

Protecting the Integrity of Federal Procurement:

Bid Protests vs. Small Business Size or Socioeconomic Status Challenges

Federal contracting laws and regulations ensure that federal procurement is conducted fairly, according to proper procedures, and in a competitive manner. However, sometimes an offeror or contractor has a reason to believe that a procurement is conducted unfairly, improperly, or anti-competitively—resulting in a “bid *protest*.” Another possibility is that an offeror has a reason to believe that a competitor does not actually qualify as a small business—resulting in a “size *challenge*.” There are several distinct venues to “protest” or “challenge” these improprieties. This article distinguishes between bid *protests* versus small business size or socioeconomic status *challenges* at the Small Business Administration (SBA).

Bid Protests at the agency, GAO, or COFC

A bid *protest* is a written objection to the solicitation or cancellation of a solicitation, the award or proposed award of a contract, or the termination or cancellation of award. The most common types of bid protests involve improper or anti-competitive terms of a solicitation, or the award of a contract due to an improper source selection process. For example, an unsuccessful offeror protests the award of a contract to a competitor because the government failed to adequately evaluate the unsuccessful offeror’s proposal, or failed to follow the evaluation plan of the solicitation.

There are three venues for bid *protests*, with advantages and disadvantages for each venue:

1. Agency protests (see FAR 33.103);
2. Government Accountability Office (GAO) protests (see FAR 33.104); and
3. Court of Federal Claims (COFC) protests (see FAR 33.105).

The GAO is the most common venue for bid protests because it is cheaper, faster (usually the protest will be resolved within 100 days), and has simplified procedural requirements when compared to the COFC.

Small Business Size or Socioeconomic Status Challenges at SBA

Bid *protests* are distinctly different from small business size or socioeconomic status *challenges*. While bid *protests* concern solicitations, awards, and procurement procedures, small business size or socioeconomic *challenges* concern the eligibility of businesses to qualify for set asides. For instance, someone can *challenge* the small business size status of a competitor by alleging that the competitor actually has more employees or higher revenue than allowed by their relevant North American Industry Classification System (NAICS) code.

These size or status *challenges* are reviewed solely by the Small Business Administration (SBA) Office of Hearing and Appeals (OHA). The SBA OHA will investigate the facts and provide a written decision.

Remember that these size or status *challenges* at the SBA OHA are distinct from bid *protests*. GAO will dismiss any bid *protests* based on these size or status *challenges* because such *challenges* are subject to SBA OHA jurisdiction. As an example, the GAO case [McGoldrick Construction Services Corp., B-409252.2 \(March 28, 2014\)](#) dismisses one basis of a bid *protest* which is actually a size *challenge*: “The Small Business Act gives the Small Business Administration (SBA), not our Office [GAO], the conclusive authority to determine matters of small business status for federal procurements...”

For more information on bid *protest* regulations of the Government Accountability Office (GAO), visit their website:

<https://www.gao.gov/legal/bid-protest-regulations/about>

For more information on the Small Business Administration’s Office of Hearings and Appeals (SBA OHA), visit their website: <https://www.sba.gov/oha>