

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 off”.

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.

§ 3554. Decisions on protests

(a)(1) To the maximum extent practicable, the Comptroller General shall provide for the inexpensive and expeditious resolution of protests under this subchapter. Except as provided under paragraph (2) of this subsection, the Comptroller General shall issue a final decision concerning a protest within 100 days after the date the protest is submitted to the Comptroller General.

(2) The Comptroller General shall, by regulation prescribed pursuant to section 3555 of this title, establish an express option for deciding those protests which the Comptroller General determines suitable for resolution within 65 days after the date the protest is submitted.

(3) An amendment to a protest that adds a new ground of protest, if timely made, should be resolved, to the maximum extent practicable, within the time limit established under paragraph (1) of this subsection for final decision of the initial protest. If an amended protest cannot be resolved within such time limit, the Comptroller General may resolve the amended protest through the express option under paragraph (2) of this subsection.

(4) The Comptroller General may dismiss a protest that the Comptroller General determines is frivolous or which, on its face, does not state a valid basis for protest.

(b)(1) With respect to a solicitation for a contract, or a proposed award or the award of a con-

tract, protested under this subchapter, the Comptroller General may determine whether the solicitation, proposed award, or award complies with statute and regulation. If the Comptroller General determines that the solicitation, proposed award, or award does not comply with a statute or regulation, the Comptroller General shall recommend that the Federal agency—

- (A) refrain from exercising any of its options under the contract;
- (B) recompute the contract immediately;
- (C) cancel the solicitation issued pursuant to the public-private competition conducted under Office of Management and Budget Circular A-76 or any successor circular;
- (D) issue a new solicitation;
- (E) terminate the contract;
- (F) award a contract consistent with the requirements of such statute and regulation;
- (G) implement any combination of recommendations under clauses (A), (B), (C), (D), (E), and (F); or
- (H) implement such other recommendations as the Comptroller General determines to be necessary in order to promote compliance with procurement statutes and regulations.

(2) If the head of the procuring activity responsible for a contract makes a finding under section 3553(d)(3)(C)(i)(I) of this title, the Comptroller General shall make recommendations under this subsection without regard to any cost or disruption from terminating, recompeting, or reawarding the contract.

(3) If the Federal agency fails to implement fully the recommendations of the Comptroller General under this subsection with respect to a solicitation for a contract or an award or proposed award of a contract within 60 days after receiving the recommendations, the head of the procuring activity responsible for that contract shall report such failure to the Comptroller General not later than 5 days after the end of such 60-day period.

(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may recommend that the Federal agency conducting the procurement pay to an appropriate interested party the costs of—

- (A) filing and pursuing the protest, including reasonable attorneys' fees and consultant and expert witness fees; and
- (B) bid and proposal preparation.

(2) No party (other than a small business concern (within the meaning of section 3(a) of the Small Business Act)) may be paid, pursuant to a recommendation made under the authority of paragraph (1)—

(A) costs for consultant and expert witness fees that exceed the highest rate of compensation for expert witnesses paid by the Federal Government; or

(B) costs for attorneys' fees that exceed \$150 per hour unless the agency determines, based on the recommendation of the Comptroller General on a case by case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee.

(3) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency shall—

(A) pay the costs promptly; or

(B) if the Federal agency does not make such payment, promptly report to the Comptroller General the reasons for the failure to follow the Comptroller General's recommendation.

(4) If the Comptroller General recommends under paragraph (1) that a Federal agency pay costs to an interested party, the Federal agency and the interested party shall attempt to reach an agreement on the amount of the costs to be paid. If the Federal agency and the interested party are unable to agree on the amount to be paid, the Comptroller General may, upon the request of the interested party, recommend to the Federal agency the amount of the costs that the Federal agency should pay.

(d) Each decision of the Comptroller General under this subchapter shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to the interested parties, the head of the procuring activity responsible for the solicitation, proposed award, or award of the contract, and the senior procurement executive of the Federal agency involved.

(e)(1) The Comptroller General shall report promptly to the Committee on Governmental Affairs and the Committee on Appropriations of the Senate and to the Committee on Government Reform and Oversight and the Committee on Appropriations of the House of Representatives any case in which a Federal agency fails to implement fully a recommendation of the Comptroller General under subsection (b) or (c). The report shall include—

(A) a comprehensive review of the pertinent procurement, including the circumstances of the failure of the Federal agency to implement a recommendation of the Comptroller General; and

(B) a recommendation regarding whether, in order to correct an inequity or to preserve the integrity of the procurement process, the Congress should consider—

- (i) private relief legislation;
- (ii) legislative rescission or cancellation of funds;
- (iii) further investigation by Congress; or
- (iv) other action.

(2) Not later than January 31 of each year, the Comptroller General shall transmit to the Congress a report containing a summary of each instance in which a Federal agency did not fully implement a recommendation of the Comptroller General under subsection (b) or (c) during the preceding year. The report shall also describe each instance in which a final decision in a protest was not rendered within 100 days after the date the protest is submitted to the Comptroller General.

(Added Pub. L. 98-369, div. B, title VII, §2741(a), July 18, 1984, 98 Stat. 1201; amended Pub. L. 100-463, title VIII, §8139, Oct. 1, 1988, 102 Stat. 2270-47; Pub. L. 103-355, title I, §1403(a)-(b)(3), Oct. 13, 1994, 108 Stat. 3289, 3290; Pub. L. 104-106, div. D, title XLIII, §4321(d)(3), div. E, title LV,

§ 5501(2), Feb. 10, 1996, 110 Stat. 674, 698; Pub. L. 111-84, div. A, title III, § 327(c), Oct. 28, 2009, 123 Stat. 2255.)

