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NOTICE REGARDING CHANGES TO PROTECTIVE ORDER

As part of its bid protest procedures, GAO issues protective orders to allow limited access to information contained in the protest record that cannot be publicly released, typically, a company's proprietary or confidential data or the contracting agency's source-selection-sensitive information. See 31 U.S.C. § 3553(f)(2) (2000), and GAO's Bid Protest Regulations, 4 C.F.R. § 21.4 (2008). The protective order strictly controls who has access to protected material and how that material is labeled, distributed, stored, and disposed of at the conclusion of the protest.

During the more than 15 years that GAO has been issuing protective orders, our Office has closely monitored their use. While protective orders are sometimes modified to suit the circumstances of individual bid protests, in the vast majority of cases the parties use GAO's standard protective order, and as a result, GAO has worked to ensure that the standard order provides the procedures and protections that are generally appropriate. As part of that effort, GAO constantly seeks input from practitioners and has, from time to time, modified the standard protective order to reflect changes in technology or professional practice, or otherwise to make the process more efficient.

GAO has also been vigilant in monitoring potential violations of protective orders. GAO treats any violation of a protective order as a serious matter, whether or not it was intentional, and whether or not it results in an improper disclosure of protected material. Fortunately, GAO's experience is that violations have been rare and have, in most cases, been unintentional. There have, however, been a handful of cases where GAO has imposed sanctions, such as barring the person found to have violated the protective order from having access to information covered by a GAO protective order for a defined period of time, and in one case dismissing the protest. In addition, GAO has referred several violations of protective orders to the state bar of the attorneys involved. GAO intends to continue handling such cases with the seriousness that they deserve.

It is in this context that GAO is making the following, relatively minor changes to its standard protective order to streamline the process by which protected information can be used in bid protest filed with the United States Court of Federal Claims and to

recognize that dismissal of a protest is a possible sanction for violation of the terms of the protective order:

- ¶ 8 to allow a party to use protected material obtained under the protective order in a bid protest filed with the United States Court of Federal Claims, without GAO's prior authorization, where that information is filed under seal with the Court, that the Court is informed of GAO's protective order, and that the Court is requested to issue its own protective order to cover the protected material.
- ¶ 9 to recognize that dismissal of the protest is a possible sanction where the terms of the protective order are violated.

GAO continues to welcome practitioners' suggestions for improvement to its procedures. Any suggestions, questions, or comments may be sent to the undersigned at goldenm@gao.gov or 202/512-8233.

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