

Comment from Special Counsel Jeffrey S. Lubbers on Government Contract Bid Protests Before Agencies

December 11, 2020

Line 11: The preferred US spelling is “benefiting,” so remove one of the t’s.

Lines 15–16 (and 35–36): This is a bit confusing. Are these three routes mutually exclusive? Does a vendor who files an agency-level protest lose the right to file with the COFC or the GAO? It appears that way from the description (although lines 65–67 state otherwise). I also assume the agency-level decision is judicially reviewable but in what court?

Line 30: To eliminate awkwardness, instead of “that implicate,” I would substitute “which implicate” — it’s not the protests that implicate these themes, but rather the reasons.

Lines 53–56: Do vendors have the same right if they file with the COFC?

Lines 69 and 70: I’m not sure what “valid” means in these sentences.

Paragraphs 4–7: Shouldn’t the FAR itself be amended to include these requirements (or at least provide that the agencies do so)?

Paragraph 9: Should this sort of stay also apply if the protester files a COFC protest? I also note that this is the only recommendation directed to Congress. Aren’t there others that could be?