Table of Contents

CHAPTER 1. INTRODUCTION AND OVERVIEW

§ 1:1 In general

CHAPTER 2. PREPARING FOR A BID PROTEST

I. INTRODUCTION

§ 2:1 Protest preparation is essential

II. PREPROPOSAL INFORMATION EXCHANGES

- § 2:2 The FAR encourages information sharing
- § 2:3 General restrictions on information sharing
- § 2:4 Presolicitation planning and communication
- § 2:5 Postsolicitation questions and answers
- § 2:6 Q&A content practice tips

III. NOTICE OF AWARD AND DEBRIEFINGS

- § 2:7 Introduction
- § 2:8 Notices triggering debriefing requirements
- § 2:9 Time restrictions for requesting debriefings
- § 2:10 Requesting debriefings practice tips
- § 2:11 Time restrictions for conducting debriefings
- § 2:12 Information disclosure requirements and restrictions
- § 2:13 Debriefing format and participation
- § 2:14 Debriefing challenges
- § 2:15 Department of Defense Enhanced Debriefings

IV. DECIDING WHETHER TO PROTEST

§ 2:16 Protest considerations

CHAPTER 3. THE AGENCY PROTEST

I. BACKGROUND

§ 3:1 In general

II. AGENCY PROTEST PROCEDURES

- § 3:2 In general
- § 3:3 The protest document
- § 3:4 Who can pursue an agency protest
- § 3:5 Where to send or file an agency protest

- § 3:6 What constitutes filing
- § 3:7 When to file

III. SUSPENSION OF CONTRACT PERFORMANCE

- § 3:8 In general
- § 3:9 Practice tips

IV. PROCESSING AGENCY PROTESTS

§ 3:10 In general

V. ADVANTAGES AND DISADVANTAGES

- § 3:11 In general
- § 3:12 Timeliness concerns at GAO following pre-award agency protests

CHAPTER 4. BID PROTESTS AT THE GOVERNMENT ACCOUNTABILITY OFFICE

I. BACKGROUND ON GAO

§ 4:1 In general

II. FILING A PROTEST

- § 4:2 Preparation of a protest
- § 4:3 —Required information
- § 4:4 —Optional requests
- § 4:5 —Marking non-public information
- § 4:6 How to file a protest with GAO—Electronic Protest Docketing System
- § 4:7 —Protests involving classified information
- § 4:8 "Filed" defined
- § 4:9 Fee to File Protest on EPDS
- § 4:10 GAO's Electronic Protest Docketing System—Background
- § 4:11 Electronic Protest Docketing System—Registering as a Filer
- § 4:12 —Practice Tips
- § 4:13 —Problem with filing
- § 4:14 Serving the protest on the agency
- § 4:15 Filing the public version of the protest

III. FILING A PROTEST—WHO MAY PROTEST

- § 4:16 "Interested party"
- § 4:17 Interested party—Before bid opening or proposal submission
- § 4:18 —After bid opening or proposal submission
- § 4:19 Awardees as interested parties
- § 4:20 The opportunity to recompete

IV. INTERVENING IN A PROTEST

§ 4:21 Who may intervene in a protest

Table of Contents

- § 4:22 Notice of protest to the intervenor
- § 4:23 Preparation of a notice of intervention
- § 4:24 How to file a notice of intervention with GAO—Electronic Protest Docketing System
- § 4:25 When to intervene in a protest
- § 4:26 Considerations in choosing whether to intervene

V. FILING A PROTEST—WHEN TO PROTEST

- § 4:27 In general
- § 4:28 Calculating timeliness
- § 4:29 Protests of solicitation improprieties
- § 4:30 —What is an impropriety
- § 4:31 —Deadlines for filing
- § 4:32 Protests other than of solicitation improprieties
- § 4:33 —What is an other than solicitation impropriety
- § 4:34 —The debriefing exception
- § 4:35 ——Enhanced postaward debriefing rights in DOD procurements
- § 4:36 —Competitive range exclusions
- § 4:37 Protests initially filed with the agency
- § 4:38 Diligent pursuit
- § 4:39 Piecemeal presentation
- § 4:40 Exceptions for otherwise untimely protests

