

# Part 33 – Protests, Disputes, and Appeals

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### **33.000 Scope of part.**

This part outlines policies and procedures for filing protests and for processing contract disputes and appeals.

## **Subpart 33.1 - Protests**

### **33.100 Purpose of the bid protest system.**

- (a) The bid protest system provides a prompt, fair, and transparent way to resolve disputes concerning federal procurement actions.
- (b) The objectives of the protest system are to:
  - (1) Ensure protests are decided efficiently and without undue delay, to minimize disruption to contract award and performance;
  - (2) Support the effective and economical operation of the Government by correcting procurement errors, as quickly as possible;
  - (3) Deter and discourage abuse of the bid protest process by requiring clear and substantiated allegations of procurement impropriety;
  - (4) Safeguard the rights of interested parties to obtain independent review of procurement actions alleged to violate law, or regulation; and
  - (5) Promote integrity, competition, accountability, and public confidence in the federal acquisition system by using available, timely and appropriate remedies.

(c) All participants in the protest process, including protesters, agency officials, and intervenors, should act in a manner consistent with these purposes to help resolve protests fairly and quickly.

(d) The protest process is not intended to serve as a way for offerors to get post-award explanations, debriefings, or additional insight into the Government's acquisition decision. Interested parties should address questions regarding the evaluation, award rationale, or proposal deficiencies through established preaward or postaward communication procedures, including formal debriefings where applicable under FAR 15 or other relevant FAR parts.

(e) Protests should not be used by incumbent contractors as a way to disrupt transition or induce extensions of their current contracts when there is no reasonable prospect of success on the merits of the protest.

### **33.101 Applicability.**

(a) This subpart applies to protests filed with an agency or the Government Accountability Office (GAO).

(b) This subpart, except for 33.100, does not apply to bid protest or dispute appeal authorities where the United States Court of Federal Claims has jurisdiction (see 28 U.S.C. 1491).

(c) This subpart does not apply to protests of small business status (see 13 CFR part 121).

### **33.102 Definitions.**

As used in this subpart-

*Day* means a calendar day, unless otherwise specified. In the computation of any period-

(1) The day of the act, event, or default from which the designated period of time begins to run is not included; and

(2) The last day after the act, event, or default is included. However, if the last day is a Saturday, Sunday, or Federal holiday, or the place for filing is closed for all or part of the last day, then the deadline for filing is the next day the place is open.

*Filed* means the complete receipt of any document by an agency before its close of business. Documents received after close of business are considered filed as of the

next day. Unless otherwise stated, the agency close of business is presumed to be 4:30 p.m., local time.

*Interested Party for the purpose of filing a protest* means an actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

*Protest* means a written objection by an interested party to any of the following:

- (a) A solicitation or other request by an agency for offers for a contract for the procurement of property or services.
- (b) The cancellation of the solicitation or other request.
- (c) An award or proposed award of the contract.
- (d) A termination or cancellation of an award of the contract, if the written objection contains an allegation that the termination or cancellation is based in whole or in part on improprieties concerning the award of the contract.

### **33.103 General.**

(a) *Consulting with legal counsel.* Whenever a contracting officer becomes aware of a protest on one of their acquisitions, they should consult with their designated legal advisor.

(b) *Agency action on protests.* If the head of an agency determines that a solicitation, proposed award, or award does not comply with the requirements of law or regulation, then, according to 41 U.S.C. 3708, the head of the agency may—

- (1) Take any action that could have been recommended by the Comptroller General had the protest been filed with the Government Accountability Office (see 31 U.S.C. 3554(b)(1)(A)-(H);
- (2) Pay appropriate costs as provided in 31 U.S.C. 3554(c);
- (3) (i) Require the contractor to reimburse the Government's costs, where a postaward protest is sustained due to the contractor's intentional or negligent misstatement, misrepresentation, or miscertification, as described in 52.233-3.  
  
