

### 19. Designation of Protected Information and Preparation of Redacted Pleadings.

After a protective order is entered the designation of protected information and the preparation and filing of redacted documents shall be governed by the terms of the protective order.

### 20. Disposition of Material Containing Protected Information.

The specific procedures to be followed in disposing of protected information at the conclusion of the case shall be as described in the protective order.

## VII. THE CONTENT AND FILING OF THE ADMINISTRATIVE RECORD

**21.** The United States will be required to identify and provide (or make available for inspection) the administrative record in a protest case by the date(s) established at the initial status conference. The filing of all or a part of the administrative record shall be accompanied by a Notice of Filing.

**22.** Early production of relevant core documents may expedite final resolution of the case. The core documents relevant to a protest case may include, as appropriate the:

- (a) agency's procurement request, purchase request, or statement of requirements;
- (b) agency's source selection plan;
- (c) bid abstract or prospectus of bid;
- (d) Commerce Business Daily or other public announcement of the procurement;
- (e) solicitation, including any instructions to offerors, evaluation factors, solicitation amendments, and requests for best and final offers;
- (f) documents and information provided to bidders during any pre-bid or pre-proposal conference;
- (g) agency's responses to any questions about or requests for clarification of the solicitation;
- (h) agency's estimates of the cost of performance;
- (i) correspondence between the agency and the protester, awardee, or other interested parties relating to the procurement;
- (j) records of any discussions, meetings, or telephone conferences between the agency and the protester, awardee, or other interested parties relating to the procurement;
- (k) records of the results of any bid opening or oral motion auction in which the protester, awardee or other interested parties participated;
- (l) protester's, awardee's, and other interested parties' offers, proposals, or other responses to the solicitation;
- (m) agency's competitive range determination, including supporting documentation;
- (n) agency's evaluations of the protester's, awardee's, or other interested parties' offers, proposals or other responses to the solicitation, including supporting documentation;
- (o) agency's source selection decision, including supporting documentation;
- (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