



# Agency Counsel's Perspective: How to Communicate Effectively & Resolve Disputes with Government Customers

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## I. General Role of Agency Counsel

Almost all Federal agencies employ agency counsel to provide legal advice on the operations of that specific agency. Relevant here, procurement agency counsel provide legal advice and representation in the areas of procurement and fiscal law. Agency counsel is responsible for protecting the integrity of the procurement process and play an important role in defending the agency's final decisions. In that vein, procurement counsel's duties include: (1) Representing the Department in bid protests, contact appeals and disputes, and claims; (2) Reviewing of pre- and post-award contracting documents and actions for legal sufficiency and compliance with all aspects of contract law, regulations, and decisional precedent; and (3) Providing substantial legal advice on the full range of contract matters including: acquisition strategies, funding, solicitations, contract awards, cause interpretation, contract performance, enforcement actions, and terminations of contracts.

## II. Day to Day Agency Counsel Interactions with Contracting Personnel

Agency Counsel tend to be a precious resource—there are far fewer of them available than most agency leadership would like to see. Because of their relative scarcity, Agency Counsel tend to get involved in contract matters in the following situations:

1. When something goes wrong;
2. When something costs a lot of money;
3. When something is politically sensitive; and/or
4. When contracting personnel are pursuing an unusual or non-standard procurement vehicle.

Your average Jane or John Doe Agency Counsel also likely has a long docket of internal client matters on any given day—some short-burn, some long-running. They will speak regularly with Contract Specialists; Contracting Officers; program personnel such as scientists, engineers, and other subject-matter experts; Project Managers; Agency career leadership; and political appointees. Each of these different audiences has a very different perspective and often very different goals; each one makes up just a part of what Agency Counsel would consider to be their “client.”

Day-to-day interactions with Agency Counsel's various points of contact can take various shapes. They will field any number

of cold calls from Contracting Officers with questions. They will regularly brief political appointees and career leadership on project status and strategy, and receive guidance and direction in return. They will likely be involved early in acquisition strategy and planning for larger or more sensitive acquisitions, and in approving sensitive procurement measures such as sole source acquisitions and time and materials or certain award fee vehicles. Once a matter enters any kind of litigation, regardless of whether Agency Counsel was actively involved on the front end of acquisition planning, they will likely be in close contact with the entire spectrum of contracting personnel and agency leadership.

## III. Agency Counsel Role in Non-Litigation

As discussed above, Agency Counsel usually do not only enter the picture as litigation counsel. Most agency government contracts shops operate on a “cradle-to-grave” or general contracts practitioner model. Although certain attorneys within a given shop may develop certain area specialties—so-and-so as the go-to construction counsel, another attorney as a major systems acquisition expert—most will have a practice that involves much more than formal dispute resolution.

### A. Discussions Before Formal Issues Arise

If Contracting Officers and program personnel have a good relationship with Agency Counsel, or have Agency Counsel they trust—or if they just need a decision-maker outside of their immediate circle—they may give Agency Counsel a call as issues arise on a project. This is particularly the case if contracting personnel and their contractor counterparts are exchanging lengthy or substantive written letters or emails. In these cases, Agency Counsel may be as heavily involved as drafting letters for the COs' signature, or have as light involvement as offering counsel on a few phone calls. However, Agency Counsel may not necessarily be involved at this stage. Depending upon the individual Contracting Officer, informal discussions may be going on without Agency Counsel's knowledge, let alone with their participation. If informal discussions are not productive, escalation may trigger Agency Counsel's involvement, and offer a chance at having a new “adult in the room” to influence the agency's actions.

### B. Request for Equitable Adjustment

Requests for Equitable Adjustments are considered “less” serious



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than submitting a claim whereas the contractor seeks a written demand for the payment of money due to a change arising from the terms of the contract.<sup>1</sup> In our experience, Agency Counsel involvement with Requests for Equitable Adjustment (REAs)<sup>2</sup> will likely be similar to their engagement level with certified claims. It is entirely possible, however, that internal agency guidelines may treat non-certified REAs with less formality than certified claims, and that Agency Counsel involvement may be elective, rather than mandatory. If the contractor submits a REA and the REA is unsuccessful, it then may submit a claim.