(ii) When a protest is sustained by GAO under circumstances that may allow the Government to seek reimbursement for protest costs, the contracting officer will determine whether the protest was sustained based on the contractor's negligent or intentional misrepresentation. If the protest was sustained on

several issues, protest costs must be apportioned according to the costs attributable to the contractor's actions.

(iii) (A) The contracting officer must review the amount of the debt, degree of the awardee's fault, and costs of collection, to determine whether a demand for reimbursement ought to be made.

(B) If it is in the best interests of the Government to seek reimbursement, the contracting officer must notify the contractor in writing of the nature and amount of the debt, and the intention to collect by offset if necessary.

(C) Before issuing a final decision, the contracting officer must give the contractor an opportunity to inspect and copy agency records about the debt to the extent permitted by statute and regulation, and to request review of the matter by the head of the contracting activity.

(c) *Availability of funds.*

(1) When a protest is filed with GAO regarding a solicitation, proposed award, or award of a contract, and the agency's contract funds available at the time the protest is filed would otherwise lapse, those funds must remain available for obligation for 100 days following the date of the final ruling on the protest (31 U.S.C. 1558).

(2) A ruling is considered final on the date on which the time allowed for filing an appeal or request for reconsideration has expired, or the date on which a decision is rendered on such appeal or request, whichever is later.

(d) *Stop work order.* Whenever the contracting officer is required or decides to suspend performance under this subpart, the contracting officer may issue a written stop-work order.

### **33.104 Protests to the agency.**

#### **33.104-1 Scope.**

(a) This section implements Executive Order 12979, Agency Procurement Protests.

(b) The agency should provide for inexpensive, informal, procedurally simple, and quick resolution of protests. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods.

### **33.104-2 Preaward.**

(a) *Filing.* Protests based on alleged apparent improprieties in a solicitation must be filed before bid opening or the closing date for receiving proposals. If no closing time has been established, or if no further submissions are anticipated, any alleged solicitation improprieties must be protested within 10 days of when the alleged impropriety was known or should have been known.

(b) Action upon receiving a protest before award.

(1) A contract may not be awarded until the agency resolves the protest, unless a written justification is made for urgent and compelling reasons, or award is determined in writing to be in the best interest of the Government.

(2) If award is withheld pending agency resolution of the protest, the contracting officer will inform the offerors whose offers might become eligible for award of the contract. If appropriate to avoid the need to resolicit, the contracting officer should request that offerors extend the time to accept their proposals. If offers are not extended, then consideration should be given to proceeding with award pursuant to paragraph (b)(1) of this section.

### **33.104-3 Postaward.**

(a) If a protest is received, within 10 days after contract award or within 5 days after a debriefing date offered to the protester under a timely debriefing request in accordance with 15.505 or 15.506, whichever is later, then the contracting officer must immediately suspend performance, pending resolution of the protest within the agency, including any independent review by a higher level official, unless continued performance is justified.

(b) Continued performance may be justified upon a written finding that there are urgent and compelling reasons, or continued performance is determined in writing to be in the best interest of the Government.

### **33.104-4 Other procedures.**

(a) *General.* These procedures are established to resolve agency protests effectively, to build confidence in the Government's acquisition system, and to reduce protests outside of the agency:

(1) Before submitting an agency protest, parties must use their best efforts to resolve concerns raised by an interested party at the contracting officer level through open and frank discussions.

(2) Protests must be concise and logically presented to facilitate review by the agency.

(3) Protests must include the following information. Failure to comply may result in dismissing the protest.

(i) Name, email address, and telephone number of the protester.

(ii) Solicitation or contract number.

(iii) Detailed statement of the legal and factual grounds for the protest, including 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.

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

(ii) As soon as practicable after a protest is filed, the contracting officer must notify the head of the contracting activity, in accordance with agency procedures.

(5) (i) In accordance with agency procedures, interested parties may request an independent review of their protest at a level above the contracting officer; solicitations should advise potential bidders and offerors that this review is available.

(ii) Agency procedures and/or solicitations must-

(A) Notify potential bidders and offerors whether this independent review is available as an alternative to consideration by the contracting officer of a protest, or is available as an appeal of a contracting officer decision on a protest.

