

33.104 Protests to GAO.

(a) General procedures.

(2) GAO sends all protests involving DLA procurements to the Office of General Counsel. Immediately after receiving notice from GAO of a protest, the Office of General Counsel will notify the procuring organization's Office of Counsel. The Office of Counsel shall promptly notify GAO and the Office of General Counsel of the name, e-mail address, and phone number of the assigned attorney. The contracting officer, in coordination with the Office of Counsel, is responsible for ensuring that the notice of protest filed at GAO is provided to all interested parties.

(3)(i) The contracting officer and assigned attorney should review the protest for possible corrective action or disposition using Alternative Dispute Resolution (ADR). For protests not resolved through corrective action or ADR, the assigned attorney provides appropriate representation, including submission of the agency report and documents required by FAR 33.104(a)(3). The agency report is prepared by the assigned attorney with close coordination with the contracting officer and will be signed by both the contracting officer and the assigned attorney. Letters transmitting agency reports to GAO must be signed by the procuring organization's Chief Counsel.

(b) Protests before award.

(1) If the HCA determines it is necessary to award a contract after receipt of a notice from GAO that a protest has been filed, the HCA, with coordination by the procuring organization's Office of Counsel, shall make the written finding. The Office of Counsel must send a copy of the finding to the Office of General Counsel. Procuring organizations for which the Deputy Director, DLA Acquisition (J7) is the HCA, shall submit the proposed finding through their Chief Counsel to the Office of General Counsel for coordination, prior to submitting the proposed finding to the Deputy Director, DLA Acquisition (J7).

(2) Before award of the contract, the assigned attorney will notify GAO of the finding.

(c) Protests after award.

(2) If the HCA determines it is necessary to continue contract performance after receipt of a notice from GAO that a protest has been filed, the HCA, with coordination by the procuring organization's Office of Counsel, shall make the written finding. The Office of Counsel must send a copy of the finding to Office of General Counsel. Procuring organizations for which the Deputy Director, DLA Acquisition (J7) is the HCA, shall submit the proposed finding through their Chief Counsel to the Office of General Counsel for coordination, prior to submitting the proposed finding to the Deputy Director, DLA Acquisition (J7).

(3) Before the procuring organization lifts the stop work order or performance is otherwise continued, the assigned attorney will notify GAO of the finding.

(g) Notice to GAO.

In a sustained protest, a decision not to follow the GAO recommendation requires approval by the DLA Acquisition Director and coordination with the Office of General Counsel.

(h) Award of costs.

The authority and responsibility for resolving claims for protest costs is delegated to Chief Counsel at the procuring organizations DLA Energy, DLA Land and Maritime, DLA Aviation, DLA Troop Support, DLA Disposition Services, and DLA Distribution. This authority may not be redelegated. All decisions resolving claims for protest costs require concurrence of the contracting officer.

The authority to resolve protest claims applies not only when the GAO issues a decision recommending protest costs be paid, but also when the agency takes corrective action after determining the solicitation, proposed award, or award does not comply with applicable laws and/or regulations. The amount paid is limited by 31 U.S.C. § 3554(c)(2).

Offices of Counsel that have not been delegated the authority to settle claims for protest costs shall forward requests for protest costs, attorney fees, and bid or proposal preparation costs to the Office of General Counsel. The Office of General Counsel is responsible for disposition of these claims.

Parent topic: SUBPART 33.1 - PROTESTS