## C. Claims

Agency Counsel will almost certainly be involved in the claims process. The Contracts Disputes Act (CDA) requires contractors to submit claims to the Contracting Officer.<sup>3</sup> The claim must be in writing, and must include: a “sum certain” if the claim seeks a monetary amount, the bases for the claim and a request for a final decision.<sup>4</sup> Additionally, for any monetary claim exceeding \$100,000, someone authorized on behalf of the contractor must submit a signed certification which states that: “(A) the claim is made in good faith; (B) the supporting data are accurate and complete to the best of the contractor’s knowledge and belief; (C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and (D) the certifier is authorized to certify the claim on behalf of the contractor.”<sup>5</sup>

Agencies may have internal requirements for when Agency Counsel must be involved—any claim above \$100,000, for instance—or they may simply have a blanket requirement for

contracting personnel to secure Agency Counsel approval before issuing a Contracting Officer’s Final Decision (COFD).<sup>6</sup>

In the case of drafting and issuing COFDs, Agency Counsel may “approve” a COFD that is not legally impermissible while still advising a CO to take a different tack. Or Counsel may be drafting a COFD for the CO’s review and signature. Much will depend on the preferences of the individuals involved, and on the agency’s internal guidelines.

## IV. Litigation

Both the Federal Acquisition Regulations<sup>7</sup> and the Contracts Disputes Act<sup>8</sup> provide a contractor several avenues to resolve contractual disputes with an agency.

### A. Agency Level Bid Protests

Less common, but still a helpful tool, is filing agency level protests.<sup>9</sup> Agency-level protests are governed by Federal Acquisition Regulation (FAR) 33.103 and applicable agency FAR supplements.<sup>10</sup> The agency should provide for inexpensive, informal, procedurally simple, and expeditious resolution of protests.<sup>11</sup> Where appropriate, the use of alternative dispute resolution techniques, third-party neutrals, and another agency’s personnel are acceptable protest resolution methods.<sup>12</sup> Importantly, upon receipt of a protest before award, a contract may not be awarded, pending agency resolution of the protest.<sup>13</sup> Additionally, upon receipt of a protest after award, the agency must immediately suspend performance pending the resolution of the protest.<sup>14</sup>

<sup>1</sup>FAR § 252.243-7002

<sup>2</sup>FAR § 252.243-7002.

<sup>3</sup>41 U.S.C. § 7103.

<sup>4</sup> 41 U.S.C. § 7103(a).

<sup>5</sup>41 U.S.C. § 7103(b); FAR 33.207(c).

<sup>6</sup>Federal Acquisition Regulations (FAR) § 32.605.

<sup>7</sup>FAR § 52.233-1; FAR § 33.

<sup>8</sup> 41 U.S.C. FAR §§ 7101-7109.

<sup>9</sup>FAR § 33.103(d) - Protests shall be concise and logically presented to facilitate review by the agency.

Protests shall include the following information:

- (i) Name, address, and fax and telephone numbers of the protester.
- (ii) Solicitation or contract number.
- (iii) Detailed statement of the legal and factual grounds for the protest, to include a description of resulting prejudice to the protester.
- (iv) Copies of relevant documents.
- (v) Request for a ruling by the agency.
- (vi) Statement as to the form of relief requested.
- (vii) All information establishing that the protester is an interested party for the purpose of filing a protest.

(viii) All information establishing the timeliness of the protest.

(3) All protests filed directly with the agency will be addressed to the contracting officer or other official designated to receive protests.

<sup>10</sup>The GAO has long held that an agency-level protest is a (1) written communication to the agency, (2) specifically expressing dissatisfaction, and (3) requesting corrective action. See Coulson Aviation (USA), Inc., B-411525; B-411525.2, Aug. 14, 2015, 2015 CPD ¶ 272 at 5-6. A writing may be a protest even if it is not expressly labeled as such. See Mackay Commc'ns—Recon., B-238926.2, Apr. 25, 1990, 90-1 CPD ¶ 426 at 1. A request for agency action without a corresponding expression of dissatisfaction, however, is not a protest. Fed. Marketing Office—Recon., B-249097.3, Jan. 5, 1993, 93-1 CPD ¶ 4 at 3-4. And an expression of dissatisfaction coupled with a mere suggestion, request for clarification, or an expressed hope or expectation of certain agency action is not an agency-level protest. Masai Techs. Corp., B-400106, May 27, 2008, 2008 CPD ¶ 100 at 3.

<sup>11</sup>FAR 33.103(c).

<sup>12</sup>Id.

<sup>13</sup>FAR 33.103(f)(1).

<sup>14</sup>FAR 33.103(f)(3).