(B) Ensure that the protester receives a redacted copy of the source selection decision, if applicable, or if not already provided to the protester, within a reasonable time after the protester elects the independent review;

(C) Provide the protester an opportunity to submit a supplemental statement to the independent review official based on the documents provided, subject to timeliness requirements at 33.104-2 and 33.104-3.

(iii) Agencies must designate the official(s) who are to conduct this independent review, but the official(s) need not be within the contracting officer's supervisory chain. When possible, officials designated to conduct the independent review should not have been previously personally involved in the procurement.

*(b) Timeliness.*

(1) Continued performance may be justified upon a written finding that there are urgent and compelling reasons, or continued performance is determined in writing to be in the best interest of the Government.

(2) Filing an agency protest does not extend the time for obtaining a stay at GAO. Agencies may include, as part of the agency protest process, a voluntary suspension period when agency protests are denied and the protester subsequently files at GAO.

(3) If there is an agency appellate review of the contracting officer's decision on the protest, it will not extend GAO's timeliness requirements. Therefore, any subsequent protest to the GAO must be filed within 10 days of knowledge of initial adverse agency action (4 CFR 21.2(a)(3)).

*(c) Protest decisions.*

(1) Agencies must make their best efforts to resolve agency protests within 35 days after the protest is received by the contracting officer or an official conducting an independent review requested according to paragraph (a)(5).

(2) Protest decisions must be well-reasoned, explain the agency position for sustaining or denying the protest, and be provided to the protester using a method that provides evidence of receipt.

### **33.105 Protests to GAO.**

#### **33.105-1 GAO Bid Protest Regulations.**

Procedures for protests to GAO are found at 4 CFR Part 21, Bid Protest Regulations.



### **33.105-2 Preaward.**

(a) If the agency receives notice of a protest from GAO before award, then a contract may not be awarded unless the head of the contracting activity authorizes contract award and performance.

(b) The head of the contracting activity, on a nondelegable basis, may authorize contract award and performance upon a written finding that—

(1) Urgent and compelling circumstances which significantly affect the interest of the United States will not allow waiting for a decision from GAO; and

(2) Award is likely to occur within 30 days of the written finding.

(c) An agency may not authorize contract award and performance until the agency has notified GAO of the finding in paragraph (b) of this section.

(d) When a protest against the making of an award is received and award will be withheld pending disposition of the protest, the contracting officer should inform the offerors whose offers might become eligible for award of the protest. If appropriate, those offerors should be requested, before the time for accepting their offers expires, to extend the time for acceptance to avoid the need for resolicitation. If offers are not extended, then consideration should be given to proceeding under paragraph (b) of this section.

### **33.105-3 Postaward.**

(a) If a protest is likely after award, then the contracting officer may direct the contractor to stop performance within the time period contained in paragraph (b)(1) of this section if the contracting officer makes a written determination that—

(1) A protest is likely to be filed; and

(2) Delay of performance is, under the circumstances, in the best interests of the United States.

(b) (1) If the agency receives notice of a protest from the GAO within 10 days after contract award or within 5 days after a debriefing date offered to the protester for any debriefing that is required by 15.505 or 15.506, whichever is later, then the contracting officer must immediately suspend performance or terminate the awarded contract, unless the head of the contracting activity authorizes contract performance.

(2) The head of the contracting activity, on a nondelegable basis, may authorize contract performance, upon a written finding that—

(i) Contract performance will be in the best interests of the United States; or

(ii) Urgent and compelling circumstances that significantly affect the interests of the United States will not permit waiting for the GAO's decision.

(c) An agency must not authorize contract performance until the agency has notified the GAO of the finding in paragraph (b)(2) of this section.

(d) When it is decided to suspend performance or terminate the awarded contract, the contracting officer should attempt to negotiate a mutual agreement on a no-cost basis.

(e) When the agency receives notice of a protest filed with the GAO after the dates contained in subparagraph (b)(1), the contracting officer does not have to suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Government's interest.

