

STATUS ELIGIBILITY PROTESTS

As of May 1, 2015	Size	SDB	HUBZone	WOSB /EDWOSB	SDVOSB - SBA	SDVOSB & VOSB – CVE	8(a)
Where Rules Are Found	13 C.F.R. §§ 121.1001 <u>et seq.</u>	13 C.F.R. §§ 124.1007 <u>et seq.</u>	13 C.F.R. §§ 126.800 <u>et seq.</u>	13 C.F.R. §§ 127.600 <u>et seq.</u>	13 C.F.R. §§ 125.24 <u>et seq.</u>	48 C.F.R. § 819.307	13 C.F.R. § 124.517
Time for Filing	<p>Generally: within 5 business days of bid opening or notification of the successful offeror</p> <p>Long term contracts: within 5 business days of notification of the successful offeror; protest of size certifications made for option periods and CO's requests for certification in connection with individual order must be made within 5 business days of notice of the certification or identity of the prospective awardee</p> <p>If filed by SBA and CO: any time</p>	Within 5 business days of bid opening or notification of the successful offeror					N/A
Who Can Protest?	<p>Generally: any offeror whom the contracting officer has not eliminated for reasons unrelated to size; the CO; the SBA; other interested parties, including large businesses where only one concern submitted an offer for the specific procurement in question</p> <p>SBA's Subcontracting Program: the prime contractor; the CO; other potential subcontractors; the SBA; and other interested parties</p>	Any other concern which submitted an offer, unless the CO has found the concern to be non-responsive or outside the competitive range, or SBA has previously found the protesting concern to be ineligible for the requirement at issue; the CO; or SBA	<p>Generally: any concern that submits an offer for a specific HUBZone requirement may protest the apparent successful offeror's status</p> <p>Sole source award: only SBA or the CO</p>	Any concern that submits an offer for a specific EDWOSB or WOSB requirement; any other party or individual may submit information to the CO or SBA to persuade them to initiate a protest	<p>Generally: any interested party</p> <p>Sole source award: only SBA or the CO</p>	CO or any interested party	<p>No other participant or any other party may protest 8(a) eligibility</p> <p>Size of 8(a) concern: anyone who can file a size status protest, except for a sole source 8(a) award</p>
Where Do You Protest?	With the CO, who must forward the protest to the appropriate SBA Government Contracting Area Office		With the CO, who must forward the protest to SBA			With the CO, who must forward to VA Director of Center for Verification and Evaluation	N/A
Who Decides?	Responsible SBA Government Contracting Area Director or designee	SBA Associate Administrator for Business Development, or designee	SBA Director of HUBZone	SBA Director of Government Contracting	<p>Veteran or disability status: VA Director of Office of Government Contracting</p> <p>Ownership and control: SBA Associate Administrator for Government Contracting</p>	VA Director of Center for Verification and Evaluation	N/A
Stay of Performance?	Generally yes, unless the CO determines in writing that award must be made to protect the public interest						N/A
Estimated Time for Case Resolution?	Within 15 business days, if possible	Within 15 business days	Within 15 business days, unless an extension is granted by the CO	Within 15 business days, unless an extension is granted by the CO	Within 15 business days	Within 21 business days	N/A
Remedies	Not award or terminate award of contract to protested concern; render protested concern ineligible under same size standard unless recertified	Not award or terminate award of contract to protested concern; preclude protested concern from applying for SDB certification for 12 months	Not award or terminate award of contract to protested concern; preclude protested concern from applying for HUBZone certification for 90 days	Not award or terminate award of contract to protested concern; preclude protested concern from submitting offer as WOSB/EDWOSB until SBA decides it cured ineligibility	Not award or terminate award of contract to protested concern; preclude protested concern from submitting offer as SDVOSB until SBA decides it overcame reasons for protest	Rescind award of contract to protested concern; award contract to next SDVOSB or VOSB in line for the award	N/A
Appellate Procedures	Appeal to SBA Office of Hearings and Appeals ("OHA") within 15 calendar days after receipt of formal determination	Appeal to SBA Associate Administrator for Government Contracting and Business Development within 5 business days after receipt of protest determination	Appeal to SBA Associate Administrator for Government Contracting & Business Development within 5 business days after receipt of protest determination	Appeal to OHA within 10 business days after receipt of protest determination		Appeal to Executive Director, Office of Small and Disadvantaged Business Utilization within 5 business days after receipt of protest determination	N/A