REFERENCES IN TEXT

Section 3(a) of the Small Business Act, referred to in subsec. (c)(2), is classified to section 632(a) of Title 15, Commerce and Trade.

AMENDMENTS

2009—Subsec. (b)(1)(C) to (H). Pub. L. 111-84 added subpar. (C), redesignated former subpars. (C) to (G) as (D) to (H), respectively, and substituted “, (E), and (F)” for “, and (E)” in subpar. (G).

1996—Subsec. (a)(1). Pub. L. 104-106, § 5501(2)(A), substituted “100 days” for “125 days”.

Subsec. (b)(2). Pub. L. 104-106, § 4321(d)(3), substituted “section 3553(d)(3)(C)(i)(I)” for “section 3553(d)(2)(A)(i)”.

Subsec. (e)(1). Pub. L. 104-106, § 5501(2)(B)(i), substituted “Government Reform and Oversight” for “Government Operations”.

Subsec. (e)(2). Pub. L. 104-106, § 5501(2)(B)(ii), substituted “100 days” for “125 days”.

1994—Subsec. (a)(1). Pub. L. 103-355, § 1403(a)(1), substituted “125 days after” for “90 working days from”.

Subsec. (a)(2). Pub. L. 103-355, § 1403(a)(2), substituted “65 days after” for “45 calendar days from”.

Subsec. (a)(3), (4). Pub. L. 103-355, § 1403(a)(3), (4), added par. (3) and redesignated former par. (3) as (4).

Subsec. (b)(3). Pub. L. 103-355, § 1403(b)(1), added par. (3).

Subsec. (c). Pub. L. 103-355, § 1403(b)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows:

“(c)(1) If the Comptroller General determines that a solicitation for a contract or a proposed award or the award of a contract does not comply with a statute or regulation, the Comptroller General may declare an appropriate interested party to be entitled to the costs of—

“(A) filing and pursuing the protest, including reasonable attorneys’ fees; and

“(B) bid and proposal preparation.

“(2) Monetary awards to which a party is declared to be entitled under paragraph (1) of this subsection shall be paid promptly by the Federal agency concerned out of funds available to or for the use of the Federal agency for the procurement of property and services.”

Subsec. (e). Pub. L. 103-355, § 1403(b)(3), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows:

“(e)(1) The head of the procuring activity responsible for the solicitation, proposed award, or award of the contract shall report to the Comptroller General, if the Federal agency has not fully implemented those recommendations within 60 days of receipt of the Comptroller General’s recommendations under subsection (b) of this section.

“(2) Not later than January 31 of each year, the Comptroller General shall transmit to Congress a report describing each instance in which a Federal agency did not fully implement the Comptroller General’s recommendations during the preceding fiscal year.”

1988—Subsec. (a)(1). Pub. L. 100-463 struck out “unless the Comptroller General determines and states in writing the reasons that the specific circumstances of the protest require a longer period” after “submitted to the Comptroller General” before period at end.

CHANGE OF NAME

Committee on Governmental Affairs of Senate changed to Committee on Homeland Security and Governmental Affairs of Senate, effective Jan. 4, 2005, by Senate Resolution No. 445, One Hundred Eighth Congress, Oct. 9, 2004.

Committee on Government Reform and Oversight of House of Representatives changed to Committee on Government Reform of House of Representatives by

House Resolution No. 5, One Hundred Sixth Congress, Jan. 6, 1999. Committee on Government Reform of House of Representatives changed to Committee on Oversight and Government Reform of House of Representatives by House Resolution No. 6, One Hundred Tenth Congress, Jan. 5, 2007.

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-84 applicable to any protest or civil action that relates to a public-private competition conducted after Oct. 28, 2009, under Office of Management and Budget Circular A-76, or any successor circular, and to a decision made after Oct. 28, 2009, to convert a function performed by Federal employees to private sector performance without a competition under Office of Management and Budget Circular A-76, see section 327(d) of Pub. L. 111-84, 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)(3) 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(2) 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.

PROMPT PAYMENT OF COSTS UNDER PRIOR LAW

Section 1403(b)(4) of Pub. L. 103-355 provided that: “Costs to which the Comptroller General declared an interested party to be entitled under section 3554 of title 31, United States Code, as in effect immediately before the enactment of this Act [Oct. 13, 1994], shall, if not paid or otherwise satisfied by the Federal agency concerned before the date of the enactment of this Act, be paid promptly.”

§ 3555. Regulations; authority of Comptroller General to verify assertions

(a) The Comptroller General shall prescribe such procedures as may be necessary to the expeditious decision of protests under this subchapter, including procedures for accelerated resolution of protests under the express option authorized by section 3554(a)(2) of this title. Such procedures shall provide that the protest process may not be delayed by the failure of a party to make a filing within the time provided for the filing.

(b) The procedures shall provide that, in the computation of any period described in this subchapter—

(1) the day of the act, event, or default from which the designated period of time begins to run not be included; and

(2) the last day after such act, event, or default be included, unless—

(A) such last day is a Saturday, a Sunday, or a legal holiday; or

(B) in the case of a filing of a paper at the Government Accountability Office or a Federal agency, such last day is a day on which