#### **33.105-4 Other procedures.**

(a) *Agency report.* Upon notice that a protest has been filed with GAO, the contracting officer must immediately notify legal counsel and begin compiling the information necessary for the agency report that will be filed with GAO.

(b) *Notice to GAO.* If the agency has not fully implemented the GAO recommendations with respect to a solicitation for a contract or an award or a proposed award of a contract within 60 days of receiving the GAO recommendations, then the head of the contracting activity must report the failure to the GAO by 5 days later. The report must explain the reasons why the GAO's recommendation, exclusive of costs, has not been followed by the agency.

#### **33.106 Protest at the U.S. Court of Federal Claims.**

Procedures for protests at the U.S. Court of Federal Claims are set forth in the rules of the U.S. Court of Federal Claims, found at <https://www.uscfc.uscourts.gov/filing-bid-protest>.

#### **33.107 Solicitation provision and contract clause.**

(a) The contracting officer must insert the provision at 52.233-2, Service of Protest, in solicitations for contracts expected to exceed the simplified acquisition threshold.

(b) The contracting officer must insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is being considered, the contracting officer must use the clause with its *Alternate I*.

## **Subpart 33.2 - Disputes and Appeals**

### **33.200 Scope.**

41 U.S.C. chapter 71, Contract Disputes, establishes procedures and requirements for asserting and resolving claims subject to the Disputes statute.

### **33.201 Definitions.**

As used in this subpart—

*Accrual of a claim* means the date when all events, that fix the alleged liability of either the Government or the contractor and permit assertion of the claim, were known or should have been known. For liability to be fixed, some injury caused by the Government's action or the contractor's action must have occurred. However, monetary damages need not have been incurred.

*Alternative dispute resolution (ADR)* means any type of procedure or combination of procedures voluntarily used to resolve issues in controversy. These procedures may include, but are not limited to, conciliation, facilitation, mediation, fact-finding, minitrials, arbitration, and use of ombudsmen.

*Defective certification* means a certificate that alters or otherwise deviates from the language in 52.233-1(d)(2)(iii) or which is not executed by a person authorized to bind the contractor with respect to the claim. Failure to certify must not be deemed to be a defective certification.

*Issue in controversy* means a material disagreement between the Government and the contractor that (1) may result in a claim or (2) is all or part of an existing claim.

*Misrepresentation of fact* means a false statement of substantive fact, or any conduct that leads to the belief of a substantive fact material to proper understanding of the matter in hand, made with intent to deceive or mislead.

### **33.202 Applicability.**

(a) Except as specified in paragraph (b) below, this subpart applies to any express or implied contract covered by the Federal Acquisition Regulation.

(b) This subpart does not apply to any contract with-

(1) A foreign government or agency of that government; or

(2) An international organization or a subsidiary body of that organization, if the agency head determines that the application of the Contract Disputes statute to the contract would not be in the public interest.

(c) This subpart applies to all disputes with respect to contracting officer decisions on matters “arising under” or “relating to” a contract. Agency Boards of Contract Appeals (BCAs) (e.g., Armed Services Board of Contract Appeals or Civilian Board of Contract Appeals) authorized under the Disputes statute continue to have all of the authority they possessed before the Disputes statute about disputes arising under a contract, as well as authority to decide disputes relating to a contract.

(d) The clause at 52.233-1, Disputes, recognizes the “all disputes” authority established by the Disputes statute, and states certain requirements and limitations of the Disputes statute to guide contractors and contracting agencies. The clause is not intended to affect the rights and obligations of the parties as provided by the Disputes statute or to constrain the authority of the statutory agency BCAs in handling and deciding contractor appeals under the Disputes statute.

### **33.203 Relationship of the Disputes statute to Pub. L. 85-804.**

(a) A contractor's allegation that it is entitled to rescission or reformation of its contract in order to correct or mitigate the effect of a mistake must be treated as a claim under the Dispute statute.

