



FEDERAL RETIREMENT THRIFT INVESTMENT BOARD
77K Street, NE Washington, DC 20002

To: FRTIB Personnel, Contractors, and Subcontractors

Through: Susan Crowder
Chief Acquisition Officer

From: Wesley Beemer
Chief Business and Policy Officer
Office of Chief Financial Officer

Date: 1 October 2018

Re: Agency Protest Procedures

Purpose:

This memorandum informs Federal Retirement Thrift Investment Board (FRTIB) acquisition staff, contractors, and subcontractors of the Agency's procedures on protests to the Agency regarding a contract action by the Contracting Division of the Office of Chief Financial Officer, FRTIB.

Subpart 33.1 of the Federal Acquisition Regulation (FAR) provides guidance on protests, which are written objections by an interested party to some action taken by an Agency during the acquisition process. Interested parties may file a protest with either the Government Accountability Office (GAO) or the Agency itself.

FAR 33.104 describes the actions to be taken when an interested party files a protest with the GAO. This guidance constitutes a complete set of instructions, which the FRTIB Contracting Division must follow in handling GAO protests.

FAR 33.103 describes the actions to be taken when an interested party files a protest with the Agency. FAR 33.103(d)(4) allows protestors to request an independent review of the protest at a level above the Contracting Officer (CO) and provides general guidance on the review procedure, but it requires each Agency to provide more detailed procedures.

The following process describes how to file a protest with the Agency and establishes the procedures for an independent review required by FAR 33.103(d)(4).

Process:

(1) Filing a Protest with FRTIB

As mentioned above, FAR 33.103(d)(4) allows interested parties to request an independent review of their protest at a level above the CO. It also stipulates that the official(s) designated to conduct the independent review (a) need not be within the CO's supervisory chain, and (b) when practicable, should not have had previous personal involvement in the procurement.

- (a) When protesting an FRTIB acquisition, an interested party may choose *either* to have the CO review the protest, *or* to have the Division Chief of Contracting (DCC) conduct the independent review described in FAR 33.103(d)(4). If the interested party requests the DCC review, but the DCC has had significant personal involvement in the procurement, then the DCC must designate another official to conduct the review. In any case, the DCC may appoint other personnel as necessary to assist in the review and preparation of the decision provided they have not been personally involved in the procurement.
- (b) Interested parties may file a protest of an FRTIB acquisition with either the CO or the DCC. In either case, the interested party must indicate whether it elects to have the CO or the DCC conduct the review of the protest.

(2) Processing the Protest

When a CO or the DCC receives a protest filed with FRTIB, they must immediately take the following actions, in the order in which they are presented:

- (a) Determine whether or not the protest is timely. To be considered timely:
 - (i) Protests based on alleged apparent improprieties in a solicitation must be filed before bid opening or the closing date for receipt of proposals.
 - (ii) In all other cases, protests must be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

However, even if the protest is not filed in a timely manner, the agency may consider the merits of any protest, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system (FAR 33.103(e)).

- (b) Determine whether or not the protest contains all the information that is required by FAR 33.103(d)(2):
 - i. Name, address, and fax and telephone numbers of the protester.
 - ii. Solicitation or contract number.
 - iii. Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
 - iv. Copies of relevant documents.
 - v. Request for a ruling by the agency.
 - vi. Statement as to the form of relief requested.
 - vii. All information establishing that the protester is an interested party for the purpose of filing a protest.

viii. All information establishing the timeliness of the protest.

Failure to substantially comply with any of these requirements may be grounds for dismissal of the protest.

- (c) Attempt to resolve the protest.
- (d) If the protestor does not withdraw the protest, suspend award of the contract/order if the protest was received before award, or suspend performance of the contract/order if the protest was received within 10 days after contract award or within 5 days after the debriefing date offered to the protestor. If contract/order award is suspended, the CO or DCC must notify any other offerors whose offers are being considered for award, and request extension of the expiration dates of the offers to allow time for handling the protest (FAR 33.103(f)).

However, the CO or DCC may continue with award of the contract/order or continuation of performance, if they justify in writing that this action is required for urgent and compelling reasons or is determined to be in the best interest of the Government. Such justification or determination must be approved by the Chief Acquisition Officer (FAR 33.103(f)).

(3) Response to the Protest

- (a) The CO or DCC must consider all timely protests. In preparing a response to a protest, the CO or DCC must seek the advice of the Office of General Counsel (OGC), and may also need to coordinate with the program office. To the extent permitted by law and regulation, the CO or DCC and the protestor may exchange relevant information (FAR 33.102(a) and 33.103(g)).
- (b) The CO or DCC should attempt to resolve the protest in an inexpensive, informal, procedurally simple, and expeditious manner. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods. But regardless of the resolution method, the CO or DCC must do everything possible to resolve the protest within 35 days after it is filed (FAR 33.103(c) and (g)). The CO or DCC's response must be well-reasoned and fully responsive to the allegation(s) contained in the protest and explain the Agency's position.
- (c) All responses must be reviewed by OGC prior to being issued. When the response is finalized and approved, the CO or DCC must prepare four final copies, and distribute one copy each to the protestor, OGC, the Program Office, and the DCC. The CO or DCC must provide the protest decision to the protestor using a method that provides evidence of receipt (FAR 33.103(h)).

(4) FAR Part 33 Contract Clauses

The CO will include the dispute and protest clauses of FAR Part 33, as prescribed.

(5) Prescribed FRTIB-Specific Clause

All solicitations released by the Contracting Division must contain the Agency specific clauses below. It notifies potential bidders and offerors that they may choose to have their protest reviewed by either the CO or DCC and provides related instructions.

(6) FRTIB-Specific Clause

FRTIB Protest Procedures

[FAR 33.103]

(a) An interested party who files a protest with FRTIB has the option of requesting review and consideration of the protest by either the Contracting Officer (CO) or the Division Chief of Contracting (DCC). The protest must clearly indicate the official to whom it is directed.

(b) If the protest is directed to the CO, a copy of the protest must be sent to the DCC at the same time the protest is filed. The mailing address for the DCC is:

Division Chief of Contracting
Office of Chief Financial Officer (OCFO)
Federal Retirement Thrift Investment Board (FRTIB)
77 K St. NE, Suite 1000
Washington, DC 20002

(c) Review and consideration of a protest by the DCC is an alternative to review and consideration by the CO.

Approval

Name: _____
Susan C. Crowder

Title: Chief Acquisition Officer, FRTIB