to establish the date of mailing shall be the U.S. Postal Service postmark on the wrapper or on the original receipt from the U.S. Postal Service. The only acceptable evidence to establish the date of transmission by mailgram shall be the automatic date indication appearing on the mailgram.

RULES AND REGULATIONS

If the postmark in the case of mail or the automatic date indication in the case of a mailgram is illegible, the protest shall be deemed to have been filed late.

(c) The Comptroller General, for good cause shown, or where he determines that a protest raises issues significant to procurement practices or procedures, may consider any protest which is not filed timely.

(d) If an additional statement in support of the initial protest is required by the General Accounting Office, one copy shall be mailed or otherwise furnished to the General Counsel, General Accounting Office, and a copy shall be mailed or otherwise furnished to the contracting officer, not later than 5 days after receipt of notification from the General Accounting Office of the need for such additional statement.

§ 20.3 Notice of protest, submission of agency report and time for filing of comments on report.

(a) The General Accounting Office shall notify the contracting agency by telephone and in writing within one day of the receipt of a protest, requesting the agency to give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The agency shall be requested to furnish in accordance with applicable procurement regulations copies of the protest documents to such parties with instructions to communicate further directly with the General Accounting Office.

(b) Material submitted by a protester will not be withheld from any interested party outside the Government or from any Government agency which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest document and the allegedly proprietary information must be so identified wherever it appears.

(c) The Office of General Counsel shall request the agency to submit a complete report on the protest to the General Accounting Office as expeditiously as possible (generally within 25 working days) in accordance with applicable procurement regulations, and to furnish a copy of the report to the protester and other interested parties.

(d) Comments on the agency report shall be filed with the Office of General Counsel within 10 days after receipt of the report, with a copy to the agency office which furnished the report and to other interested parties. Any rebuttal a protester or interested parties may care to make shall be filed with the Office of General Counsel, General Accounting Office, within 5 days after receipt of the comments to which rebuttal is directed, with a copy to the agency office which furnished the report, the protester, and

interested parties, as the case may be. Unsolicited agency rebuttals shall be considered if filed within 5 days after receipt by the Agency of the comments to which rebuttal is directed.

(e) The failure of a protester or any interested party to comply with the time limits stated in this section may result in resolution of the protest without consideration of the comments untimely filed.

§ 20.4 Withholding of award.

When a protest has been filed before award the agency will not make an award prior to resolution of the protest except as provided in the applicable procurement regulations. In the event the agency determines that award is to be made during the pendency of a protest, the agency will notify the Comptroller General.

§ 20.5 Furnishing of information on protests.

The Office of General Counsel, General Accounting Office, shall, upon request, make available to any interested party information bearing on the substance of the protest which has been submitted by interested parties or agencies, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of 10 days.

§ 20.6 Time for submission of additional information.

Any additional information requested by the Office of General Counsel, General Accounting Office, from the protester or interested parties shall be submitted no later than 5 days after the receipt of such request. If it is necessary to obtain additional information from the agency, the General Accounting Office will request that such information be furnished as expeditiously as possible.

§ 20.7 Conference.

(a) A conference on the merits of the protest with members of the Office of General Counsel, General Accounting Office, may be held at the request of the protester, any other interested party, or an agency official. Request for a conference should be made prior to the expiration of the time period allowed for filing comments on the agency report (see § 20.3(d)). Except in unusual circumstances, requests for a conference received after such time will not be honored.

(b) Conferences normally will be held prior to expiration of the period allowed for filing comments on the agency report. All interested parties shall be invited to attend the conference. Ordinarily, only one conference will be held on a bid protest.

(c) Any written comments to be submitted and as deemed appropriate by the General Accounting Office as a result of the conference must be received in the General Accounting Office within 5 days of the date on which the conference was held.

§ 20.8 Time for decision by Comptroller General.

The Comptroller General establishes a goal of 25 days for issuing a decision on a protest after receipt of all information submitted by all parties and the conclusion of any conference.

§ 20.9 Request for reconsideration.

(a) Reconsideration of a decision of the Comptroller General may be requested by the protester, any interested party who submitted comments during consideration of the protest, and any agency involved in the protest. The request for reconsideration shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(b) Request for reconsideration of a decision of the Comptroller General shall be filed not later than 10 days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the General Accounting Office.

(c) A request for reconsideration shall be subject to these bid protest procedures consistent with the need for prompt resolution of the matter.

§ 20.10 Effect of judicial proceedings.

The Comptroller General may refuse to decide any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court. The foregoing shall not apply where the court requests, expects, or otherwise expresses interest in the Comptroller General's decision.

[SEAL]

ELMER B. STAATS,
Comptroller General
of the United States.

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