

BID PROTEST FACT SHEET

INITIAL CONSIDERATIONS

- 3 fora for federal bid protests:
 - the awarding agency (to the contracting officer or one level higher)
 - the US Government Accountability Office (GAO)
 - the US Court of Federal Claims
- 2 principal types of protest
 - Pre-award protest of a defective solicitation
 - Post-award protest of award or improper action in connection with a procurement

PRE-AWARD PROTESTS

- May need to be filed *before* the time for bid opening/ deadline for submission of proposals
- Commonly address issues such as specifications favoring one company over another, improper brand-

name-only procurements, unnecessary terms that have the effect of limiting competition, and unclear terms resulting in an unlevel playing field




- Agency protests may be appropriate here: inexpensive; informal; agency may be motivated to modify solicitation voluntarily to avoid a protest; requires best efforts to resolve issues through “open and frank discussions” before filing the protest – must account for in schedule

POST-AWARD PROTESTS

- Can be filed in all three fora
- Commonly address issues such as improper evaluation of technical proposals, unequal discussions, improper best value determinations; improper sole source awards; non-responsiveness or ineligibility of awardee; organizational conflicts of interest; unequal treatment of offerors

KEY GAO AND COURT OF FEDERAL CLAIMS DISTINCTIONS

	GAO	CFC
Stay of Performance	Automatic if protest filed in time	Requires successful motion for temporary restraining order or preliminary injunction
Filing Deadline	10 days	No deadline, but may see diminishing returns
Time to Resolution	100 days	Not prescribed; may be longer
Formality/ Expense	Less formal; less expensive	Formal federal court litigation/more expensive
Voluntary Agency Resolution	Agency may take voluntary corrective action where claims appear to have merit	Agency may take voluntary corrective action where claims appear to have merit
Hearing/Oral Argument	Less common	Commonplace
Decision	Recommends corrective action	Federal court injunction of agency action
Standard of Review	Whether agency decision is reasonable and complies with the terms of the solicitation and procurement law	APA Review: whether agency action is arbitrary or capricious or in violation of law; injunctive relief considers factors other than the merits, e.g., balance of harms, public interest and prejudice
Access to Information	Protective Order prohibits the companies, including in-house counsel, from viewing bid and proposal, source selection and proprietary information that frequently comprise much of the agency record and the required pleadings; individual outside counsel specifically admitted under protective order may review this information	

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