(b) A claim that is first submitted to the contracting officer for consideration under the Disputes statute and is either denied or not approved in its entirety under the Disputes statute may be presented by the contractor as a request for relief under Pub. L. 85-804 (50 U.S.C. 1431-1435) as implemented by subpart 50.1.

### **33.204 Policy.**

As a matter of policy, the Government tries to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Reasonable efforts should be made to resolve controversies before submitting a claim.

### **33.205 Postaward.**

#### **33.205-1 Contractor claim.**

(a) *Contractor claims against the Government.*

(1) Contractor requirements for submission of claims are located at 52.233-1(d).

(2) The contracting officer must document in the contract file the date of receipt of a claim submitted by a contractor.

(b) *Government claims against a contractor.* The contracting officer must issue a written decision on any Government claim against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period, or the claim is based on a contractor claim involving fraud.

### **33.205-2 Contractor certification.**

(a) Contractor requirements for certification of claims exceeding \$100,000 are located at 52.233-1(d).

(b) Use the aggregate amount of both increased and decreased costs to determine when the dollar thresholds requiring certification are met (see example in 15.403-4(a)(1)(iii) regarding certified cost or pricing data).

(c) A defective certification does not deprive a court or an agency BCA of jurisdiction over that claim. Before the entry of a final judgment by a court or a decision by an agency BCA, the court or agency BCA must require a defective certification to be corrected.

### **33.205-3 Interest on claims.**

(a) The Government must pay interest on a contractor's claim on the amount found due and unpaid from the date that—

(1) The contracting officer receives the claim (certified if required by 33.205-2(a)); or

(2) Payment otherwise would be due, if that date is later, until the date of payment.

(b) Simple interest on claims must be paid at the rate, fixed by the Secretary of the Treasury as provided in the Disputes statute, which applies to the period during which the contracting officer receives the claim and then at the rate that applies for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. (See the clause at 52.232-17 for the right of the Government to collect interest on its claims against a contractor).

(c) Interest must be paid on claims having defective certifications starting on the date that the contracting officer initially receives the claim until the date the claim was paid, see 52.233-1(h).

#### **33.205-4 Suspected fraudulent claims.**

If the contractor is unable to support any part of the claim and evidence reveals that the inability is due to misrepresentation of fact or to fraud on the part of the contractor, the contracting officer must refer the matter to the agency official responsible for investigating fraud.

#### **33.205-5 Contracting officer's authority.**

(a) Contracting officers are authorized, within any specific limitations defined in their warrants, to decide or resolve all claims arising under or relating to a contract subject to the Disputes statute, except this authority does not extend to—

(1) A claim or dispute for penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine; or

(2) The settlement, compromise, payment or adjustment of any claim involving fraud.

(b) Contracting officers can use ADR procedures to resolve claims, according to agency policies and 33.205-8.

#### **33.205-6 Contracting officer's decision.**

(a) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer must—

(1) Review the facts relevant to the claim;

(2) Get help from legal and other advisors;

(3) Coordinate with the contract administration officer or contracting office, as appropriate; and

(4) Prepare a written decision that-

(i) Includes the contracting officer's decision and supporting rationale for the decision reached;

(ii) Substantially conveys the following:

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the

Contracting Officer from whose decision this appeal is taken. The notice must indicate that an appeal is intended, refer to this decision, and identify the contract by number.

With regard to appeals to the agency board of contract appeals, you may, solely at your election, proceed under the board's—

(A) Small claim procedure for claims of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or

(B) Accelerated procedure for claims of \$100,000 or less.

Instead of appealing to the agency board of contract appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in 41 U.S.C. 7102(d), regarding Maritime Contracts) within 12 months of the date you receive this decision”; and

(iii) Makes a demand for payment prepared according to 32.604 and 32.605 in all cases where the decision results in a finding that the contractor is indebted to the Government.

(b) The contracting officer must furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement applies to decisions on claims initiated by or against the contractor.

