



Federal Bid Protest Rules and Deadlines



This reference lays out the filing deadlines, jurisdictional requirements, stay rules, and appeal processes for the places where bid protests are most frequently filed: the Government Accountability Office, the U.S. Court of Federal Claims, and the procuring agency.

The rules differ by type of procurement. Chart 1 lists the rules for protesting contracts awarded under FAR parts 13, 14, and 15. Chart 2 lists the rules for protesting task and delivery orders issued under most IDIQ contracts. Chart 3 lists the special rules that apply to protests of task orders issued under the General Service Administration's Federal Supply Schedule contracts.

Frankel PLLC's government contracts lawyers are experienced counselors and skilled litigators with reputations for winning the hardest and most technical cases. We represent protesters and awardees in every forum where bid protests and government contract controversies arise.

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GAO

Automatic Stay? Yes, subject to override.

- For pre-award protests, the agency must suspend award of the contract once it receives notice from GAO that a protest has been filed. FAR 33.104(b).
- For post-award protests, the agency must suspend performance if it receives notice of the protest within **either 10 days of award, or**, if a debriefing is required and timely requested, **5 days of the debriefing** date offered to the protester, **whichever is later**. FAR 33.104(c). (Note: Debriefings are not required for procurements under FAR Part 13 or FAR Part 14, except 14.5 (two step sealed bidding).)
- **In DoD procurements**, offerors may submit additional questions within **2 business days** of receiving a requested and required debriefing, and DoD has **5 business days** to respond. 10 U.S.C. § 2305(b)(5). If the offeror accepts the originally offered debriefing date and submits additional questions, the 5 day stay deadline starts when DoD answers the questions. If the offeror does not accept the offered debriefing date or does not submit questions, the 5 days starts on the originally offered date.
- **GSA** applies similar enhanced debriefing procedures to certain procurements.

Jurisdictional Timelines:

- A pre-award protest based on RFP improprieties that are apparent before the initial proposal submission deadline must be filed **prior to that deadline**. Solicitation improprieties incorporated after the initial deadline must be protested by the **next deadline** for submitting revisions. 4 C.F.R. § 21.2(a)(1). Where a basis for challenging the terms of a solicitation does not arise until after the submission of final proposals, a protest is due **10 days** after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a).
- An offeror excluded from the competitive range before award must request a debriefing in writing within **3 days** after receipt of notice of exclusion to obtain a "required" debriefing. FAR 15.505(a)(1). The offeror then must file its protest within **10 days** after the debriefing. 4 C.F.R. § 21.2(a)(2).
- For competitions where a debriefing is requested and required, post-award protests must be filed not later than **10 days** after the debriefing closes, but not before the offered debriefing date. 4 C.F.R. § 21.2(a)(2). For DoD, the 10 days run from when DoD answers any "additional questions" submitted after debriefing.
- For all other protests, the protester must file its protest within **10 days** after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2).

Subject Matter Jurisdiction Limits:

- An "interested party" may protest a solicitation, its cancellation, an award, or the termination of a contract where the termination was based on an award impropriety. 4 C.F.R. § 21.1(a). An "interested party" is an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1).
- GAO will not consider protests addressing contract administration, various SBA issues, or affirmative responsibility determinations. 4 C.F.R. § 21.4. GAO will not consider alleged Procurement Integrity Act violations unless they were brought to the agency's attention within **14 days** of discovery. Id.; FAR 33.102(f); 41 U.S.C. § 2106.

Process for Appealing Unsuccessful Decision:

- A Request for Reconsideration may be filed at GAO within **10 days** after the basis for reconsideration is known or should have been known. 4 C.F.R. § 21.14.
- A protester may effectively appeal a GAO decision by filing suit in the Court of Federal Claims alleging that the challenged agency action is arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A); 28 U.S.C. § 1491. There is no fixed time for filing such a suit.

U.S. Court of Federal Claims

Automatic Stay? No.