VI. CICA STAY

- § 4:41 Competition in Contracting Act Stay
- § 4:42 —Pre-award stay of award
- § 4:43 —Post-award stay of performance
- § 4:44 —Post-award stay of performance in DoD procurements
- § 4:45 CICA stay overrides

VII. FILING A PROTEST—WHAT TO PROTEST TO AVOID DISMISSAL

- § 4:46 In general
- § 4:47 Protester not an interested party
- § 4:48 Protest untimely
- § 4:49 Protest premature
- § 4:50 —Presolicitation notice
- § 4:51 —Prior to receipt of requested debriefing
- § 4:52 Protest does not involve a procurement
- § 4:53 —Sales of government property
- § 4:54 —Mixed transactions
- § 4:55 —Concession contract
- § 4:56 Protest does not involve a federal agency
- § 4:57 —Government-owned corporations
- § 4:58 —Agencies exempt from GAO jurisdiction
- § 4:59 —Nonappropriated fund instrumentalities (NAFIs)

§ 4:60	—Federal Aviation Administration (FAA procurements)
§ 4:61	Protests that are factually and legally insufficient
§ 4:62	Contract administration
§ 4:63	Small Business Administration issues—Size standards and NAICS standards
§ 4:64	—Small business certificate of competency determinations
§ 4:65	—Procurements under section 8(a) of the Small Business Act
§ 4:66	Affirmative determination of responsibility
§ 4:67	Procurement integrity
§ 4:68	Subcontractor protests
§ 4:69	Suspension and debarment issues
§ 4:70	Competitive range exclusion
§ 4:71	Judicial proceedings
§ 4:72	Task and delivery order jurisdiction
§ 4:73	—Background on orders valued in excess of certain thresholds
§ 4:74	—Orders valued in excess of certain thresholds—How to value orders
§ 4:75	— —How to determine which threshold applies
§ 4:76	Other commons bases of dismissal—Rejection of an unsolicited proposal
§ 4:77	—Debriefings
§ 4:78	—Agency compliance with internal guidance
VIII.	LITIGATING A PROTEST
§ 4:79	In general
§ 4:80	Acknowledgement of a protest
§ 4:81	Notice to the contracting agency
§ 4:82	Dismissal request
§ 4:83	Five-day letter
§ 4:84	Objection to the five-day letter
§ 4:85	Document production
§ 4:86	Additional requests for documents
§ 4:87	Agency report
§ 4:88	Comments
§ 4:89	Additional information
§ 4:90	Supplemental protests
§ 4:91	Conference calls
§ 4:92	Hearings
§ 4:93	—Witnesses
§ 4:94	Post-hearing comments
IX. G	AO PROTECTIVE ORDERS
§ 4:95	In general
§ 4:96	Application for access to protected material
§ 4:97	Identification and safeguarding of protected information
§ 4:98	Submission of redacted copies omitting protective material
§ 4.50 § 4:99	Litigation without a protective order
§ 4:33 § 4:100	Protective order violations
2 T. TOO	1 1 0 0 C 0 1 1 C 0 1 U C 1 1 1 U I U U U U I U I

§ 4:101 Filing Protected Material on EPDS

X. CULMINATION OF THE PROTEST

- § 4:102 Withdrawal of a protest
 § 4:103 Alternative dispute resolution (ADR)
 § 4:104 Alternative dispute resolution—Outcome prediction
- § 4:105 —Negotiation assistance ADR § 4:106 —Litigation risk assessment ADR
- § 4:107 Corrective action
- § 4:108 Decision
- § 4:109 Reconsideration

XI. REMEDIES

- § 4:110 In general
- § 4:111 Monetary relief
- § 4:112 Bid and proposal preparation costs
- § 4:113 Protest costs after a sustained protest
- § 4:114 —Timing
- § 4:115 Protest costs after corrective action
- § 4:116 —Timing
- § 4:117 Costs