(c) The contracting officer must issue the decision within the following statutory time limitations:

(1) For claims of \$100,000 or less, 60 days after receiving a written request from the contractor that a decision be given within that period, or within a reasonable time after receipt of the claim if the contractor does not make such a request.

(2) For claims over \$100,000, 60 days after receiving a certified claim; provided, however, that if a decision will not be issued within 60 days, the contracting officer must notify the contractor, within that period, of the time within which a decision will be issued.

(d) The contracting officer must issue a decision within a reasonable time, taking into account-

(1) The size and complexity of the claim;

(2) The adequacy of the contractor's supporting data; and

(3) Any other relevant factors.

(e) The contracting officer has no obligation to render a final decision on any claim exceeding \$100,000 that contains a defective certification, if within 60 days after receiving the claim, the contracting officer notifies the contractor, in writing, of the reasons why any attempted certification was found to be defective.

(f) In the event of undue delay by the contracting officer in providing a decision on a claim, the contractor may request the tribunal concerned to direct the contracting officer to issue a decision in a specified time period that the tribunal decides.

(g) Any failure of the contracting officer to issue a decision within the required time periods will be deemed a decision by the contracting officer denying the claim and will authorize the contractor to file an appeal or suit on the claim.

(h) The amount determined payable under the decision, less any portion already paid, should be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment must be without prejudice to the rights of either party.

### **33.205-7 Obligation to continue performance.**

(a) (1) Before the passage of the Disputes statute, the obligation to continue performance applied only to claims arising under a contract. However, the Disputes statute, at 41 U.S.C. 7103(g), authorizes agencies to require a contractor to continue contract performance according to the contracting officer's decision pending a final resolution of any claim arising under, or relating to, the contract.

(2) (i) A claim arising under a contract is a claim that can be resolved under a contract clause, other than the clause at 52.233-1, Disputes, that provides for the relief sought by the claimant. However, relief for such a claim can also be sought under the clause at 52.233-1.

(ii) A claim relating to a contract is a claim that cannot be resolved under a contract clause other than the clause at 52.233-1. This distinction is recognized by the clause with its Alternate I (see 33.205-9).

(b) In all contracts that include the clause at 52.233-1, with its Alternate I, in the event of a dispute relating to the contract, the contracting officer must consider providing, through appropriate agency procedures, financing of the continued performance, provided that the Government's interest is properly secured.



### **33.205-8 Alternative dispute resolution (ADR).**

(a) (1) Agencies are encouraged to use ADR procedures as much as possible. Certain factors, however, may make the use of ADR inappropriate (see 5 U.S.C. 572(b)).

(2) Except for arbitration conducted according to the Administrative Dispute Resolution Act (ADRA), (5 U.S.C. 571, et seq.), agencies have authority that is separate from that provided by the ADRA to use ADR procedures to resolve issues in controversy. Agencies may also choose to proceed under the authority and requirements of the ADRA.

(b) The objective of using ADR procedures is to increase the opportunity to relatively quickly and cheaply resolve an issue in controversy. Essential elements of ADR include—

(1) An issue in controversy;

(2) Both parties choose to participate in the ADR process;

(3) Both parties agree on alternative procedures and terms instead of formal litigation; and

(4) Officials of both parties who have the authority to resolve the issue in controversy choose to participate in the process.

(c) (1) If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer must give the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate to resolve the dispute.

(2) If a contractor rejects a request for ADR see 52.233-1(g).

(d) ADR procedures may be used at any time that the contracting officer has authority to resolve the issue in controversy. If a claim has been submitted, ADR procedures may apply to all or a portion of the claim. When ADR procedures are used after a contracting officer has issued their final decision, the contracting officer's use of ADR procedures does not alter any of the time limitations or procedural requirements for filing an appeal of the contracting officer's final decision. The use of ADR procedures does not constitute a reconsideration of the final decision.

(e) When appropriate, a neutral person may be used to help resolve the issue in controversy using the procedures the parties chose.

(f) The confidentiality of ADR proceedings must be protected consistent with 5 U.S.C. 574.