- In order to obtain a stay of performance during the protest, the protester must file a motion for preliminary injunction demonstrating: (1) the protester is likely to succeed on the merits; (2) it will suffer irreparable harm absent an injunction; (3) granting the injunction will serve the public interest; and (4) the harm the protester will suffer without an injunction outweighs the harm the injunction would cause the Government and third parties.

Jurisdictional Timelines:

- There are no strict timelines for filing a protest other than a 6 year statute of limitations. However, a protester's delay in filing may affect its ability to obtain injunctive relief. *Harmonia Holdings Group, LLC v. U.S.*, 20 F.4th 759, 767 (Fed Cir. 2021).
- A protester is deemed to waive a challenge to the terms of a solicitation unless it files an agency, GAO, or COFC protest prior to the proposal submission deadline. *Blue & Gold Fleet, L.P. v. U.S.*, 492 F.3d 1308, 1315 (Fed. Cir. 2007). COFC cases have extended the waiver rule to other kinds of pre-award protests, but the Federal Circuit has expressed disapproval. *Harmonia Holdings*, 20 F.4th at 767.

Subject Matter Jurisdiction Limits:

- Only an "interested party" may file a protest. 28 U.S.C. § 1491(b)(1). An "interested party" as an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. *American Fed'n of Gov't Emp., AFL-CIO v. U.S.*, 258 F.3d 1294, 1299 (Fed. Cir. 2001).
- The COFC determines whether the procuring agency's action is arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A); 28 U.S.C. § 1491.

Process for Appealing Unsuccessful Decision:

- A protester may appeal a COFC decision to the U.S. Court of Appeals for the Federal Circuit by filing a notice of appeal with the clerk of the Federal Circuit within 60 days after the date of entry of judgment. 28 U.S.C. §§ 1295(a)(3); 2107(b); 2522; COFC Rule 58.1; FRAP Rule 3; CAFC Rules 3 and 4 (Practice Notes).
- The Federal Circuit reviews the COFC's judgments de novo.

Agency

Automatic Stay? Yes, subject to override.

- For pre-award protests, the agency must suspend award of the contract until it has resolved the protest. FAR 33.103(f)(1).
- For post-award protests, the agency must suspend performance if it receives the protest within **either 10 days of award, or**, if a debriefing is required and timely requested under FAR 15.506, **5 days of the debriefing** date offered to the protester, **whichever is later**. FAR 33.103(f)(3). Not all debriefings are required.
 - Pursuing an agency protest does not extend the time for obtaining a stay at GAO; however, agencies may voluntarily agree to continue a stay during a subsequent GAO or COFC protest. FAR 33.103(f)(4).

Jurisdictional Timelines:

- A pre-award protest based on improprieties in the RFP must be filed **before bid opening or the closing date for receipt of proposals**. FAR 33.103(e).
- All other protests must be filed no later than **10 days** after the basis of protest is known or should have been known. FAR 33.103(e).
 - Check to make sure the agency has not adopted more stringent filing rules.

Subject Matter Jurisdiction Limits:

- Only an interested party may file an agency-level protest. FAR 33.103 (d)(2)(vii).

Process for Appealing Unsuccessful Decision:

- A protester may seek higher-level agency review as provided in the agency's rules. Such review does not extend GAO's timeliness requirements. FAR 33.103(d)(4).
- A GAO protest can be filed within **10 days** of actual or constructive knowledge of the agency's first adverse action expressly or impliedly indicating the agency has denied the agency protest. The agency protest must have been timely. FAR 33.103(d)(4).
- A protester may file suit in the Court of Federal Claims alleging that the challenged agency action is arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A); 28 U.S.C. § 1491. There is no fixed time for filing such a suit.

GAO

Automatic Stay? Yes, subject to override.