BID PROTESTS

As of January 2017	GAO	COFC	Agency / Contracting Officer	FAA / ODRA
Where Rules Are Found	4 C.F.R. §§ 21.0 <u>et seq.</u>	Rules of the United States Court of Federal Claims (“RCOFC”); RCOFC Appendix C	48 C.F.R. § 33.103, individual agency rules	14 C.F.R. §§ 17.1 <u>et seq.</u>
Time for Filing	Pre-award: prior to bid opening or the time set for receipt of initial proposals Post-award: either (1) no later than 10 days after the basis for the protest is known or (2) 10 days after the debriefing is provided (if required and requested)	Pre-award: prior to bid opening or the time set for receipt of initial proposals Post-award: any time, but serious delay in filing a complaint will impact the ability to obtain injunctive relief and could lead to the imposition of laches	Pre-award: before bid opening or time set for receipt of proposals Post-award: no later than 10 days after basis of protest is known or should have been known, whichever is earlier The agency may, for good cause shown, or where it determines that a protest raises issues significant to the agency’s acquisition system, consider the merits of any protest which is not timely filed	Pre-award: prior to bid opening or the time set for receipt of initial proposals Post award: either (1) no later than 7 business days after the basis for the protest is known or should have been known, or (2) no later than 5 business days after the debriefing (if requested)
Jurisdiction (FAR Parts 8, 12, 15, Task Order/IDIQ)	Protests involving FAR Part 8, 12, & 15 procurements Protests of task orders issued under multiple award contracts if the value of the protested task order exceeds \$25M for DoD awards or \$10M for civilian agency awards OR if protest alleges that task order increases the scope, period, or maximum value of the master contract. DoD task orders issued under civilian agency Government Wide Acquisition Contracts (GWACs) are subject to the \$10 million threshold applicable to civilian task order awards.	Protests involving FAR Part 8, 12, & 15 procurements Protests of task orders issued under multiple award contracts if the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued	Protests involving FAR Part 8, 12, & 15 procurements. For FAR Part 8 procurements, protests should be made directly to the agency that issued the task order Protests of task orders issued under multiple award contracts if the protester asserts that the task order increases the scope, period, or maximum value of the contract under which the order is issued and task order is valued at \$10 million or less	FAA contracts other than the following, except for review of compliance with the FAA Acquisition Management System (“AMS”): FAA purchases from or through state, local, and tribal governments and public authorities; FAA purchases from or through other Federal agencies; grants; cooperative agreements; other transactions that do not fall into the category of procurement contracts subject to the AMS
Who Can Protest?	An “interested party,” defined 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	An “interested party,” defined as: an actual or prospective bidder whose direct economic interest would be affected by the award of the contract that had a substantial chance or securing award but for the alleged error	An “interested party,” defined as: actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract	An “interested party,” defined as: one whose direct economic interest has been or would be affected by the award or failure to award an FAA contract; does not include proposed subcontractors
Stay of Performance?	Pre-award: yes Post-award: yes, the CICA stay applies if the protest is filed within 5 days after a required and requested debriefing or within 10 days after contract award	No automatic stay, but the Government will often agree to voluntarily stay award or performance or protester can ask the Court to stay performance by moving for a preliminary injunction, which requires the plaintiff to demonstrate: (1) likelihood of success on the merits, (2) irreparable harm unless the injunction is granted, (3), preliminary injunction is in the public interest, and (4) the balance of the hardships is in the plaintiff’s favor	Pre-award: yes, unless contract award is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government Post-award: yes, if protested within 10 days after contract award or within 5 days after a required and requested debriefing, whichever is later, unless continued performance is justified, in writing, for urgent and compelling reasons or is determined, in writing, to be in the best interest of the Government	No, unless requested by protester and there is a compelling reason to suspend all or part of the procurement activities or contractor performance; protestors may request suspension of performance in initial filing
Estimated Time for Case Resolution?	100 days	Anywhere from days to over a year	35 days	Typically 3-4 months; Alternative Dispute Resolution is strongly encouraged, which may result in a decision in less time
Remedies	GAO can recommend the agency refrain from exercising options under the contract, terminate the contract, recompet the contract, issue a new solicitation, award a contract consistent with statute or regulation, or such other recommendation as GAO determines necessary to promote compliance, and protest filing fees and bid and proposal costs	Temporary injunctive relief, preliminary injunctive relief, declaratory relief, and bid preparation and proposals costs	Any action that could be recommended by the GAO; order agency to pay costs of protester; require awardee to reimburse the Government’s costs where post-award protests sustained as the result of an awardee’s intentional or negligent misstatement, misrepresentation, or miscertification	Amend the Screening Information Request (“SIR” or solicitation), refrain from exercising options under the contract, issue a new SIR, require a recompetition or reevaluation, terminate an existing contract for the FAA’s convenience, direct an award to the protester, award bid and proposal costs, or any other remedy appropriate under the circumstances; attorneys’ fees of prevailing protestor to the extent allowed by EAJA
Appellate Procedures	Request that GAO reconsider its decision in the protest within 10 days after the basis for reconsideration is known or should have been known, whichever is earlier; appeal the decision to the COFC	Appeal to the U.S. Court of Appeals for the Federal Circuit within 30 days after judgment entered	Agencies may make available independent review of protest at a level above CO as an appeal of CO decision; protester may file protest at GAO within 10 days of the initial adverse agency decision; protester may file protest at COFC after agency decision	Appeal to any U.S. Court of Appeals except the Federal Circuit



