

**TITLE 31 - MONEY AND FINANCE**  
**SUBTITLE III - FINANCIAL MANAGEMENT**  
**CHAPTER 35 - ACCOUNTING AND COLLECTION**  
**SUBCHAPTER V - PROCUREMENT PROTEST SYSTEM**

**§ 3553. Review of protests; effect on contracts pending decision**

- (a) Under procedures prescribed under section 3555 of this title, the Comptroller General shall decide a protest submitted to the Comptroller General by an interested party.
- (b)
  - (1) Within one day after the receipt of a protest, the Comptroller General shall notify the Federal agency involved of the protest.
  - (2) Except as provided in paragraph (3) of this subsection, a Federal agency receiving a notice of a protested procurement under paragraph (1) of this subsection shall submit to the Comptroller General a complete report (including all relevant documents) on the protested procurement—
    - (A) within 30 days after the date of the agency's receipt of that notice;
    - (B) if the Comptroller General, upon a showing by the Federal agency, determines (and states the reasons in writing) that the specific circumstances of the protest require a longer period, within the longer period determined by the Comptroller General; or
    - (C) in a case determined by the Comptroller General to be suitable for the express option under section 3554 (a)(2) of this title, within 20 days after the date of the Federal agency's receipt of that determination.
  - (3) A Federal agency need not submit a report to the Comptroller General pursuant to paragraph (2) of this subsection if the agency is sooner notified by the Comptroller General that the protest concerned has been dismissed under section 3554 (a)(4) of this title.
- (c)
  - (1) Except as provided in paragraph (2) of this subsection, a contract may not be awarded in any procurement after the Federal agency has received notice of a protest with respect to such procurement from the Comptroller General and while the protest is pending.
    - (2) The head of the procuring activity responsible for award of a contract may authorize the award of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—
      - (A) upon a written finding that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General under this subchapter; and
      - (B) after the Comptroller General is advised of that finding.
    - (3) A finding may not be made under paragraph (2)(A) of this subsection unless the award of the contract is otherwise likely to occur within 30 days after the making of such finding.
  - (d)
    - (1) A contractor awarded a Federal agency contract may, during the period described in paragraph (4), begin performance of the contract and engage in any related activities that result in obligations being incurred by the United States under the contract unless the contracting officer responsible for the award of the contract withholds authorization to proceed with performance of the contract.
    - (2) The contracting officer may withhold an authorization to proceed with performance of the contract during the period described in paragraph (4) if the contracting officer determines in writing that—
      - (A) a protest is likely to be filed; and
      - (B) the immediate performance of the contract is not in the best interests of the United States.
    - (3) (A) If the Federal agency awarding the contract receives notice of a protest in accordance with this section during the period described in paragraph (4)—

*NB: This unofficial compilation of the U.S. Code is current as of Jan. 4, 2012 (see <http://www.law.cornell.edu/uscode/uscprint.html>).*

- (i) the contracting officer may not authorize performance of the contract to begin while the protest is pending; or
- (ii) if authorization for contract performance to proceed was not withheld in accordance with paragraph (2) before receipt of the notice, the contracting officer shall immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract.
- (B) Performance and related activities suspended pursuant to subparagraph (A)(ii) by reason of a protest may not be resumed while the protest is pending.
- (C) The head of the procuring activity may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—
  - (i) upon a written finding that—
    - (I) performance of the contract is in the best interests of the United States; or
    - (II) urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and
  - (ii) after the Comptroller General is notified of that finding.
- (4) The period referred to in paragraphs (2) and (3)(A), with respect to a contract, is the period beginning on the date of the contract award and ending on the later of—
  - (A) the date that is 10 days after the date of the contract award; or
  - (B) the date that is 5 days after the debriefing date offered to an unsuccessful offeror for any debriefing that is requested and, when requested, is required.
- (e) The authority of the head of the procuring activity to make findings and to authorize the award and performance of contracts under subsections (c) and (d) of this section may not be delegated.
- (f)
  - (1) Within such deadlines as the Comptroller General prescribes, upon request each Federal agency shall provide to an interested party any document relevant to a protested procurement action (including the report required by subsection (b)(2) of this section) that would not give that party a competitive advantage and that the party is otherwise authorized by law to receive.
  - (2)
    - (A) The Comptroller General may issue protective orders which establish terms, conditions, and restrictions for the provision of any document to a party under paragraph (1), that prohibit or restrict the disclosure by the party of information described in subparagraph (B) that is contained in such a document.
    - (B) Information referred to in subparagraph (A) is procurement sensitive information, trade secrets, or other proprietary or confidential research, development, or commercial information.
    - (C) A protective order under this paragraph shall not be considered to authorize the withholding of any document or information from Congress or an executive agency.
- (g) If an interested party files a protest in connection with a public-private competition described in section 3551 (2)(B) of this title, a person representing a majority of the employees of the Federal agency who are engaged in the performance of the activity or function subject to the public-private competition may intervene in protest.

