



# ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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## Information Interchange Bulletin No. 007

# Agency Bid Protests

### What is a bid protest?

A bid protest is a written objection to the conduct of a government agency in acquiring supplies and services for its direct use or benefit. The challenged conduct can include, among other things, violations of law or regulation in the way in which an agency solicits offers for a contract, cancels such a solicitation, awards a contract, or substantially modifies a contract.

### Who can file a bid protest?

Any “interested party”—i.e., any “actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract”—may file a bid protest. 48 C.F.R. § 33.101; 33 U.S.C. § 3551(2).

### Where can parties file bid protests?

Parties may file bid protests in any of three separate forums: (1) the procuring agency; (2) the Government Accountability Office (GAO); or (3) the U.S. Court of Federal Claims (COFC). In most cases, would-be protesters choose the forum in which to file a given protest, rather than statute dictating the venue.

#### Additional Resources

Christopher Yukins, [Stepping Stones to Reform: Making Agency-Level Bid Protests Effective for Agencies and Bidders by Building on Best Practices from Across the Federal Government](#) (draft May 1, 2020)  
ACUS Rec. [95-5](#), *Government Contract Bid Protests*

### What happens while the protest is pending?

<b>Agency</b>	Contract award or performance is automatically stayed pending resolution of the protest. 48 C.F.R. § 33.103(f).
<b>GAO</b>	Contract award or performance is automatically stayed pending resolution of the protest. 31 U.S.C. § 3553(c)–(d).
<b>COFC</b>	No automatic stay. Protester must secure a temporary restraining order or a preliminary injunction to prevent award or performance.

### What is the standard of review?

<b>Agency</b>	Whether the award complies with applicable statutory and regulatory requirements and the terms of the solicitation.
<b>GAO</b>	Whether the award complies with applicable statutory and regulatory requirements and with the terms of the solicitation.
<b>COFC</b>	Whether the agency’s decision is arbitrary, capricious, an abuse of discretion, or otherwise unlawful. 28 U.S.C. § 1491(b)(4).

### Is there a timeline for a decision?

<b>Agency</b>	The agency must use its best efforts to render a decision within 35 days. See 48 C.F.R. § 33.103(g).
<b>GAO</b>	GAO generally must make a decision within 100 days of filing but may extend the deadline when a supplemental protest is filed. 31 U.S.C. 3554(a)(1).
<b>COFC</b>	There is no timeline for a decision.

### What substantive relief is available to a protester?

<b>Agency</b>	Among other things, the agency may terminate or recompetite the contract; issue a new or revised solicitation; reevaluate previously submitted proposals; pay the protester’s costs for filing and pursuing the protest and preparing the bid and proposal; and/or award other necessary relief.
<b>GAO</b>	GAO may sustain, deny, or dismiss a bid protest. If GAO sustains a protest, it will recommend that the agency take appropriate corrective action. GAO must report an agency’s noncompliance with its recommendations to Congress. 31 U.S.C. § 3554(e).
<b>COFC</b>	The Court may award any relief it deems proper, including declaratory and injunctive relief. Monetary relief is limited to bid preparation and proposal costs, and fees. 28 U.S.C. § 2412.

### What is the preclusive effect of a decision?

<b>Agency</b>	Denial of a protest does not have preclusive effect. Disappointed protesters may file follow-on protests at GAO or COFC.
<b>GAO</b>	Denial of a protest does not have preclusive effect. Disappointed protesters may file follow-on protests at the agency or COFC.
<b>COFC</b>	A protestor may not later file a protest in another forum after filing a protest at the COFC.