



1. PURPOSE

The purpose of this document is to provide the SPAWAR claimancy with guidance regarding protests filed with the agency (SPAWAR) or the General Accountability Office (GAO). If there is a conflict between this document and statutory or regulatory guidance such as the [FAR](#), [DFARS](#), [NMCARS](#) or Government Accountability Office Bid Protest Regulations under [4 CFR 21](#), the latter guidances shall control.

A protest is a written objection by an interested party (actual or prospective offeror with economic interest in a contract) to any of the following:

- a. Solicitation or request for offers for the procurement of property or services;
- b. Cancellation of the solicitation or other request;
- c. Contract award or proposed award; or
- d. Termination or cancellation of contract award, if the objection contains an allegation of improprieties concerning the award of the contract ([FAR 33.101](#)).

Related guidance is available under CMPG [5.1.1 Determine Protest Validity](#).

2. POLICY

All parties are encouraged to use their best efforts to resolve concerns at the contracting officer level before filing a formal protest ([FAR 33.103](#)). Alternative Dispute Resolution (ADR) techniques are encouraged, such as conciliation, facilitation, mediation, fact-finding, mini-trials, arbitration, and use of ombudsmen ([FAR 33.201](#)).

Protests are categorized into pre-award and post-award types. Pre-award protests involve objections to a solicitation or the cancellation of a solicitation before an award has been made. Post-award protests involve objections to an award, proposed award or a termination/cancellation of an award after the Government awards a contract ([FAR 33.104](#)).

Protests may be filed directly with the agency, GAO, U.S. Court of Federal Claims (COFC), or U.S. District Court. Each forum has specific statutory and regulatory requirements, and thus, the agency should follow the regulations applicable to the forum in which the protest was filed. This policy document focuses on agency and GAO protests, as these forums are the most common protest forums, and does not address protests submitted to other organizations. Note: Pursuant to [FAR 19.302](#), any protest challenging the small business representation of an offeror in a specific offer must be filed with the Small Business Administration.

2.1 Agency Protests ([FAR 33.101](#) through [FAR 33.103](#))

Agency protests do not include formal discovery or hearings; however, informal sharing of relevant information may occur ([FAR 33.103\(h\)](#)). The contracting officer must render a formal agency decision that is well reasoned and explains the agency position. Listed below are some of the most significant FAR procedural requirements relating to agency protests. For a full and detailed explanation of FAR requirements for agency level protests, see [FAR 33.101](#) through [FAR 33.103](#). In addition to the FAR, agencies should adhere to applicable Navy and DoD policies relating to protests.

2.1.1 DOCUMENTATION

The following are existing documents applicable to agency level protests:

1. *Statistical Report*: DON HCAs maintain statistical information on agency protests IAW [the ASN \(RD&A\) memo](#), to include:
 - Number of agency protests received.
 - Number of agency protests reviewed at a level above the contracting officer.



- Number of agency protests decided in favor of the protester or for which some form of corrective action was taken by the contracting activity.
 - Number of agency protests appealed to GAO and number of such GAO protests decided in favor of the protester.
 - Estimated number of GAO protests avoided because protests to the agency submitted instead.
2. *DPAP Briefing*: The [DPAP Memo of Jan 02, 2008](#) and [DASN\(AP\) memo of Dec 2008](#) require an agency briefing to the DPAP Director *within ten days* of the filing of any protest for either a competitively awarded Major Defense Acquisition Program (MDAP) or a services acquisition valued at \$1 Billion dollars or more.

2.1.2 PROTEST REQUIREMENTS

Protests shall be concise and logically presented to facilitate review by the agency. The substantial failure to do so may be grounds for dismissal ([FAR 33.103\(d\)](#)).

Timing:

- Pre-Award: Protests challenging an impropriety in the solicitation (pre-award) must be filed before bid opening or the date set for receipt of proposals. ([FAR 33.103\(e\)](#))
- Postaward: All other protests (post-award) should be filed within 10 calendar days after the basis is known or should have been known, whichever is earlier, or within 5 calendar days of a required debriefing. (If the last day of this period falls on a weekend or holiday, the protest may be filed on the next workday.)