(Added Pub. L. 98–369, div. B, title VII, § 2741(a), July 18, 1984, 98 Stat. 1200; amended Pub. L. 103–355, title I, §§ 1402, 1403 (c), Oct. 13, 1994, 108 Stat. 3287, 3290; Pub. L. 104–106, div. D, title XLIII, § 4321(d)(2), div. E, title LV, § 5501(1), Feb. 10, 1996, 110 Stat. 674, 698; Pub. L. 108–375, div. A, title III, § 326(c), Oct. 28, 2004, 118 Stat. 1848.)

## **Amendments**

2004—Subsec. (g). Pub. L. 108–375 added subsec. (g).

1996—Subsec. (b)(2)(A). Pub. L. 104–106, § 5501(1), substituted “30 days” for “35 days”.

Subsec. (b)(3). Pub. L. 104–106, § 4321(d)(2), substituted “3554(a)(4)” for “3554(a)(3)”.

1994—Subsec. (b)(1). Pub. L. 103–355, § 1402(a)(1)(A), substituted “one day after” for “one working day of”.

Subsec. (b)(2)(A). Pub. L. 103–355, § 1402(a)(1)(B)(i), substituted “35 days after” for “25 working days from”.

Subsec. (b)(2)(C). Pub. L. 103–355, § 1402(a)(1)(B)(ii), substituted “20 days after” for “10 working days from”.

Subsec. (c)(3). Pub. L. 103–355, § 1402(a)(2), substituted “after the making of such finding” for “thereafter”.

Subsec. (d). Pub. L. 103–355, § 1402(b), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows:

“(d)(1) If a Federal agency receives notice of a protest under this section after the contract has been awarded but within 10 days of the date of the contract award, the Federal agency (except as provided under paragraph (2)) shall, upon receipt of that notice, immediately direct the contractor to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the United States under that contract. Performance of the contract may not be resumed while the protest is pending.

“(2) The head of the procuring activity responsible for award of a contract may authorize the performance of the contract (notwithstanding a protest of which the Federal agency has notice under this section)—

“(A) upon a written finding—

“(i) that performance of the contract is in the best interests of the United States; or

“(ii) that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for the decision of the Comptroller General concerning the protest; and

“(B) after the Comptroller General is notified of that finding.”

Subsec. (f). Pub. L. 103–355, § 1403(c), designated existing provisions as par. (1) and added par. (2).

## **Effective Date of 2004 Amendment**

Amendment by Pub. L. 108–375 applicable to protests filed under this subchapter that relate to studies initiated under Office of Management and Budget Circular A–76 on or after the end of the 90-day period beginning on Oct. 28, 2004, see section 326(d) of Pub. L. 108–375, set out as a note under section 3551 of this title.

## **Effective Date of 1996 Amendment**

For effective date and applicability of amendment by section 4321(d)(2) of Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 2302 of Title 10, Armed Forces.

Amendment by section 5501(1) of Pub. L. 104–106 effective 180 days after Feb. 10, 1996, see section 5701 of Pub. L. 104–106, div. E, title LVII, Feb. 10, 1996, 110 Stat. 702.

## **Effective Date of 1994 Amendment**

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 2302 of Title 10, Armed Forces.

## **Effective Date**

Section applicable with respect to any protest filed after Jan. 14, 1985, see section 2751(b) of Pub. L. 98–369, set out as a note under section 2302 of Title 10, Armed Forces.

## **Construction of 2004 Amendment**

Amendment by Pub. L. 108–375 not to be construed to authorize the use of a protest under this subchapter with regard to a decision made by an agency tender official, see section 326(e) of Pub. L. 108–375, set out as a note under section 3551 of this title.