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United States Government Accountability Office
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**NOTICE REGARDING CHANGES TO PROTECTIVE ORDER &
CLARIFICATION OF FILING PROCEDURES**

As part of its bid protest procedures, GAO routinely issues protective orders to allow limited access to information contained in the protest record that cannot be publicly released, typically, a company's proprietary or confidential data or the contracting agency's source-selection-sensitive information. See 31 U.S.C. § 3553(f)(2) (2000), and GAO's Bid Protest Regulations, 4 C.F.R. § 21.4 (2005). The protective order strictly controls who has access to protected material and how that material is labeled, distributed, stored, and disposed of at the conclusion of the protest.

During the 15 years that GAO has been issuing protective orders, our Office has closely monitored their use. While protective orders are sometimes modified to suit the circumstances of individual bid protests, in the vast majority of cases the parties use GAO's standard protective order, and as a result, GAO has worked to ensure that the standard order provides the procedures and protections that are generally appropriate. As part of that effort, GAO constantly seeks input from practitioners and has, from time to time, modified the standard protective order to reflect changes in technology or professional practice, or otherwise to make the process more efficient.

GAO has also been vigilant in monitoring potential violations of protective orders. GAO treats any violation of a protective order as a serious matter, whether or not it was intentional, and whether or not it results in an improper disclosure of protected material. Fortunately, GAO's experience is that violations have been rare (fewer than 65 violations in the thousands of protests handled since 1991) and have, in most cases, been unintentional. There have, however, been a handful of cases where GAO has imposed sanctions, such as barring the person found to have violated the protective order from having access to information covered by a GAO protective order for a defined period of time. In addition, GAO has referred several violations of protective orders to the state bar of the attorneys involved. GAO intends to continue handling such cases with the seriousness that they deserve.

It is in this context that GAO is making a number of relatively minor changes to its standard protective order and the application for admission to it. These changes respond to suggestions for improvements made by practitioners and the growing reliance on e-mail transmission of documents. Specifically, GAO is no longer requiring that applicants file the original signed application, so long as a signed copy was previously transmitted to GAO by facsimile or electronic mail. In addition, we

are making the following limited changes to paragraphs 4, 6, and 7 of the standard protective order:

- ¶ 4 to permit each party to make up to 3 copies (including the original and electronic copies) of protected material
- ¶ 6 to permit the use of electronic mail to transmit protected documents, unless objected to by any party to the protest
- ¶ 7 to require that electronically transmitted material be disposed of at the end of the protest

GAO has also modified paragraph 2 of the Application for Access to Material Under a Protective Order for Outside Counsel, and modified paragraph 7 to reflect a reduction in the reporting requirement for violations to 2 years. GAO is making this change based on its extensive experience handling protective orders, the small number of reported violations, and GAO's ability to track whether an applicant has violated an earlier protective order. Accordingly, GAO has concluded that a reporting period of two years is now appropriate for the protective order process at GAO.

Applicants seeking admission to the protective order (which include law clerks or support staff admitted to a bar) are now required to provide more complete contact information, such as e-mail addresses and direct dial telephone numbers. Requiring law clerks and others to apply for admission to the protective order where those individuals are admitted to a state bar reflects the fact those individuals are attorneys, and GAO believes that they should be treated as such for purposes of the protective order.

Finally, GAO has made several changes to its Acknowledgment of Protest letter (sent to the protester) and Confirmation of Report Requirement (sent to the agency). These changes are to clarify aspects of our filing procedure and reflect the changes to our protective order discussed above.

GAO continues to welcome practitioners' suggestions for improvement to its procedures. Any suggestions, questions, or comments may be sent to the undersigned at gordond@gao.gov or 202/512-8219.



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