

Department of Energy

933.103

(b) The Chief Financial Officer's determination for items (c) and (d) in 932.7004-2 based on information contained in the application, the Federal Reserve Bank's report, and information furnished by the contracting activity concerned.

[49 FR 12011, Mar. 28, 1984, as amended at 59 FR 9106, Feb. 25, 1994]

PART 933—PROTESTS, DISPUTES, AND APPEALS

Subpart 933.1—Protests

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- 933.102 General.
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AUTHORITY: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418(b); and 50 U.S.C. 2401 *et seq.*

SOURCE: 51 FR 31336, Sept. 3, 1986, unless otherwise noted.

Subpart 933.1—Protests

SOURCE: 61 FR 41708, Aug. 9, 1996, unless otherwise noted.

933.102 General. (DOE coverage— paragraph (b))

(b) The Heads of Contracting Activities, for contracts estimated to be within the limits of their delegated authority, may, without power of redelegation, provide corrective relief in response to a protest in accordance with 48 CFR 33.102(b).

[63 FR 53758, Oct. 16, 1997]

933.103 Protests to the agency. (DOE coverage—paragraphs (f), (i), (j), and (k))

(f) If FAR 33.103(f) requires that award be withheld or performance be suspended or the awarded contract be terminated pending resolution of an agency protest, authority to award and/or continue performance of the protested contract may be requested by the Head of the Contracting Activity (HCA), concurred in by counsel, and approved by the Procurement Executive.

(i)(1) Protests filed with the contracting officer before or after award shall be decided by the Head of the Contracting Activity except for the fol-

lowing cases, which shall be decided by the Procurement Executive:

(i) The protester requests that the protest be decided by the Procurement Executive.

(ii) The HCA is the contracting officer of record at the time the protest is filed, having signed either the solicitation where the award has not been made, or the contract, where the award or nomination of the apparent successful offeror has been made.

(iii) The HCA concludes that one or more of the issues raised in the protest have the potential for significant impact on DOE acquisition policy.

(2) Upon receipt of a protest requesting a decision by the Procurement Executive, the contracting activity shall immediately provide a copy of the protest to the Office of Contract Management.

(j) The Department of Energy encourages direct negotiations between an offeror and the contracting officer in an attempt to resolve protests. In those situations where the parties are not able to achieve resolution, the Department favors the use of alternative dispute resolution (ADR) techniques to resolve protests. A protest requesting a decision at the Headquarters level shall state whether the protester is willing to utilize ADR techniques such as mediation or nonbinding evaluation of the protest by a neutral. Upon receipt of a protest requesting a decision at the Headquarters level, the Office of Contract Management will explore with the protester whether the use of ADR techniques would be appropriate to resolve the protest. Both parties must agree that the use of such techniques is appropriate. If the parties do not mutually agree to utilize ADR to resolve the protest, the protest will be processed in accordance with the procedures set forth in paragraph (k).

(k) Upon receipt of a protest lodged with the Department, the contracting officer shall prepare a report similar to that discussed in FAR 33.104(a)(3)(iii). In the case of a protest filed at the Headquarters level, the report shall be forwarded to the Office of Contract Management within 21 calendar days of being notified of such a protest with a proposed response to the protest. The Procurement Executive (for protests at

the Headquarters level or those specific HCA protests cited in paragraph (i)(1) of this section) or an HCA (for protests at the contracting activity level) will render a decision on a protest within 35 calendar days, unless a longer period of time is determined to be needed.

[51 FR 31336, Sept. 3, 1986, as amended at 67 FR 14871, Mar. 28, 2002]

933.104 Protests to GAO. (DOE coverage—paragraphs (a), (b), (c), and (g))

(a)(2) The contracting officer shall provide the notice of protest.

(b) *Protests before award.* (1) When the Department has received notice from the GAO of a protest filed directly with the GAO, a contract may not be awarded until the matter is resolved, unless authorized by the Head of the Contracting Activity in accordance with FAR 33.104(b). Before the Head of the Contracting Activity authorizes the award, the required finding shall be concurred in by the DOE counsel handling the protest, endorsed by the Senior Program Official, and approved by the Procurement Executive. The finding shall address the likelihood that the protest will be sustained by the GAO.

(c) *Protests after award.* Before the Head of the Contracting Activity authorizes performance, the finding required by FAR 33.104(c)(2) shall be concurred in by the DOE counsel handling

the protest, endorsed by the Senior Program Official, and approved by the Procurement Executive.

(g) *Notice to GAO.* (1) The report to the GAO regarding a decision not to comply with the GAO's recommendation, discussed at FAR 33.104(f), shall be provided by the HCA making the award, after approval of the Procurement Executive. If a DOE-wide policy issue is involved, the report shall be provided by the Procurement Executive.

(2) It is the policy of the Department to comply promptly with recommendations set forth in Comptroller General Decisions except for compelling reasons.

(3) The GAO does not have jurisdiction to consider subcontractor protests. 933.106 Solicitation provisions.

933.106 Solicitation provisions.

(a) The contracting officer shall supplement the provision at FAR 52.233-2, Service of Protest, in solicitations for other than simplified acquisitions by adding the provision at 48 CFR 952.233-2.

(b) The contracting officer shall include the provision at 48 CFR 952.233-4 in solicitations for purchases above the simplified acquisition threshold.

(c) The contracting officer shall include the provision at 48 CFR 952.233-5 in solicitations for purchases above the simplified acquisition threshold.