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BID & STATUS ELIGIBILITY PROTEST FORUMS

ABOUT PILIEROMAZZA: Located in the nation’s capital, PilieroMazza has earned a reputation as one of the country’s most prominent law firms for companies doing business with the federal government. Our vast experience in government contracts law and Small Business Administration procurement programs, coupled with our full-service capabilities in the areas of corporate and business law, litigation, labor and employment, government relations, and intellectual property, distinguish us from others in the legal community.

We bring the versatility and insight that clients across the country seek and the responsive delivery they appreciate. We represent a broad range of businesses, trade associations and nonprofits—from startups with a single-market focus to publicly traded corporations doing business around the world—with the personalized service, experience and zeal that few law firms can match.

Our versatility and cross-practice collaboration is a major benefit to smaller companies that look to us to provide them with a virtual in-house counsel across all areas of our practice. For clients with in-house legal support, we also provide the high-value, in-depth experience general counsel demands. Whether assisting with mergers, acquisitions and corporate transactions; contract disputes; government investigations; labor and employment issues; regulatory compliance; or complex business litigation, PilieroMazza tailors service to clients of all sizes, in a wide range of industries.

PilieroMazza attorneys take pride in nurturing our clients’ businesses and building long-lasting, personal relationships. Passionate in our representation, we go the distance not only to identify issues and obstacles, but also to develop practical, cost-effective approaches to overcome them. We’re accessible to clients, whenever and wherever they need us, and ready to take on new challenges, strategize, digest late-breaking developments or simply listen to their concerns.

Practice Areas

- Government Contracts Law
- Business & Corporate Law
- Small Business Programs
- Labor & Employment Law
- Litigation
- Government Relations Services
- Intellectual Property & Technology Rights
- Trade Associations & Nonprofits

PILIEROMAZZA PUBLICATIONS

Our *PM Legal Minute* blog, provides updates and analysis of issues that our practice groups have encountered, as well as tips and practical advice for government contractors.

The *Legal Advisor* is our quarterly newsletter, written by PilieroMazza attorneys and guest columnists, to address current issues that are of concern to federal government contractors and commercial businesses nationwide.

Our *Weekly Update* is emailed each Friday to recap any relevant actions taken by Congress, the Administration, or the courts.

Webinars & Seminars - We frequently hold sessions on informative topics and offer training on many government contracting practices and small business programs.

PilieroMazza YouTube Channel contains many of our past training webinars. You are invited to visit www.youtube.com/pilieromazza to see all our past sessions.

You may sign up for all of our publications and be notified of our seminars and webinars on the home page of our website at www.pilieromazza.com

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