



## DEPARTMENT OF THE INTERIOR

### DEPARTMENT OF THE INTERIOR ACQUISITION REGULATION (DIAR)

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#### PART 1433 PROTESTS, DISPUTES, AND APPEALS

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#### **SUBPART 1433.1 -- PROTESTS**

##### **1433.102 General**

(a) For protests filed with either the GAO or GSBCA, the SOL shall be responsible for handling of all bid protest matters. Any communications to the GAO or to GSBCA shall be coordinated with the regional and/or field solicitor and the Assistant Solicitor-Procurement and Patents.

##### **1433.103 Protests to the agency**

(a)(2) For protests filed with the agency, the CO shall coordinate with the regional and/or field solicitor and the Assistant Solicitor- Procurement and Patents prior to making the determination prescribed in [FAR 33.103\(a\)\(2\)](#). When a protest is denied by the CO, the decision issued shall advise the protester that the decision may be appealed to the GAO

or GSBCA. All protest decisions must also contain a notice that appeals to either the GAO or the GSBCA must include a copy of the CO's protest decision.

(4) Prior to any decision, suspension, and/or termination of a contract award as a result of a protest to the agency received after award, the CO shall coordinate with the regional and/or field solicitor and the Assistant Solicitor - Procurement and Patents.

#### **1433.104 Protests to the GAO**

(a) General procedures. (1) A protester shall furnish a copy of its complete protest simultaneously to the CO and the Assistant Solicitor - Procurement and Patents. Upon being telephonically advised by the GAO of the receipt of a protest, the SOL shall inform the appropriate contracting activity which shall immediately notify the CO. For protests concerning FIP acquisitions, the SOL shall also inform the Director, PIR, who, in turn, shall notify the appropriate bureau Information Resources Management (IRM) contact and GSA official. The CO shall prepare the protest report as required by [FAR 33.104\(a\)\(3\)](#).

(2) The SOL will furnish promptly GAO's written notice of the protest to the cognizant contracting activity which, in turn, shall promptly transmit copies to the CO. The CO shall begin notification as prescribed in [FAR 33.104 \(a\)\(2\)](#). The notification letters shall contain a specified period of time for submission of comments and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the CO and the Assistant Solicitor - Procurement and Patents. Copies of the CO's notification letters shall be sent concurrently to the Assistant Solicitor - Procurement and Patents.

(3)(i) The contracting activity shall have no more than 15 working days from the date of telephonic notification by the SOL to deliver the protest report to the Assistant Solicitor - Procurement and Patents. For reports involving use of the 10 working day express option, the SOL shall establish the report delivery date after consultation with the contracting activity.

(3)(i)(B) If required, the SOL shall make the request for an extension in the report due date.

(3)(ii)(G) In addition to the requirements of [FAR 33.104\(a\)\(3\)](#), the report shall be appropriately titled and dated; shall cite the GAO file number; and shall be signed by the CO. Reports shall be prepared with the assistance of the local attorney - advisor of the SOL. A statement shall be included giving an estimate of the length of time an award may be delayed without significant expense or difficulty in performance. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. The contracting activity shall submit an original and two complete copies of the CO's report to the Assistant Solicitor- Procurement and Patents plus one complete copy for each interested party who responded to the notification pursuant to [FAR 33.104\(a\)\(2\)](#).

(4)(i) The Assistant Solicitor - Procurement and Patents shall be responsible for submitting the report to GAO and sending copies of the report to each interested party.

(b) Protests before award. (1) The finding to award, notwithstanding protest, shall be written by the CO, reviewed by the SOL, and approved by the HCA. A copy of the approved written finding shall be placed in the contract file.

(2) The SOL shall be responsible for notifying the GAO of the finding to award notwithstanding protest.

(c) Protests after award. (1) The CO shall notify the SOL prior to suspending or terminating the awarded contract.

(2) The written finding to authorize continued contract performance, notwithstanding protest, shall be written by the CO, reviewed by the SOL, and approved by the HCA.

(3) The SOL shall be responsible for notifying the GAO of the finding to continue contract performance notwithstanding protest.

