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DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA VA 22332 2300

Reliaf

Ser 111A/96-204

21 Oct 1996

From: Commander Naval Facilities Engineering Command

Subj: PRE AND POST AWARD PROTESTS (57-96)

Encl.: (1) OASN (RD&A) Memorandum of 13 Aug 96
(2) Protest Data Sheet
(3) Agency Protest Information

1. Enclosure (1) announces Navy policy relative to Executive Order 12979 of 25 October 1995. Pending issuance of DOD wide implementing guidance, activities should follow the procedures contained herein for the review and collection of data relative to both agency level and GAO protests.

2. Effective immediately, all agency level protests received by any NAVFAC contracting office shall be subject to administrative review by the Chief of the Contracting Office. In so far as the Chief of the Contracting Office for NAVFAC components are located at the EFD/EFA/PWC level, this means that all protests received for solicitations being advertised at field activities should be reviewed at no less than the EFD/EFA/PWC level. However, for protests received on solicitations being advertised at an EFA or PWC, the responsible higher level shall be the EFD. Protests received on solicitations advertised at the EFD or NAVFACCO shall be referred to NAVFAC Code 11 for administrative review. With regard to stays, all personnel should note that the same rules apply to agency level protests as apply to those protests submitted to GAO.

3. Effective retroactively to 1 October 1996, information shall be collected on all protests, both those submitted to GAO and the agency, as per enclosure (2). In so far as it is anticipated that NAVFAC will be called upon to analyze the impact of the Executive Order, this backup data sheet should be retained in each contract file and centrally in the Office of Counsel so that they may be readily retrieved for analysis. Each Office of Counsel should submit summary status reports for agency level protests received and reviewed as per enclosure (3). The NAVFAC Office of Counsel will consolidate all agency level protest reports along with those prepared for protests pending before GAO.

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4. Points of contract for implementing these new procedure are John McElhenny (703) 325-7656 and George Brezna (703) 325-8999.


ROBERT R. BOYER
By direction

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DEPARTMENT OF THE NAVY
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AUG 13 1996

MEMORANDUM FOR DISTRIBUTION

Subj: FAR 33.103; PROTESTS TO THE AGENCY

By Executive Order (E.O.) 12979 of 25 October 1995, the President directed the heads of executive departments and agencies to prescribe administrative procedures for the resolution of procurement protests as an alternative to protests to outside fora. This direction was incorporated into FAR 33.103 as one of the items included in FAC 90-40, which was published in the Federal Register on 26 July 1996. A copy of the pertinent section of the Federal Register notice is enclosed for your information.

Pending issuance of DoD or DoN-wide implementing guidance, DoN activities should utilize agency protest procedures that are consistent with the overriding objective of the Executive Order; namely, to provide interested parties with a procedurally simple and relatively quick mechanism for having their concerns regarding Federal procurements considered in a fair and impartial manner. In that regard, the FAR coverage states that interested parties may request a review at a level above the contracting officer. It also states that, pending protest resolution, the contracting officer shall not award a contract if a protest is received prior to award or shall immediately suspend performance if a protest is received within specified times after award, unless award or continued performance is justified in writing and approved at a level above the contracting officer.

Within the Navy, these objectives will be implemented as follows. First, "a level above the contracting officer," shall mean, for purposes of FAR 33.103(d)(4) and 33.103(f), the Chief of the Contracting Office or, if the Chief of the Contracting Office is less than two levels higher than the contracting officer, the Chief of the next higher Contracting Office. An individual so designated who has been personally and substantially involved with the procurement shall recuse him or herself and, instead, refer the matter to another appropriate DoN official at a comparable or higher level. Additionally, activities should ensure that bidders/offerors are advised by appropriate means, including, where feasible, notice in solicitations, how, or to whom, interested parties should submit agency protests and how such protests will be processed.

In anticipation of requests for statistical information related to implementation of E.O. 12979, and until notified otherwise, you are requested to maintain the agency protest information identified on the attached list.

Elliott B. Branch

Elliott B. Branch
Executive Director
Acquisition and Business
Management

AGENCY PROTEST INFORMATION
TO BE MAINTAINED BY DON HCA ACTIVITIES

1. Number of agency protests received
2. Number of agency protests reviewed at a level above the contracting officer
3. Number of agency protests decided in favor of the protester or for which some form of corrective action was taken by the contracting activity
4. Number of agency protests appealed to GAO and number of such GAO protests decided in favor of the protester
5. Estimated number of GAO protests avoided because protests to the agency submitted instead

PROTEST DATA SHEET

ACTIVITY: (Name and Location of Contracting Office)

SOLICITATION: (Contract Number and Title)

REQUIREMENT DESCRIPTION: (Circle or note as appropriate)

CONSTRUCTION SERVICE AE SUPPLY OTHER SIC CODE _____

NEW REQUIREMENT: YES NO FOLLOW ON REQUIREMENT YES NO

ESTIMATED VALUE OF AWARD \$ _____

NAME OF PROTESTER: _____

BASIS OF PROTEST: _____

PROTEST SUBMITTED TO: AGENCY GAO

DATE SUBMITTED: _____ DATE REVISED: _____

PERFORMANCE AUTHORIZED IN FACE OF PROTEST: YES NO

DISPOSITION OF PROTEST: DATE: _____

WITHDRAWN because : _____

DISMISSED because : _____

DENIED because : _____

SUSTAINED because: _____

From:
 To: Associate Counsel (Acquisition), NAVFAC
 Subj: AGENCY PROTEST INFORMATION

	MONTH AGENCY PROTEST	REV ABOVE KO	SUST/ ACT	APPEAL TO GAO	GAO SUST	ESTIMATE PROTEST AVOIDED
OCTOBER						
NOVEMBER						
DECEMBER						
JANUARY						
FEBRUARY						
MARCH						
APRIL						
MAY						
JUNE						
JULY						
AUGUST						
SEPTEMBER						
TOTAL						

1. Number of agency protests received (monthly).
2. Number of agency protests reviewed at a level above the contracting officer.
3. Number of agency protests decided in favor of the protester OR for which some form of corrective action was taken by the contracting agency.
4. Number of agency protests appealed to GAO and number of such GAO protests decided in favor of the protester.
5. Estimated number of GAO protests avoided because protests to the agency were submitted instead.

NOTE: REPORTS ARE DUE NO LATER THAN THE LAST WORKDAY OF EACH MONTH. NEGATIVE RESPONSES ARE REQUIRED.