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After filing the protest, a disappointed contractor may request a review of the protest at a level above the contracting officer.<sup>15</sup> Agency protest decisions shall be well-reasoned, and explain the agency position.<sup>16</sup> Agencies shall make their best efforts to resolve agency protests within 35 days after the protest is filed and to the extent permitted by law and regulation, the parties may exchange relevant information.<sup>17</sup> Beyond these rules, unlike protests at the Government Accountability Office (GAO) and the Court of Federal Claims (COFC), there are no strict rules the agency must follow in deciding an agency level protest.

Agency Counsel will more likely than not be extremely involved in drafting the response to the protest. Agency Counsel will discuss the protest with the contracting personnel involved and likely perform legal research on the protest grounds. Agencies tend to prefer to address procurement errors internally rather than in a formal forum like at GAO and COFC. Therefore, if the procurement error is presented as clear and simple, the agency counsel is likely to recommend the contracting personnel correct the procurement error. Additionally, the filing of an agency level protest may signal to Agency Counsel that if the agency-level protest is denied, forthcoming protests at GAO and COFC will be filed. To avoid additional work at a later date if the protest is denied, the agency counsel may highly scrutinize the agency-level protest to correct any procurement errors made by the Agency.

## B. Bid Protests at Government Accountability Office

Filing a bid protest at the GAO is a popular choice among

contractors.<sup>18</sup> It tends to cost less than filing a protest at the COFC and GAO will provide a written decision within 100 days from the filing of the protest.<sup>19</sup> Importantly, filing a protest at GAO will invoke the Competition in Contract Act automatic stay (CICA Stay), which typically suspends any procurement action by the Agency until GAO decides the case.<sup>20</sup>

Agency Counsel handles bid protests filed at GAO. In the majority of cases, Agency Counsel will not be familiar with the contracting issue(s) subject to the protest until the protest is filed. Agency Counsel will review the protest in detail and evaluate whether the protest has merit and the litigation risk.<sup>21</sup> Therefore, it is important that the protest be clear and set forth in detail the errors made by the Agency as the Agency Counsel may then recommend that the agency take voluntary corrective action. As a general matter, the details of a corrective action are within the sound discretion and judgment of the contracting agency.<sup>22</sup> Voluntary corrective action taken by the agency must be tailored to the protest grounds and provide an appropriate remedy to the concern that caused the agency to take corrective action.<sup>23</sup> GAO will generally will not object to the specific corrective action, so long as it is appropriate to remedy the concern that caused the agency to take corrective action.<sup>24</sup> Therefore, it is very important that a protest is clearly written so that the agency (who is being advised by agency counsel) has a clear path on what corrective action to take.<sup>25</sup>

If the protest continues, the protestor's counsel will have limited contact with Agency Counsel as the Agency Report, supplemental

<sup>15</sup>FAR 33.103(d)(4).

<sup>16</sup>FAR 33.103(h).

<sup>17</sup>FAR 33.103(g).

<sup>18</sup>Title 4 of the Code of Federal Regulations (C.F.R.), Part 21 discusses whom and what procurement actions may be protested at GAO.

<sup>19</sup>4 C.F.R. § 21.9(a).

<sup>20</sup>31 U.S.C. § 3553.

<sup>21</sup>GAO does not require formal briefs or other technical forms of pleadings. However, at a minimum, a protest must:

- (1) Include the name, street address, e-mail address, and telephone and facsimile numbers of the protester (or its representative, if any);
- (2) Be signed by the protester or its representative (electronic signature is acceptable);
- (3) Identify the agency and the solicitation and/or contract number;
- (4) Set forth a detailed statement of the legal and factual grounds of protest, including copies of relevant documents;
- (5) Set forth all information establishing that the protester is an interested party for the purpose of filing a protest;
- (6) Set forth all information establishing the timeliness of the protest;
- (7) Specifically request a ruling by the Comptroller General of the United States; and
- (8) State the form of relief requested.

4 C.F.R. § 21.1(c).

<sup>22</sup>Rockwell Elec. Commerce Corp., B-286201.6, Aug. 30, 2001, 2001 CPD ¶ 162 at 4.

<sup>23</sup>Networks Elec. Corp., B-290666.3, Sept. 30, 2002, 2002 CPD ¶ 173 at 3.

<sup>24</sup>Id.