CHAPTER 5. BID PROTESTS AT THE COURT OF FEDERAL CLAIMS

I. BACKGROUND

§ 5:1 History and scope of the Court's protest jurisdiction

II. FILING A PROTEST

- § 5:2 The Court's rules and procedures
- § 5:3 Who may protest—An "interested party"
- § 5:4 Who may intervene
- § 5:5 When to protest
- § 5:6 Preliminary Injunctive relief
- § 5:7 CICA stay litigation
- § 5:8 How to file a protest—Pre-filing notification
- § 5:9 How to File a Protest—Filing the complaint and injunctive relief papers
- § 5:10 How to file a protest—Cases involving classified information

III. JURISDICTION

- § 5:11 Jurisdiction
- § 5:12 —Protests against a federal agency
- § 5:13 —Protests "in connection with a procurement or proposed procurement"
- § 5:14 —Task and delivery order contracts

§ 5:15	—GSA Schedule contracts
_	—Maritime procurements
§ 5:17	—Nonappropriated fund instrumentalities
-	—Cancellation of solicitation
_	—Termination of award
o .	—Agency corrective action
o .	—Where COFC jurisdiction is broader than GAO jurisdiction

IV. LITIGATING A PROTEST

§ 5:22	Protective order
§ 5:23	Standard of review and burden of proof
$\S 5:24$	After a protest is filed—Status conference
§ 5:25	The administrative record
§ 5:26	Motions for judgment on the administrative record
§ 5:27	After filing a motion for judgment on the administrative
	record

V. RELIEF

§ 5:28	Relief—In general
§ 5:29	—Injunctive and declaratory relief
§ 5:30	—Bid preparation and proposal costs
§ 5:31	—Attorney's fees and other relief
§ 5:32	Protesting at the COFC after a GAO protest decision
§ 5:33	Reconsideration
\$ 5:34	Appeal

CHAPTER 6. FORUM SELECTION CONSIDERATIONS

I. SELECTING A BID PROTEST FORUM

§ 6:1 In general

II. FORUM SELECTION FACTORS

§ 6:2	Timeliness
§ 6:3	Cost/expense of litigation
§ 6:4	Entitlement to discovery
§ 6:5	Background/expertise of adjudicator
§ 6:6	Effect of, and options after, a protest decision
§ 6:7	Registration in the System for Award Management
§ 6:8	Statistics and trends
§ 6:9	Section 809 panel recommendations
§ 6:10	Other strategic considerations

APPENDICES

Appendix A. Competition in Contracting Act of 1984 (CICA), 31 U.S.C.A. §§ 3551 to 3557 (December 12, 2017)

Table of Contents

- Appendix B. Federal Acquisition Regulation (FAR), 48 C.F.R. Subpart 33.1, Protests (September 13, 2012)
- Appendix C. Executive Order 12979, Agency Procurement Protests
- Appendix D. Government Accountability Office (GAO) Bid Protest Regulations, 4 C.F.R. Part 21 (April 2, 2018)
- Appendix E. GAO, Electronic Protest Docketing System (EPDS)
 Protester/Intervenor User Manual (April 11, 2018)
- Appendix F. GAO, Electronic Protest Docketing System Instructions (April 2018)
- Appendix G. GAO, EPDS Frequently Asked Questions (May 2018)
- Appendix H. Department of Defense Class Deviation—Enhanced Postaward Debriefing Rights (March 22, 2018)
- Appendix I. Guide to GAO Protective Orders (June 2019)
- Appendix J. Additional GAO Guide for Document Redactions (September 2009)
- Appendix K. Rules of the United States Court of Federal Claims— Appendix C—Procedure in Procurement Protest Cases (July 1, 2019)
- Appendix L. Tucker Act, 28 U.S.C.A. § 1491 (December 31, 2011)

Table of Laws and Rules

Table of Cases

Index