

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

General Accounting Office, Administrative Practice and Procedure, Bid Protest Regulations, Government Contracts

AGENCY: General Accounting Office.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The General Accounting Office (GAO) is reviewing, and will be revising, its Bid Protest Regulations, promulgated in accordance with the Competition in Contracting Act of 1984. GAO last revised Part 21 in 1996, and believes that developments since that time warrant updating the Regulations to reflect current practice. In connection with this effort, GAO also is soliciting comments on how its Regulations should be revised to improve the overall efficiency and effectiveness of the bid protest process at GAO.

DATES: Comments must be submitted on or before April 1, 2002.

ADDRESSES: Comments should be addressed to: John M. Melody, Assistant General Counsel, General Accounting Office, 441 G Street, NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: John M. Melody (Assistant General Counsel) or David A. Ashen (Deputy Assistant General Counsel), 202-512-9732.

SUPPLEMENTARY INFORMATION: GAO is considering revising its Bid Protest Regulations, in accordance with the Competition in Contracting Act of 1984, 31 U.S.C. 3555(a). Revisions are being considered in several areas to take into account legal developments and changes in practice that have occurred since the 1996 revision. Among the changes being considered are the following:

Section 21.0(g) currently states that a document may be filed by hand delivery, mail, or commercial carrier, and then goes on to state that parties wishing to file by facsimile transmission

or other electronic means must ensure that the necessary equipment at GAO's Procurement Law Group is operational. GAO is not aware that there has been any significant confusion regarding acceptable means of filing protests and other documents. However, in light of our experience that documents commonly are filed by facsimile transmission, and our recent initiative to permit electronic filing, we believe this paragraph should clarify that filing by facsimile transmission is permitted (and, in fact, is commonplace), and that electronic filing (E-mail) of protest documents is permitted under certain circumstances.

Alternate dispute resolution (ADR) is utilized regularly by GAO as a means of resolving bid protests in an efficient, expeditious manner, but there is no language in the Bid Protest Regulations identifying it as such. Since a substantial number of cases have been found to be suitable for resolution using ADR, and it is anticipated that this will remain the case, GAO is considering adding language to reflect this practice.

Under the timeliness provisions of § 21.2(a)(2), where a debriefing is requested and required, any protest basis that is known or should have been known, either before or as a result of the debriefing, shall not be filed prior to the debriefing date offered to the protester. This rule has had the unintended result, in a very few cases, of leading protesters to delay—until after a debriefing—protesting a matter that arose during the procurement (for example, an alleged Procurement Integrity Act violation), prior to award. As it has long been GAO's view that it is beneficial to the procurement system to have alleged procurement deficiencies resolved, where possible, at the time the alleged deficiency arises, GAO is considering revising § 21.2(a)(2) to provide guidance in this area.

Section 21.5(c) provides that GAO will consider affirmative determinations of responsibility only under very limited circumstances, reflecting GAO's long held view that such determinations are so subjective that they do not lend themselves to reasoned review. In January 2001, the Court of Appeals for the Federal Circuit, in its decision *Impresa Construzioni Geom. Domenico Garufi v. United States*, 238 F.3d 1324 (Fed. Cir. 2001) held that affirmative determinations of responsibility by

contracting officers are reviewable by the Court of Federal Claims under the "arbitrary and capricious" standard applicable under the Administrative Procedures Act. In light of the Federal Circuit's decision, GAO is considering whether to revise its Regulations in this area.

GAO welcomes comments on these considerations, as well as suggestions for changes to other areas of the Regulations that may enhance the efficiency and overall effectiveness of the bid protest process.

Comments may be submitted by hand delivery or mail to the address in the address line, by e-mail at BidProtestRegs.gao.gov, or by facsimile at 202-512-9749.

Anthony H. Gamboa,
General Counsel.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM205; Special Conditions No. 25-01-05-SC]

Special Conditions: Fairchild Dornier GmbH, Model 728-100; Sudden Engine Stoppage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Fairchild Dornier GmbH Model 728-100 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes, associated with engine size and torque load which affects sudden engine stoppage. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.