(g) Notice to GAO. The CO shall prepare the report required by [FAR 33.104\(g\)](#), and coordinate it with the Assistant Solicitor- Procurement and Patents and the Director, PAM prior to HCA signature (signature level not redelegable). For protests regarding FIP acquisitions, the CO shall also coordinate the report with the Director, PIR. After signature, the report shall be forwarded to the Assistant Solicitor - Procurement and Patents for transmission to the GAO approval, the report shall be submitted to the HCA

### **1433.105 Protests to GSBCA**

(a)(1) A protester shall furnish a copy of its complete protest simultaneously to the CO and the Assistant Solicitor - Procurement and Patents. Immediately upon receipt of a copy of the protest, the SOL shall inform PIR and the contracting activity which shall immediately coordinate with the CO. The CO shall immediately notify its bureau IRM contact.

(2) The CO shall be responsible for the notice and confirmation of notice requirements contained in FAR 33.105(a)(2). The CO shall ensure copies of the notification, confirmation, and all related correspondence with GSBCA is maintained in the contract file, with copies forwarded to the SOL.

(b) An original and 2 copies of a protest file plus one copy for each interested party which has filed a notice of intervention or a motion to intervene in accordance with the requirements of Rule 5 of the GSBCA Rules of Procedure (48 CFR 6101.5) shall be submitted by the CO to the SOL within 8 working days after the filing of a protest. The protest file shall be organized to comply with the requirements of Rule 4(b) of the GSBCA Rules of Procedure (48 CFR 6101.4). The SOL shall then submit the file to the

GSBCA within 10 working days after filing of the protest and shall also send copies to each interested party.

(d)(1) The SOL shall be responsible for representing the CO at any hearing on the suspension of the agency's delegation of procurement authority.

(2) The CO shall prepare the D&F countermanding the request for suspension of procurement authority and forward it to the HCA for approval and signature.

(e) The SOL shall also be responsible for representing the CO at any hearing on the merits of the protest. The SOL shall notify the CO and PIR of the hearing results.

### **1433.106 Solicitation provision and contract clause**

The provision at [FAR 52.233-2](#), Service of Protest, as prescribed in [FAR 33.106](#), shall be modified in accordance with the instructions in DIAR 1452.233-2.

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## **SUBPART 1433.2 -- DISPUTES AND APPEALS**

### **1433.203 Applicability**

(b) The CO shall prepare any determination that application of the Contract Disputes Act to contracts with a foreign or international organization would not be in the public interest and forward it to the HCA for review. The HCA shall be responsible for submitting the determination through the Director, PAM, to the AS/PMB for approval.

(c) The IBCA (43 CFR Part 4, Subpart C), is authorized by the Contract Disputes Act or by the Secretary to consider and determine an appeal from a decision of a CO on a claim arising under or relating to a contract made by DOI. IBCA may consider Contract Disputes Act appeals from another executive agency if such agency or the Administrator of OFPP has duly designated the IBCA to decide the appeal.

### **1433.209 Suspected fraudulent claims**

The CO shall refer all matters relating to suspected fraudulent claims by a contractor or individual to the OIG for further action or investigation.

### **1433.211 Contracting officer's decision.**

(a)(4)(v) The contracting officer's decision shall reference the Interior Board of Contract Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, and its procedures under 43 CFR Part 4. Small claims procedures and accelerated procedures under 43 CFR 4.113 shall be referenced, if appropriate, using the most current statutory amounts appropriate to such procedures.

### **1433.212 Contracting officer's duties upon appeal**

(a) When a notice of appeal has been received, the CO shall write the date of appellant's mailing (or the date of receipt if the notice was not mailed) on the appeal and forward it to the IBCA by certified mail within 5 days of receipt. The CO shall also notify the SOL of the appeal. (See [43 CFR 4.103](#).)

(b) The CO shall prepare the appeal file containing the data, documentation, and information required by 43 CFR 4. The CO shall submit the appeal file to the SOL for review prior to transmittal to the IBCA and the appellant or appellant's counsel. The CO shall ensure that the appeal file is transmitted to the IBCA within 30 days after receipt of a notice of appeal or advice that the appeal has been docketed by the IBCA, whether or not the SOL has completed its review.

### **1433.213 Obligation to continue performance**

(b) If the CO considers financing continued contractor performance to be in the best interest of the Government, the CO shall prepare and forward a determination to the HCA for approval.

### **1433.214 Alternative dispute resolution(ADR)**

(a) DOI strongly encourages the use of ADR in the resolution of disputes in lieu of litigation or adjudication. Efforts shall be made to resolve disputes in an expeditious and financially responsible manner.

### **1433.215 Contract clause**

The Disputes clause contained in [FAR 52.233-1](#) shall be used with its' Alternate I in all solicitations and contracts.

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