(g) (1) A solicitation must not require arbitration as a condition of award, unless arbitration is otherwise required by law.

(2) An agreement to use arbitration must be in writing and must specify a maximum award that the arbitrator may issue, as well as any other conditions limiting the range of possible outcomes.

(h) Binding arbitration, as an ADR procedure, may be agreed to only as specified in agency guidelines. Such guidelines must provide advice on the appropriate use of binding arbitration and when an agency has authority to settle an issue in controversy through binding arbitration.

### **33.205-9 Contract clauses.**

(a) Insert the clause at 52.233-1, Disputes, in solicitations and contracts, unless the conditions in 33.202(b) apply. If it is determined under agency procedures that continued performance is necessary pending resolution of any claim arising under or relating to the contract, the contracting officer must use the clause with its Alternate I.

(b) Insert the clause at 52.233-4 in all solicitations and contracts.

## Part 52 – Solicitation Provisions and Contract Clauses

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### [52.233 \[Reserved\]](#)

#### [52.233-1 Disputes.](#)

#### [52.233-2 Service of Protest.](#)

#### [52.233-3 Protest after Award.](#)

#### [52.233-4 Applicable Law for Breach of Contract Claim.](#)

### **52.233 [Reserved]**

#### **52.233-1 Disputes.**

As prescribed in 33.205-9(a), insert the following clause:

#### DISPUTES (DEVIATION NOV 2025)

Definitions. As used in this clause-

(a) *Claim* means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

*Defective certification* means a certification that alters or otherwise deviates from the language in paragraph (d)(2)(iii) of this clause or which is not executed by a person authorized to bind the contractor with respect to the claim. Failure to certify must not be deemed to be a defective certification.

(b) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(c) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract must be resolved under this clause.

(d) (1) A claim by the Contractor must be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor must be subject to a written decision by the Contracting Officer.

(2) (i) The Contractor must provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification must state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision must be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor must inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h) (1) The Government must pay interest on the amount found due and unpaid from the date that-

(i) The Contracting Officer receives the claim (certified, if required); or

(ii) Payment otherwise would be due, if that date is later, until the date of payment.

(2) For claims having defective certifications, interest must be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims must be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which applies to the period during which the Contracting Officer receives the claim and then at the rate that applies for each 6-month period as fixed by the Treasury Secretary while the claim is pending.

(i) The Contractor must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract. The Contractor must comply with any decision of the Contracting Officer.

(End of clause)

*Alternate I* (DEVIATION NOV 2025). As prescribed in 33.205-9(a), substitute the following paragraph (i) for paragraph (i) of the basic clause:

(i) The Contractor must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

#### **52.233-2 Service of Protest.**

As prescribed in 33.107(a), insert the following provision:

##### **SERVICE OF PROTEST (DEVIATION NOV 2025)**

(a) Protests, (as defined in FAR 33.102), that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), must be served on the Contracting Officer identified in the solicitation by obtaining written and dated acknowledgment of receipt from them.

(b) The copy of any protest must be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

#### **52.233-3 Protest after Award.**

As prescribed in 33.107(b), insert the following clause:

##### **PROTEST AFTER AWARD (DEVIATION NOV 2025)**

(a) Upon receipt of a stop-work order, the Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the order during the period of work stoppage. After receiving the final decision in the protest, the Contracting Officer must either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor must resume work. The Contracting Officer must make an equitable adjustment in the delivery schedule or contract price, or both, and the contract must be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer must allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer must allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

*Alternate I* (DEVIATION NOV 2025). As prescribed in 33.107(b), substitute in paragraph (a)(2) the words “the Termination clause of this contract” for the words “the Default, or the Termination for Convenience of the Government clause of this contract.” In paragraph (b) substitute the words “an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected” for the words “an equitable adjustment in the delivery schedule or contract price, or both.”

**52.233-4 Applicable Law for Breach of Contract Claim.**

As prescribed in 33.205-9(b), insert the following clause:

APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (DEVIATION NOV 2025)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)