2.2 GAO Protests ([FAR 33.104](#); [4 CFR 21](#))

In contrast to agency level protests, GAO level protests are statutorily allowed and involve a decision-making body separate from the agency. GAO, rather than the agency, determines whether the protest should be denied or sustained and what corrective action must be taken, if any. During a GAO protest, formal discovery and/or hearings between the parties and the GAO will occur. In addition, the agency may be required to provide information relating to the protest to GAO, the protester, and/or other interested parties. Some requested information may be source selection sensitive or proprietary. Interested parties, however, may request a protective order prohibiting certain parties and/or the public from accessing the sensitive information.

CICA Stay. The Competition in Contracting Act (CICA) requires GAO to notify the agency of a protest within one day after the receipt of a protest. When the agency receives notice of a GAO protest *filed within 10 days of award or 5 days of the debriefing date offered to the protester* (when required), whichever is later, the contracting officer shall immediately direct the contractor(s) to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract.

3. RESPONSIBILITIES

3.1 Interested Party/Protester

Communicates concerns to contracting officer; participates in ADR; files protest with the agency or GAO.

3.2 General Accountability Office (GAO) – GAO Protest

Receives protests from interested parties and issues recommendations to agencies.

3.3 Contracting Officer

Considers all protests and seeks legal advice, whether protests are submitted before or after award and whether filed directly with the agency or the GAO.



- GAO protests: submits a statement of relevant facts to the Office of Counsel and assists the Office of Counsel in preparing the agency report and D&F, if necessary, to award or continue performance in the face of a protest.
- Agency protests: reviews, signs and sends the agency decision to the protester. If requested by the protester, a level above the contracting officer may be requested to issue/sign the protest decision ([FAR 33.103\(d\)\(4\)](#), [NMCARS 5233.103\(d\)\(4\)](#)).

3.4 Office of Council/SPAWAR 3.0

Prepares the agency report or agency decision; reviews protester-requested documents; and prepares the D&F to award or continue performance in the face of a protest.

3.5 Chief of the Contracting Office (CCO)

Reviews and signs the agency report to the GAO; reviews all agency decisions for agency-level protests.

3.6 Head of the Contracting Activity (HCA)/SPAWAR 2.0

- GAO Protests:
 - Provides a copy of each report to *DASN(AP)* concurrent with the submission to GAO.
 - Consults with *DASN(AP)* before any final decision is reached that differs from GAO's recommendations ([NMCARS 5233.104\(g\)](#)).

4. PROCEDURE

4.1 Attempt to Resolve Concerns

1. **Interested Party** communicates concerns to contracting officer.
2. **Contracting Officer**
 - a. Attempts to resolve issue (implements ADR); and
 - b. Contacts Office of Counsel for legal support.
3. **Interested Party** decides to file a protest with the agency (see [Agency Protests](#) for next step) or GAO (see [Protests to GAO](#) for next step). Note that pursuing an agency protest does not extend the time for obtaining a [CICA stay](#) at GAO.

4.2 Agency Protests ([FAR 33.103](#) | [DFARS 233.1](#) | [NMCARS 5233.103](#))

Agency uses their best efforts to resolve agency protests *within 35 days* after the protest is filed ([FAR 33.103\(g\)](#)). Interested parties/protestors may request.

4.2.1 FILING AN AGENCY PROTEST

1. **Protester** develops written protest. Protests shall be concise and logically presented to facilitate review; substantial failure to do so may be grounds for dismissal. Agency protests include:
 - Name, address, fax and telephone numbers of the protester;
 - Solicitation or contract number;
 - Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester;
 - Copies of relevant documents;
 - Request for a ruling by the agency;
 - Statement as to the form of relief requested;
 - All information establishing that the protester is an interested party; for the purpose of filing a protest; and
 - All information establishing the timeliness of the protest.
2. **Protester** may request an independent review of their protest at a level above the contracting officer (the CCO or, if the CCO is less than two levels