<sup>25</sup>When a procuring agency takes corrective action in response to a protest, GAO may recommend reimbursement of protest costs where, based on the circumstances of the case, GAO determines that the agency unduly delayed taking corrective action in the face of a clearly meritorious protest, thereby causing the protester to expend unnecessary time and resources to make further use of the protest process in order to obtain relief. 4 C.F.R. § 21.8(e); AAR Aircraft Servs.--Costs, B-291670.6, May 12, 2003, 2003 CPD ¶ 100 at 6. Thus, as a prerequisite to our recommending the reimbursement of costs where a protest has been settled by corrective action, the protest must not only have been meritorious, but it also must have been clearly meritorious, i.e., not a close question. InfraMap Corp.--Costs, B-405167.3, Mar. 26, 2012, 2012 CPD ¶ 123 at 3. A protest is clearly meritorious where a reasonable agency inquiry into the protester's allegations would reveal facts showing the absence of a defensible legal position. First Fed. Corp.--Costs, B-293373.2, Apr. 21, 2004, 2004 CPD ¶ 94 at 2. With respect to the promptness of the agency's corrective action, we review the record to determine whether the agency took appropriate and timely steps to investigate and resolve the impropriety. Remote Diagnostics Techs., LLC, B-413375.3, Feb. 6, 2017, 2017 CPD ¶ 52 at 3. Corrective action not unduly delayed when taken prior to the submission of an agency report. TRAX Int'l Corp.--Costs, B-410441.5, Aug. 26, 2015, 2015 CPD ¶ 27.



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protests, and comments are filed. However, protestor's counsel may have more resources to comb through the Agency Report than the agency counsel and may be able to identify additional protest grounds.<sup>26</sup> In a supplemental protest, if the protestor brings forward additional procurement errors to the Agency's attention; the Agency Counsel may recommend corrective action at that time. Therefore, as before, you want to ensure the supplemental protest grounds are clear and concise.

Once GAO reaches a decision, if it is in the protestor's favor, the Agency Counsel will be instrumental in advising the agency on how to implement GAO's recommendations.<sup>27</sup> It is important for protestor's counsel to provide the agency time to implement the recommendation. However, the protestor's counsel, if after a reasonable period of time, should contact Agency Counsel to ensure the agency complies with GAO's recommendations.<sup>28</sup>

## C. Bid Protests and Claims at the Court of Federal Claims

Contractors may also file bid protests and claims at the COFC.<sup>29</sup> Unlike cases at the agency, GAO, or boards, the Department of Justice (DOJ) will represent an agency in proceedings at COFC. Once a case is filed, the DOJ will assign a DOJ attorney to the case. The DOJ attorney will contact Agency Counsel to request a summary of the case. If a motion for a temporary restraining order and preliminary injunction is filed with the initial complaint, the DOJ and Agency Counsel will discuss whether the agency will agree to a voluntary stay. At this time, Agency Counsel will consult with contracting officials, and possibly their own supervisors/political appointees, to determine the agency's need for the good/service. There is no clear-cut answer on when the agency will agree to a voluntary stay and when it will not. However, generally the agency will agree to a voluntary stay if it is a post-award protest and the services/goods procured are not crucial to the function of the agency.

After an initial status conference, the COFC judge will set a

briefing schedule. For bid protests, the scope of the COFC's review is generally confined to the administrative record.<sup>30</sup> The administrative record should include all the information relied upon by the agency as it made its decision, as well as documentation of the agency's decision-making process.<sup>31</sup> The administrative record must be certified by the agency and filed with the court.<sup>32</sup> The DOJ will rely on the agency counsel during this process to provide all relevant information required.<sup>33</sup> After the administrative record is filed, briefing ensues ending with oral argument.

Importantly, while the DOJ attorneys are skilled litigators, they may not be as familiar with the facts of the case as Agency Counsel (especially if it is a protest that was previously litigated at GAO). Each DOJ attorney is different, but most tend to heavily rely on Agency Counsel in developing arguments, providing supporting information, and mooted for oral argument for both bid protests and claims. Agency Counsel usually attends all hearings. Further, claims have an extended period of time of discovery compared to bid protests. Because of this, DOJ may rely even more heavily on Agency Counsel in providing litigation support during the discovery process.

