

(p) pre-award audits, if any, or surveys of the offerors;

(q) notification of contract award and executed contract;

(r) documents relating to any pre- or post-award debriefing;

(s) documents relating to any stay, suspension, or termination of award or performance pending resolution of the bid protest;

(t) justifications, approvals, determinations and findings, if any, prepared for the procurement by the agency pursuant to statute or regulation; and

(u) the record of any previous administrative or judicial proceedings relating to the procurement, including the record of any other protest of the procurement.

**23.** Because a protest case cannot be efficiently processed until production of the administrative record, the court expects the United States to produce the core documents and the remainder of the administrative record as promptly as circumstances will permit. (See RCFC 5.3 (d) which is applicable to administrative records, unless waived by the court.) Materials that otherwise qualify as part of the administrative record are not excluded from it merely because they are only in electronic form.

**24.** Any additional documents within the administrative record shall be produced at such time as may be agreed to by the parties or ordered by the court.

#### VIII. ADMISSION OF COUNSEL

**25.** In those procurement protest cases in which counsel for the plaintiff is not a member of the bar of the court and does not have sufficient time to gain admission prior to the filing of the action, the clerk shall accept for filing any proper complaint and accompanying pleadings under 28 U.S.C. §1491(b) from such counsel, conditioned upon counsel's prompt pursuit of admission to practice before the United States Court of Federal Claims pursuant to RCFC 83.1. Failure to do so within 30 days of the initiation of the action may result in dismissal of the action, and possible referral for disciplinary action.

#### RULES COMMITTEE NOTE

This appendix sets forth the procedures applicable to the court's procurement protest jurisdiction. In the main, these procedures reflect those that formerly appeared as General Order No. 38, issued on May 7, 1998. In addition, however, Appendix C now also incorporates—in paragraphs 10 through 14—those provisions of former RCFC 65(f) (titled "Procedures") which enumerated requirements particular to applications for temporary restraining orders and/or motions for preliminary injunction.

Papers and exhibits are often filed under seal in procurement protests. Procedures for unsealing are addressed at RCFC 77.3(d). The standards for granting access to protected information are addressed in decisions such as *U.S. Steel Corp. v. United States*, 730 F.2d 1465 (Fed. Cir. 1984) and *Matsushita Elec. Indus. Co. v. United States*, 929 F.2d 1577 (Fed. Cir. 1991).

#### APPENDIX D

##### PROCEDURE IN CONGRESSIONAL REFERENCE CASES

**1. Purpose.** The Federal Courts Improvement Act of 1982, amended 28 U.S.C. §§1492 and 2509 to

authorize either House of Congress to refer bills to the chief judge of the United States Court of Federal Claims for investigation and report to the appropriate House. Procedures promulgated by the chief judge applicable to such congressional reference cases are specified herein. The RCFC, to the extent feasible, are to be applied in congressional reference cases.

**2. Service of notice.** Upon referral of a bill to the chief judge by either House of the Congress, the clerk shall docket the reference and serve a notice, as provided in RCFC 5, on each person whose name and address is shown by the papers transmitted and who appears to have an interest in the subject matter of the reference. The notice shall set forth the filing of the reference and state that the person notified appears to have an interest therein and that such person shall have 90 days within which to file a complaint. The clerk shall forward a copy of each such notice to the Attorney General.

**3. Complaint.** Any person served with notice who desires to assert a claim may do so by filing a complaint in accordance with RCFC 3(c), 8 and 9.

**4. Failure of party to appear.** If no interested person files a complaint within the time specified in the notice served by the clerk, the case may be reported upon the papers filed and upon such evidence, if any, as may be produced by the Attorney General.

**5. Hearing officer; review panel.** Upon the filing of a complaint, the chief judge by order will designate a judge of the court to serve as hearing officer and a panel of three judges to serve as a reviewing body. One of the review panel members will be designated by the chief judge as presiding officer of the panel.

**6. Subpoenas.** Each hearing officer and each review panel shall have authority to do and perform any acts which may be necessary or proper for the efficient performance of their duties, including the power of subpoena and the power to administer oaths and affirmations. Subpoenas requiring travel of more than 100 miles to place of trial must have attached thereto an order of approval by the hearing officer.

**7. Hearing officer report.** The hearing officer shall conduct such proceedings and utilize such rules of the United States Court of Federal Claims as may be required to determine the facts, including facts relating to delay or laches, facts bearing upon the question whether the bar of any statute of limitation should be removed, or facts claimed to excuse the claimant for not having resorted to any established legal remedy. The hearing officer shall find the facts specially. The hearing officer's findings shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the hearing officer to judge the credibility of witnesses. The hearing officer shall append to the findings of fact conclusions sufficient to inform Congress whether the demand is a legal or equitable claim or a gratuity, and the amount, if any, legally or equitably due from the United States to the claimant. The report shall be filed with the clerk, and served by the clerk on the parties.

**8. Acceptance or exceptions.** Within 30 days after service of the report, each party shall file either (a) a notice of intention to except to the report or (b) a notice accepting the report.