- higher than the contracting officer, the Chief of the next higher contracting office).
3. **Protester** submits protest within applicable time limits ([FAR 33.103\(e\)](#)).
 - a. Protests claiming an impropriety in the solicitation (pre-award) must be filed before proposal due date or bid opening.
 - b. All other protests (post-award) should be filed *no later than 10 days after the basis* of protest is known (or should have been known). If the last day of this period falls on a weekend or holiday, the protest may be filed on the next workday.
 - c. The agency may choose to consider protests that are not filed on time where it determines the protest raises significant issues with its acquisition system.
- 4.2.2 AGENCY REPORT
1. **Contracting Officer**/CCO and Office of Counsel validate proposal for timeliness and completeness.
 2. **Contracting Officer**/CCO and Office of Counsel determine appropriate action:
 - a. Suspend performance. Immediately suspend performance on any contract where the protest is received within ten (10) days of award or five (5) days of the offered debriefing date, whichever is later, the contracting officer shall immediately suspend performance. Unless award/performance is urgent and compelling, the contracting officer shall not award a contract until the protest is resolved.
 - b. Award pending protest disposition. In some cases, an urgent and compelling Government need may necessitate award or continued performance ([FAR 33.103\(f\)\(3\)](#)).
 - i. **Contracting officer** and program office/technical code justify contract award or continued performance in writing following the  [Determination and Findings](#) (D&F) SCPPM. The D&F is reviewed by SPAWAR 3.0 and SPAWAR 2.0, and [approved](#) by the *head of the contracting agency (HCA)*.
 - ii. Inform all offerors who might become eligible for award.
 - iii. Consider requesting offerors to extend the time for acceptance of their solicitations to avoid the need for a re-solicitation.
 - c. Corrective action. If *within 1 year of contract award*, a protest causes the agency to either (1) issue a new solicitation on the protested contract award, or (2) issue a new request for revised proposals on the protested contract award, follow the guidance at [FAR 15.507\(b\)-\(c\)](#) and provide the following information to appropriate parties:
 - i. Information provided to unsuccessful offerors in any debriefings conducted on the original award regarding the successful offeror's proposal.
 - ii. Other nonproprietary information that would have been provided to the original offerors.

Is an acquisition valued at over \$1B being protested? If yes:

Agency submits the required protest notice *within five (5) days* of protest filing to DASN(AP) at RDAJ&As@navy.mil ([NMCARS 5233.170](#)). If the acquisition is for an MDAP or services, brief DPAP *within 10 days* of protest filing IAW [DFARS 233.170](#) and [DFARS PGI 233.170](#).

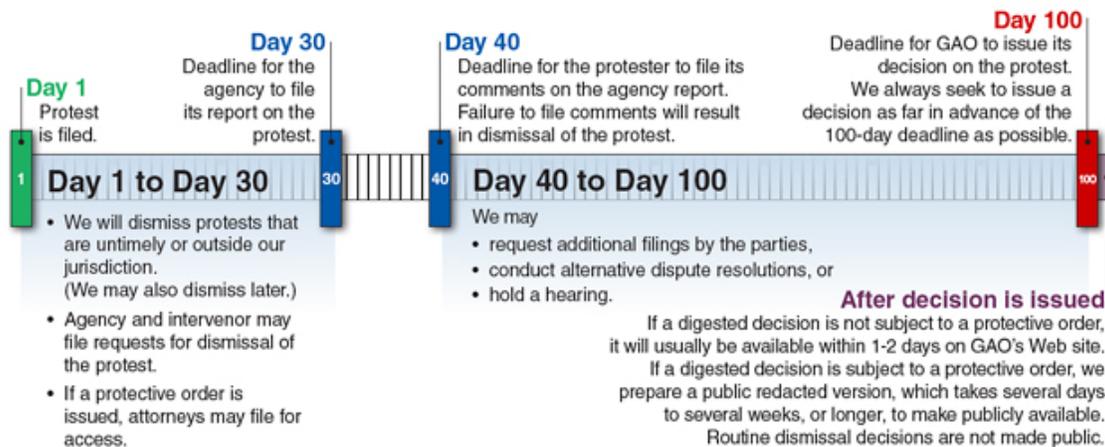
3. **Office of Council** prepares the agency report or decision.



- a. An agency's protest decisions shall be well-reasoned, and explain the agency's position. In this manner, the protester will fully understand the agency's viewpoint.
 - b. All agency protest decisions are independently reviewed by the CCO.
 - c. An agency appellate review of a contracting officer's final decision does not extend the GAO's timeliness requirements.
4. **Protester** may challenge the Contracting Officer's decision via the [GAO Contract Appeals Board](#).

4.3 GAO Protests ([FAR 33.104](#) | [DFARS 233.1](#) | [NMCARS 5233.104](#) | [4 CFR 21](#))

GAO determines whether the protest should be denied or sustained and what corrective action must be taken, if any. The GAO issues a decision within 100 workdays of the initial filing (65 calendar days if the express option is used). The [GAO website](#) provides the following image for GAO protest decision timeline, including a [full-text description](#).



