

The Protest Process. A protest is simply a written objection to some aspect of an acquisition or to a proposed or actual award of a contract. Protests may be filed with the Contracting Officer, the General Services Board of Contract Appeals (GSBCA), the General Accounting Office (GAO), or through the court system. The United States Court of Federal Claims has pre-award bid protest jurisdiction; the U.S. District Courts have jurisdiction for post-award protests. Canadian firms should be aware that protests serve multiple purposes.

There are strict ethical rules prohibiting a contractor from filing a protest as a delay tactic. Canadian firms should avoid frivolous protests. However, a protest can serve as a competitive tool. A party may file a protest to win the suspension of a procurement. If you are an incumbent, a suspension could keep your contract in place for several additional months. As the incumbent you may continue to develop new technology and make new government contacts. A party may also file a protest to conduct discovery of a competitor's confidential information through the use of interrogatories, depositions and request for documents. Such confidential information may give the discovering party a competitive edge. A protest is also a mechanism to address problems such as unreasonably restrictive specifications, insufficient evaluations and inadequate discussions between government and the offeror.

Whether you should protest is a policy matter and depends on the situation. Every contractor should protest under legitimate circumstances, and no contractor should protest when it is legally or ethically unjustified. Government employees and appointees are capable of inappropriate and unfair solicitations and awards, both intentionally and through error. Every protest must be in accord with the government terms and conditions in order for the protest to receive serious consideration. Every RFP has its own special evaluation criteria, and protesters must be within those parameters to win.

If you decide to protest, will you need an attorney? Neither the GSBCA nor GAO rules require one, but that is up to the individual contractor. As the protest process becomes more formal and complex, the services of an attorney may be essential. A protest is much like preparing a court case against someone. You must be sure you're right before proceeding. The government usually denies about 75 percent of protests, so protest wisely.

Contracting Officer Protests. The FAR encourages offerors to protest to the contracting officer. Firms pursuing these protests subsequently may protest the