- For pre-award protests, the agency must suspend award of the contract once it receives notice from GAO that a protest has been filed. FAR 33.104(b).
 - For post-award protests, the agency must suspend performance if it receives notice of the protest within **either 10 days of award, or**, if a debriefing is required and timely requested, **5 days of the debriefing date** offered to the protester, **whichever is later.** FAR 33.104(c). Debriefings are required for orders in excess of \$6 million. FAR 16.505(b)(6).
- **In DoD procurements**, offerors may submit additional questions within **2 business days** of receiving a requested and required debriefing, and DoD has **5 business days** to respond. 10 U.S.C. § 2305(b)(5). If the offeror accepts the originally offered debriefing date *and* submits additional questions, the 5 day stay deadline starts when DoD answers the questions. If the offeror does not accept the offered debriefing date or does not submit questions, the 5 days starts on the originally offered date.
- **GSA** uses similar enhanced debriefing procedures for some task order awards.

Jurisdictional Timelines:

- A pre-award protest based on RFP improprieties that are apparent before the initial proposal submission deadline must be filed **prior to that deadline.** Solicitation improprieties incorporated after the initial deadline must be protested **by the next deadline** for submitting revisions. 4 C.F.R. § 21.2(a)(1). Where a basis for challenging the terms of a solicitation does not arise until after submission of final proposals, a protest is due **10 days** after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a).
- For competitions where a debriefing is requested and required, post-award protests must be filed not later than 10 days after the debriefing closes, but not before the offered debriefing date. 4 C.F.R. § 21.2(a)(2). For DoD, the **10 days** run from when DoD answers any “additional questions” submitted after debriefing.
- For all other protests, the protester must file its protest within **10 days** after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2).

Subject Matter Jurisdiction Limits:

- A GAO protest of an order issued by DoD, NASA, or the Coast Guard valued in excess of \$25 million may be brought on any grounds. 10 U.S.C. § 2304c(e)(1)(B). A GAO protest of an order issued by other civilian agencies valued in excess of \$10 million may be brought on any grounds. 41 U.S.C. § 4106(f)(1)(B).
- If the value of a DoD, NASA, or Coast Guard order is less than \$25 million, or the value of a civilian order is less than \$10 million, a protest may be brought only on the grounds that the order improperly increases the scope, period, or maximum value of the contract. 10 U.S.C. § 2304c(e)(1)(A); 41 U.S.C. § 4106(f)(1)(A).
- All other protests in connection with the issuance or proposed issuance of a task or delivery order are barred.

Process for Appealing Unsuccessful Decision:

- A Request for Reconsideration may be filed at GAO within **10 days** after the basis for reconsideration is known or should have been known. 4 C.F.R. § 21.14.
- A protester may effectively appeal a GAO decision by filing suit in the Court of Federal Claims alleging that the challenged agency action is arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A); 28 U.S.C. § 1491. There is no fixed time for filing such a suit.

U.S. Court of Federal Claims

Automatic Stay? No.

- In order to obtain a stay of performance during the protest, the protester must file a motion for preliminary injunction demonstrating: (1) the protester is likely to succeed on the merits; (2) it will suffer irreparable harm absent an injunction; (3) granting the injunction will serve the public interest; and (4) the harm the protester will suffer without an injunction outweighs the harm the injunction would cause the Government and third parties.

Jurisdictional Timelines:

- There are no strict timelines for filing a protest other than a 6 year statute of limitations. However, a protester’s delay in filing may affect its ability to obtain injunctive relief. *Harmonia Holdings Group, LLC v. U.S.*, 20 F.4th 759, 767 (Fed Cir. 2021).
- A protester is deemed to waive a challenge to the terms of a solicitation unless it files an agency, GAO, or COFC protest prior to the proposal submission deadline. *Blue & Gold Fleet, L.P. v. U.S.*, 492 F.3d 1308, 1315 (Fed. Cir. 2007). COFC cases have extended the waiver rule to other kinds of pre-award protests, but the Federal Circuit has expressed disapproval. *Harmonia Holdings*, 20 F.4th at 767.