4.3.1 DEVELOPING A GAO PROTEST

1. **Protester** develops written protest, addressing [4 CFR 21](#) GAO requirements.
2. **Protester** submits the written protest IAW GAO procedure.
 - a. Protests alleging improprieties in a solicitation must be filed *before proposal due date* if the improprieties were apparent prior to that time.
 - b. A solicitation defect that was not apparent before that time must be protested *not later than 10 days after the defect became apparent*.
 - c. In negotiated procurements, if an alleged impropriety did not exist in the initial solicitation but was later incorporated into the solicitation by an amendment, a protest based on that impropriety must be filed *before the next closing time* established for submitting proposals.
 - d. In all other cases, protests must be filed *not later than 10 days after* the protester knew or should have known the basis of the protest, whichever is earlier, with the exception of protests following a required
3. **Protester** furnishes a copy of its complete protest to the official and location designated in the solicitation (or, in the absence of such a designation, to the contracting officer), so it is received *no later than 1 day* after the protest is filed with the GAO. The GAO may dismiss the protest if the protester fails to furnish a complete copy of the protest within 1 day.
4. **GAO** notifies the contracting officer by telephone within 1 day after the filing of a protest, and, unless the protest is dismissed under this part, shall



- promptly send a written confirmation to the agency and an acknowledgment to the protester.
5. **GAO** may decide to use the Express Option (at the request of a party or on its own initiative) to resolve a protest under an expedited schedule ([4 CFR 21.10\(a\)](#)). If the GAO decides to dismiss the protest, an agency report is not required.
 6. Upon notice that a protest has been filed with the GAO, the **contracting officer** immediately begins compiling information necessary for a report to the GAO. This includes providing the Office of Counsel with:
 - a. Relevant protest file documents (see [Agency Protests](#));
 - b. A statement of relevant facts, requiring all persons with potentially relevant information to retain all information and assisting the Office of Counsel to prepare the agency report (see [Agency Protests](#)).
 7. **Agency** immediately issues a notice of protest
 - a. *Pre-Award*: Agency gives notice of the protest to all parties who appear to have a reasonable prospect of receiving award if the protest is sustained. The contracting officer, in consultation with the Office of Counsel, furnishes copies of redacted protest submissions with instructions to (1) communicate directly with the GAO, and (2) provide copies of such communication to the agency and to other participating parties when they become known.
 - b. *Postaward*: Agency gives notice of the protest to the contractor(s) immediately after receipt of the GAO's written notice that a protest has been filed.
- #### 4.3.2 AGENCY REPORT
1. **Contracting officer** decides how to respond to the GAO protest notification.
 - a. **Suspend performance or terminate awarded contract.** Immediately suspend performance or terminate the awarded contract if the GAO protest notice is received before contract award (Pre-Award) or (Postaward) *within 10 days after the contract award or within 5 days after the debriefing date offered to the protester, whichever is later.* See paragraph b for authorized exceptions (i.e., continued performance or award).
 - i. **Suspended award**: Inform all offerors who might become eligible for award. Consider requesting offerors to extend the time for acceptance of their solicitations to avoid the need for a resolicitation.
 - ii. **Suspended or terminated award**: Attempt to negotiate a mutual agreement on a no-cost basis.
 - b. **Continue with performance or award.** Urgent and compelling circumstances that significantly affect Government interest will not permit awaiting GAO decision. Justify contract award or continued performance in writing following the  [Determination and Findings](#) (D&F) SCPPM. The D&F is reviewed by SPAWAR 3.0 and SPAWAR 2.0, and [approved](#) by the *HCA*.
 - i. **Pre-Award** ([FAR 33.104\(b\)](#)): *HCA* authorization required for award; award is likely to occur within 30 days of D&F approval.
 - ii. **Postaward** ([FAR 33.104\(c\)\(1\)](#)): Under [CICA Stay](#) conditions, the **contracting officer** immediately suspends/terminates the awarded contract. **HCA** may authorize continued performance or award via approval of D&F.



- iii. Inform GAO of the written finding to continue; provide written notice of the decision to the protester and other interested parties.
- c. **Postpone award until after protest resolution.** Inform the offerors who might become eligible for award. If appropriate, request that offerors extend the time for acceptance of their offers to avoid the need for re-solicitation.