Agency Counsel serves as the conduit between DOJ and the Agency and are a crucial link to contracting officials and decision makers in the agency in determining if the agency should take corrective action or settle. Therefore, while the agency in COFC is represented by DOJ, it would not hurt to have casual conversations with Agency Counsel (if they are willing) before or after hearings. Even if you are not able to have direct communication with Agency Counsel, Agency Counsel is relaying what happens in the hearings and summarizing the pleadings to the contracting officials/ leadership. Therefore, even though DOJ is representing the agency, Agency Counsel will have the day-to-day interactions with agency officials and relay both their own and DOJ's recommendations to the agency's decision makers.

<sup>26</sup>4 C.F.R. § 21.3(h)(i)(1).

<sup>27</sup>4 C.F.R. § 21.8.

<sup>28</sup>In accordance with 31 U.S.C. § 3554(e)(2), the Comptroller General must report to Congress each instance in which a federal agency did not fully implement a recommendation made by GAO in connection with a bid protest.

<sup>29</sup>The Tucker Act, as amended by the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, §§ 12(a)-(b), 110 Stat. 3870 (Oct. 19, 1996).

<sup>30</sup>RCFC 52.1 (limiting COFC's review of an agency's procurement decision to the administrative record);

*Axiom Res. Mgmt., Inc. v. United States*, 564 F.3d 1374, 1379 (Fed. Cir. 2009) ("[T]he focal point for judicial review should be the administrative record already in existence.").

<sup>31</sup>*Kerr Contractors, Inc. v. United States*, 89 Fed. Cl. 312, 335 (2009); see also *MG Altus Apache Co. v. United States*, 102 Fed. Cl. 744, 752 (2012) ("The [administrative record] should contain all relevant information on which the agency relied or allegedly should have relied in making the challenged decision").

<sup>32</sup>RCFC 51.1(a).

<sup>33</sup>RCFC, Appendix C - Section VII.



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## D. Claims at Contract Boards

After receiving a Contracting Officer's Final Decision, a claimant may file an appeal to the Court of Federal Claims or to an administrative board of contract appeals.<sup>34</sup> The vast majority of board cases are handled by either the Civilian Board of Contract Appeals (CBCA) or Armed Services Board of Contract Appeals (ASBCA).<sup>35</sup> The CBCA has jurisdiction to decide any appeal from a decision of a contracting officer of any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Regulatory Commission, Federal Aviation Administration<sup>36</sup> or the Tennessee Valley Authority<sup>37</sup>) relative to a contract made by that agency.<sup>38</sup>

The Armed Services Board has jurisdiction to decide any appeal from a decision of a contracting officer of the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, or the National Aeronautics and Space Administration relative to a contract made by that department or agency.<sup>39</sup> The Postal Service Board of Contract Appeals has jurisdiction to decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory Commission relative to a contract made by either agency.<sup>40</sup>

Similar to protests at GAO, Agency Counsel will handle the case before the respective board. However, unlike protests before GAO, cases before boards include full discovery, including depositions, and may continue for months.<sup>41</sup> This provides appellant's counsel multiple opportunities to communicate with Agency Counsel. In order to facilitate amicable resolution of discovery disputes, it is crucial to have a positive relationship with Agency Counsel.

Further, as the case progresses and discovery continues, Agency Counsel will be reviewing all the materials and make recommendations to contracting officials on both the strategy of

the case and settlement options. Consequently, because cases at the board tend to be much more intensive than any other litigation agency procurement counsel may handle, agency counsel may be more willing to try to resolve the case prior to depositions and/or motions for summary judgment are filed. Therefore, while appellant counsel should not unnecessarily overwhelm the agency with discovery request or filings, placing as much evidence as possible in front of Agency Counsel earlier in the process may facilitate faster settlement discussions

## V. Suspension and Debarment

The suspension and debarment process protects the federal government from fraud, waste and abuse by avoiding doing business with non-responsible contractors.<sup>42</sup> This article will not go into great detail about what a contractor can do to be suspended<sup>43</sup> or debarred<sup>44</sup>, however, Agency Counsel is heavily involved in the process before a contractor is suspended or debarred.<sup>45</sup> Each agency has a Suspension and Debarment official (SDO) who makes present responsibility determinations, and decides whether to take administrative actions such as suspensions or debarments. Contractors found not to be presently responsible are suspended or debarred and listed on the System for Award Management (SAM).

If the contractor is currently working on an agency contract, the Contracting Officer should be informed of the proposed suspension and debarment. While suspension and debarment only affects prospective contracts (i.e. the contractor can continue working on any current contracts); it does prevent the Government from renewing or extending those contracts. Therefore, the contracting office should be kept informed of any developments so they may find new avenues for the services/goods the suspended or debarred contractor are currently providing to the agency.

