

## 33.102 General.

(a) Without regard to the *protest venue*, *contracting officers shall* consider all *protests* and seek legal advice, whether *protests* are submitted before or after award and whether *filed* directly with the agency, the Government Accountability Office (GAO), or the U.S. Court of Federal *Claims*. (See [19.302](#) for *protests* of small business status, [19.305](#) for *protests* of disadvantaged business status, [19.306](#) for *protests* of HUBZone small business status, and [19.307](#) for *protests* of service-disabled veteran-owned small business status, and M) for *protests* of the status of an economically disadvantaged *women-owned small business concern* or of a *women-owned small business concern* eligible under the Women-Owned Small Business Program.)

(b) If, in connection with a *protest*, the head of an agency determines that a *solicitation*, proposed award, or award does not comply with the requirements of law or regulation, the *head of the agency may*-

(1) Take any action that could have been recommended by the Comptroller General had the *protest* been *filed* with the Government Accountability Office;

(2) Pay appropriate costs as stated in [33.104\(h\)](#); and

(3) Require the awardee to reimburse the Government's costs, as provided in this paragraph, where a postaward *protest* is sustained as the result of an awardee's intentional or negligent misstatement, misrepresentation, or miscertification. In addition to any other remedy available, and pursuant to the requirements of [subpart 32.6](#), the Government *may* collect this debt by offsetting the amount against any payment due the awardee under any contract between the awardee and the Government.

(i) When a *protest* is sustained by GAO under circumstances that *may* allow the Government to seek reimbursement for *protest* costs, the *contracting officer* will determine whether the *protest* was sustained based on the awardee's negligent or intentional misrepresentation. If the *protest* was sustained on several issues, *protest* costs *shall* be apportioned according to the costs attributable to the awardee's actions.

(ii) The *contracting officer shall* review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement ought to be made. If it is in the best interests of the Government to seek reimbursement, the *contracting officer shall* notify the contractor *in writing* of the nature and amount of the debt, and the intention to collect by offset if necessary. Prior to issuing a final decision, the *contracting officer shall* afford the contractor an opportunity to inspect and copy agency records pertaining to the debt to the extent permitted by statute and regulation, and to request review of the matter by the *head of the contracting activity*.

(iii) When appropriate, the *contracting officer shall* also refer the matter to the agency *debarment* official for consideration under [subpart 9.4](#).

(c) In accordance with [31 U.S.C.1558](#), with respect to any *protest filed* with the GAO, if the funds available to the agency for a contract at the time a *protest* is *filed* in connection with a *solicitation* for, proposed award of, or award of such a contract would otherwise expire, such funds *shall* remain available for obligation for 100 days after the date on which the final ruling is made on the *protest*. A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request,

whichever is later.

(d) *Protest likely after award.* The *contracting officer* may stay performance of a contract within the time period contained in paragraph 33.104(c)(1) if the *contracting officer* makes a written determination that-

(1) A *protest* is likely to be *filed*; and

(2) Delay of performance is, under the circumstances, in the best interests of the *United States*.

(e) An interested party wishing to *protest* is encouraged to seek resolution within the agency (see 33.103) before filing a *protest* with the GAO, but *may protest* to the GAO in accordance with GAO regulations (4 CFR Part 21).

(f) No person *may* file a *protest* at GAO for a *procurement* integrity violation unless that person reported to the *contracting officer* the information constituting evidence of the violation within 14 days after the person first discovered the possible violation (41 U.S.C. 2106).

**Parent topic:** Subpart 33.1 - Protests