Is an MDAP or services acquisition valued at over \$1B being protested? If yes: Agency briefs DPAP within ten (10) days of protest filing ([DFARS 233.170](#)). This brief should outline the basis of the protest, SPAWAR's position, and any other information deemed relevant to the protest.

2. **Office of Counsel** creates and maintains a protest file. If an actual or prospective offeror so requests, the procuring agency shall provide actual or prospective offerors reasonable access to the protest file within a reasonable time after submittal of an agency report to the GAO. However, if the GAO dismisses the protest before the documents are submitted to the GAO, then no protest file need be made available. The protest file shall include an index and as appropriate:
 - a. The protest;
 - b. The offer submitted by the protester;
 - c. The offer being considered for award or being protested;
 - d. All relevant evaluation documents;
 - e. The solicitation, including the specifications or portions relevant to the protest;
 - f. The abstract of offers or relevant portions; and
 - g. Any other documents that the agency determines are relevant to the protest, including documents specifically requested by the protester.
 3. **Agency** completes its report to GAO (see [FAR 33.104\(a\)\(3\)\(iv\)](#) for detailed agency reporting requirements). The agency report contains:
 - The documents in the protest file;
 - The signed statement of relevant facts;
 - A legal memorandum in opposition to the protest;
 - A list of parties being provided the documents; and
 - Responses to the protester's document requests.
 4. **Agency** submits report to GAO *within 30 days* (or 20 days for an Express Option) after the GAO notifies the agency that a protest has been filed, unless the GAO advises the agency the protest is dismissed or authorizes an extension.
 5. At the same time, **contracting officer** provides copies of the agency report to the protester and any interveners subject to protective order limitations.
 6. **Protester** requests any other documents from the time of relevance or mentioned in the report within *two (2) workdays* after receipt of the report; **agency** provides requested documents to GAO *within two (2) days*.
 7. **Protester** submits a response to the agency report to GAO within *10 days* (5 days under Express Option) after receipt of the report.
- 4.3.3 GAO DECISION
1. **GAO** issues a decision on the protest *within 100 days*:
 - a. **Dismiss the protest.** In this case, an agency report is not required.
 - b. Authorizes **additional time for the Agency report** in response to an agency request for an extension.



- c. **Sustain the protest.** GAO may recommend that the agency implement any combination of the following remedies:
 - i. Refrain from exercising options under the contract;
 - ii. Cancel or amend the solicitation;
 - iii. Terminate the contract;
 - iv. Re-compete the contract;
 - v. Award a contract consistent with statutes and regulations to promote compliance; or
 - vi. Other recommendations it deems necessary, including but not limited to reimbursing the offeror for its bid and proposal costs and attorney’s fees.
- 2. **HCA** reviews GAO recommendation; consults with *DASN(AP)* before any final decision is reached that differs from GAO’s recommendations ([NMCARS 5233.104\(g\)](#)).
- 3. If GAO recommends reimbursement of cost
 - a. Agency consults legal counsel before paying an award of costs; and
 - b. Agency and protestor attempt to reach an agreement on the amount:
 - i. Agreement: **Offeror** files a claim for its costs with SPAWAR *within 60 days* or forfeits its right to recover costs.
 - ii. Unable to reach agreement: Protester requests GAO to recommend an amount; **Agency** has *60 days* to inform GAO of action taken in response to their recommendation.
- 4. If GAO recommendations are not fully implemented *within 60 days* of receipt, the **HCA** reports the failure to the GAO no more than 5 days later (65 days after receipt). The report shall explain the reasons why the GAO’s recommendation, exclusive of costs, has not been followed by the agency.

5. APPROVALS

N/A

6. TOOLBOX

- 1. [Protest Resources](#) – DPAP webpage
- 2. [GAO](#) – website
- 3. [GAO Bid Protest Guide](#) - 2009
- 4. [Protests](#) – DASN(AP), Dec 2008
- 5. [Improving Communication during Competitive Source](#) – DPAP, Jan 2008
- 6. [FAR 33.103: Protests to the Agency](#) – ASN(RD&A), Aug 1996
- 7. [Policy Alert 09-51 -- An Analysis of Viable Protests](#) – SPAWAR, 2009
- 8. [Determination and Findings](#)

7. CHANGE HISTORY

Updated material is highlighted by *purple text* and an Alert/New icon.

Date	Description of Changes
June 2016	Content formatted and reorganized; updated links.
March 2013	Last version created in old format; no change notes available. Latest updates are highlighted by purple text.