Potentially, the Office of Inspector General (OIG) of the respective agency may be involved in the suspension or debarment of the contractor by reporting to the SDO a contractor's alleged fraud,

<sup>34</sup>41 U.S.C § 7104.

<sup>35</sup>41 U.S.C § 7105(a)-(b).

<sup>36</sup>14 CFR § 17.

<sup>37</sup>The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals of the Tennessee Valley Authority of an indeterminate number of members. 41 U.S.C § 7105(c).

<sup>38</sup>41 U.S.C § 7105(e)(1)(B).

<sup>39</sup>41 U.S.C § 7105(e)(1)(A).

<sup>40</sup>41 U.S.C § 7105(e)(1)(C).

<sup>41</sup><https://www.cbca.gov/howto/rules/procedure.html#rule13>; 48 CFR Chapter 2, Appendix A, Part 2.

<sup>42</sup>FAR § 9.402(a).

<sup>43</sup>FAR § 9.407-2 (causes for suspension).

<sup>44</sup>FAR § 9.406-2 (causes for debarment).

<sup>45</sup>FAR § 9.402(c) ("Agencies are encouraged to establish methods and procedures for coordinating their debarment or suspension actions")



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waste, abuse, poor performance, and noncompliance with contract provisions or applicable law. If the OIG is involved, Agency Counsel may work the OIG counsel throughout the suspension and debarment process. As the OIG is a separate entity from the agency, Agency Counsel must strike a delicate balance between the interests of the agency and the OIG as they may not fully align (though they usually do).

Prior to the issuance of a Notice of Suspension or Proposed Notice of Debarment, Agency Counsel should be integrally involved with the decision by the SDO to issue a notice and will also help draft the notice. After the notice is issued, the contractor will have an opportunity to submit, in person, in writing, or through a representative, information and argument in opposition to the proposed suspension or debarment.<sup>46</sup> Agency Counsel will analyze this information with applicable regulations and discuss with the SDO if the proposed suspension or debarment should move forward. Therefore, it is very important that the contractor's submission is clear and concise and raise genuine disputes over facts.

In actions not based upon a conviction or civil judgment, if it is found that the contractor's submission in opposition raises a genuine dispute over facts material to the proposed suspension or debarment, agencies shall afford the contractor an opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront any person the agency presents.<sup>47</sup> Apart from the SDO's final decision<sup>48</sup>, this is the area where Agency Counsel is most involved during the suspension and debarment process. Agency Counsel will provide advice to the SDO on the legal standard for suspension and debarment and will more likely than not attend any informal hearing where he or she will review the submitted documentary evidence and may question witnesses. Further, if the hearing includes questioning of agency

witnesses by opposing counsel, agency counsel will prepare the witnesses prior and sit with the witnesses during this proceeding.

Because suspension and debarments are not extremely common, SDOs tend to rely heavily on Agency Counsel to ensure compliance with the law in making their final decision including depending profoundly on agency counsel to analyze the information submitted by the contractor after the notices are sent to determine if suspension or debarment is still warranted. Therefore, while the SDO is the ultimate decision-maker, contractors should be cognizant that an attorney will be reviewing all the submitted materials and advising the SDO.

## VI. Conclusion

Within the specialty of Government Contract Law, Agency Counsel tend to nevertheless be generalists, with at least a functioning knowledge of a broad range of subjects (suspension and debarment, claims and appeals, construction) and an equally broad set of skills (contract drafting and interpretation, strategic planning, litigation). Because the range of personnel with whom they interact is similarly so broad—from entry-level Contract Specialists to a Department Secretary or General Counsel—they are capable of weighing varying agency interests to reach resolution of a particular issue. Contractors should tailor their REAs, claims, and protests to the Agency with the mindset that a lawyer will be reviewing it. Although Agency Counsel are in an adversarial position to contractors, this does not mean they cannot be a useful resource if contractors are having a difficult time gaining traction in their interactions with contracting personnel alone. While the decision-making authority does not rest with the Agency Counsel, they do wield a great deal of influence on the final decision. ■

<sup>46</sup>FAR § 9.407-3(b); FAR § 9.406-3(b).

<sup>47</sup>FAR § 9.406-3(b)(2)(i); FAR § 9.407-3(c)(5)-(6).

<sup>48</sup>FAR § 9.406-3(d); FAR § 9.407-3(d).