Subject Matter Jurisdiction Limits:

- The COFC may hear a task or delivery order protest only if it (1) alleges that the order improperly increased the scope, period, or maximum value of the underlying contract, or (2) challenges agency action separate from the “issuance or proposed issuance” of an order. *Tolliver Grp., Inc. v. U.S.*, 151 Fed. Cl. 70, 103-05 (2020).

Process for Appealing Unsuccessful Decision:

- A protester may appeal a COFC decision to the U.S. Court of Appeals for the Federal Circuit by filing a notice of appeal with the clerk of the Federal Circuit within 60 days after the date of entry of judgment. 28 U.S.C. §§ 1295(a)(3); 2107(b); 2522; COFC Rule 58.1; FRAP Rule 3; CAFC Rules 3 and 4 (Practice Notes).
- The Federal Circuit reviews the COFC’s judgments de novo.

Agency

Automatic Stay? Yes, subject to override.

- For pre-award protests, the agency must suspend award of the contract until it has resolved the protest. FAR 33.103(f)(1).
 - For post-award protests, the agency must suspend performance if it receives the protest within **either 10 days of award, or**, if a debriefing is required and timely requested under FAR 15.506, **5 days of the debriefing date** offered to the protester, **whichever is later.** FAR 33.103(f)(3). Not all debriefings are required.
- Pursuing an agency protest does not extend the time for obtaining a stay at GAO; however, agencies may voluntarily agree to continue a stay during a subsequent GAO or COFC protest. FAR 33.103(f)(4).

Jurisdictional Timelines:

- A pre-award protest based on improprieties in the RFP must be filed **before bid opening or the closing date for receipt of proposals.** FAR 33.103(e).
 - All other protests must be filed no later than **10 days** after the basis of protest is known or should have been known. FAR 33.103(e).
- Check to make sure the agency has not adopted more stringent filing rules.

Subject Matter Jurisdiction Limits:

- Technically, agency jurisdiction is limited to protests that allege an order improperly increased the scope, period, or maximum value of the underlying contract, or that challenge agency action separate from the “issuance or proposed issuance” of an order. But an agency has inherent discretion to reconsider its decisions.
- An offeror may file a non-protest “complaint” with the agency’s task-order or delivery-order ombudsman, who must ensure the offeror was afforded a fair opportunity to be considered for the order. FAR 16.505(b)(8).

Process for Appealing Unsuccessful Decision:

- A protester may seek higher-level agency review as provided in the agency’s rules. Such review does not extend GAO’s timeliness requirements. FAR 33.103(d)(4).
- A GAO protest can be filed within **10 days** of actual or constructive knowledge of the agency’s first adverse action expressly or impliedly indicating the agency has denied the agency protest. The agency protest must have been timely. FAR 33.103(d)(4).
- A protester may file suit in the COFC alleging that the challenged agency action is arbitrary, capricious, or contrary to law, although the COFC’s jurisdiction over task order protests is limited. There is no fixed deadline for filing.

GAO

Automatic Stay? Yes, subject to override.

- For pre-award protests, the agency must suspend award of the contract once it receives notice from GAO that a protest has been filed. FAR 33.104(b).
- For post-award protests, the agency must suspend performance if it receives notice of the protest within **10 days** of award. Debriefings are not required in FSS procurements, and the agency's "brief explanation" is not a debriefing. FAR 8.405-2(d).

Jurisdictional Timelines:

- A pre-award protest based on RFP improprieties that are apparent before the initial offer submission deadline must be filed **prior to that deadline**. Solicitation improprieties incorporated after the initial deadline must be protested **by the next deadline** for submitting revisions. 4 C.F.R. § 21.2(a)(1). Where a basis for challenging the terms of a solicitation does not arise until after submission of final offers, a protest is due **10 days** after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a).
- A post-award protest must be filed not later than **10 days** after award, even if the agency provides something it calls a "debriefing."
- For all other protests, the protester must file its protest within **10 days** after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2).

