Rules and Regulations

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GENERAL ACCOUNTING OFFICE

4 CFR Part 21

General Accounting Office; Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: General Accounting Office. **ACTION:** Final rule.

SUMMARY: The General Accounting Office (GAO) is amending its Bid Protest Regulations after receiving and considering the comments on the proposed rule published on January 31, 1995. The final rule implements the Federal Acquisition Streamlining Act of 1994 (FASA) and conforms GAO's current regulation to the practice that has evolved at GAO since April 1991, when GAO last revised part 21. The final rule will improve the overall efficiency and effectiveness of GAO's bid protest process by streamlining the process, by reducing the costs of pursuing protests at GAO for all parties, and by permitting GAO to resolve protests as expeditiously as possible. The final rule reflects the requirement in FASA that the implementing regulation be concise and easily understood by vendors and government officials. The final rule shortens the regulation, even though several provisions implementing FASA are added.

EFFECTIVE DATE: October 1, 1995. **FOR FURTHER INFORMATION CONTACT:** Michael R. Golden (Acting Associate General Counsel) or Linda S. Lebowitz (Senior Attorney), 202–512–9732.

SUPPLEMENTARY INFORMATION:

Effective Dates

Protests filed at GAO prior to the effective date of this final rule will be considered under the previous rule published at 56 FR 3759 on April 1, 1991. That previous rule will also be used to consider (1) protests filed on or after the effective date of this rule which supplement or amend a protest filed at GAO prior to the effective date of this rule and (2) claims and requests for reconsideration filed on or after the effective date of this rule which concern a protest which was considered under the previous rule.

Background

On January 31, 1995, GAO published a proposed rule (60 FR 5871) in which it proposed to revise its Bid Protest Regulations. The supplementary information included with the proposed rule explained that the proposed revision to GAO's regulation implemented the statutory changes contained in the Federal Acquisition Streamlining Act of 1994 (FASA), Pub. L. 103-355, 108 Stat. 3243, dated October 13, 1994. The proposed rule also was based on GAO's experience with the previous rule, including the use of protective orders and hearings, which was published at 56 FR 3759 on April 1, 1991. The proposed rule conformed GAO's regulation to the practice that had evolved at GAO since April 1991.

In revising its regulation, GAO has been guided by the statutory mandate in sec. 10002(e) of FASA that the implementing regulation be concise and easily understood by vendors and government officials, and by the principle that GAO's bid protest process remain as uncomplicated and informal as possible, consistent with the goal of providing expeditious and meaningful relief to vendors wrongfully excluded from procurements. More specifically, GAO's final rule will streamline the process, reduce the costs of pursuing protests at GAO for all parties, and permit GAO to resolve protests as expeditiously as possible. GAO's regulation is shortened overall, even though several new provisions implementing FASA are added. Redundancies are eliminated and language changes reflect an effort to make the regulation clearer and more readable.

Summary of Comments

Interested persons were invited to submit comments on GAO's proposed rule by April 3, 1995. We received written comments from 11 Federal agencies, 2 bar associations, 4 law firms, 1 industry association, and 2 members of the public. In adopting this final rule, we have carefully considered all comments received. The commenters generally were supportive of our efforts to streamline the bid protest process and to provide expeditious and meaningful relief to vendors wrongfully excluded from procurements. In this regard, the commenters suggested further language changes consistent with these goals. We have adopted many of these suggestions in the final rule to improve the efficiency of the process.

A discussion of the more significant comments concerning GAO's proposed rule, and our responses to these comments, are set forth below.

Section 21.0—Definitions

One commenter recommended that we expand the definition of "intervenor" in §21.0(b) to include entities which participated in a procurement which were not selected for award. It was suggested that these entities be considered "intervenors" in spite of their decision not to file a protest. Because these entities can file a protest in their own right, we do not believe that expansion of the definition of "intervenor" is warranted. Also, under §21.3(i), GAO may permit, or even request, the submission of statements by entities which do not choose to, or cannot, participate as a matter of right in a protest. For example, it has been our practice to allow submissions from trade associations and other participants in a procurement.

Section 21.1—Filing a Protest

One commenter, in supporting our efforts to make the final rule more "user-friendly," suggested that we further revise the language in §21.1(c), which lists the elements of a protest filing, to include certain additional elements. We basically adopted this suggestion by adding language to require a protester to establish in its protest its interested party status and the timeliness of its protest. Moreover, we have added a new paragraph (d) to this section (and accordingly, have redesignated subsequent paragraphs) which provides that in addition, protesters may request in their protests a protective order, specific documents relevant to the protest grounds, and a hearing. Further, we have revised the language in redesignated paragraph (i) of this section to provide that protests will not be dismissed if a protester fails