Subject Matter Jurisdiction Limits:

- The value and subject-matter jurisdictional restrictions on bid protests of task orders do not apply to FSS procurements. *Severn Cos., Inc.*, B-275717, et seq., Apr. 28, 1997, 97-1 CPD ¶ 181 at 2 n.1.
- The protestor must still be an "interested party."

Process for Appealing Unsuccessful Decision:

- A Request for Reconsideration may be filed at GAO within **10 days** after the basis for reconsideration is known or should have been known. 4 C.F.R. § 21.14.
- A protester may effectively appeal a GAO decision by filing suit in the Court of Federal Claims alleging that the challenged agency action is arbitrary, capricious, or contrary to law. 5 U.S.C. § 706(2)(A); 28 U.S.C. § 1491. There is no fixed time for filing such a suit.

U.S. Court of Federal Claims

Automatic Stay? No.

- In order to obtain a stay of performance during the protest, the protester must file a motion for preliminary injunction demonstrating: (1) the protester is likely to succeed on the merits; (2) it will suffer irreparable harm absent an injunction; (3) granting the injunction will serve the public interest; and (4) the harm the protester will suffer without an injunction outweighs the harm the injunction would cause the Government and third parties.

Jurisdictional Timelines:

- There are no strict timelines for filing a protest other than a 6 year statute of limitations. However, a protester's delay in filing may affect its ability to obtain injunctive relief. *Harmonia Holdings Group, LLC v. U.S.*, 20 F.4th 759, 767 (Fed Cir. 2021).
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Subject Matter Jurisdiction Limits:

- The value and subject-matter jurisdictional restrictions on bid protests of task orders do not apply to FSS procurements. *Idea Int'l, Inc. v. U.S.*, 74 Fed. Cl. 129 (2006).
- The protester must still be an "interested party."

Process for Appealing Unsuccessful Decision:

- A protester may appeal a COFC decision to the U.S. Court of Appeals for the Federal Circuit by filing a notice of appeal with the clerk of the Federal Circuit within 60 days after the date of entry of judgment. 28 U.S.C. §§ 1295(a)(3); 2107(b); 2522; COFC Rule 58.1; FRAP Rule 3; CAFC Rules 3 and 4 (Practice Notes).
- The Federal Circuit reviews the COFC's judgments de novo.

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- For post-award protests, the agency must suspend performance if it receives the protest within **10 days** of award.
 - Pursuing an agency protest does not extend the time for obtaining a stay at GAO; however, agencies may voluntarily agree to continue a stay during a subsequent GAO or COFC protest. FAR 33.103(f)(4).

Jurisdictional Timelines:

- A pre-award protest based on improprieties in the RFP must be filed **before the closing date for receipt of offers**. FAR 33.103(e).
- All other protests must be filed no later than **10 days** after the basis of protest is known or should have been known. FAR 33.103(e).
 - Check to make sure the agency has not adopted more stringent filing rules.

Subject Matter Jurisdiction Limits:

- The value and subject-matter jurisdictional restrictions on bid protests of task orders do not apply to FSS procurements.
- The protester must still be an "interested party." FAR 33.103(d)(2)(vii)

Process for Appealing Unsuccessful Decision:

- A protester may seek higher-level agency review as provided in the agency's rules. Such review does not extend GAO's timeliness requirements. FAR 33.103(d)(4).
- A GAO protest can be filed within **10 days** of actual or constructive knowledge of the agency's first adverse action expressly or impliedly indicating the agency has denied the agency protest. The agency protest must have been timely. FAR 33.103(d)(4).
- A protester may file suit in the COFC alleging that the challenged agency action is arbitrary, capricious, or contrary to law, although the COFC's jurisdiction over task order protests is limited. There is no fixed deadline for filing.