

PART 1833

PROTESTS, DISPUTES, AND APPEALS

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PART 1833

PROTESTS, DISPUTES, AND APPEALS

Subpart 1833.1—Protests

1833.103 Protests to the agency.

(d)(4) The provision at [1852.233-70](#) provides for an alternative to a protest to the United States Government Accountability Office (GAO). This alternative gives bidders or offerors the ability to protest directly to the contracting officer (CO) or to request an independent review by the Assistant Administrator for Procurement (or designee). The Agency review shall be deemed to be at the CO level when the request is silent as to the level of review desired. The Agency review shall be deemed to be at the level of the Assistant Administrator for Procurement (or designee) when the request specifies a level above the CO, but does not specifically request an independent review by the Assistant Administrator for Procurement. Such reviews are separate and distinct from the Ombudsman Program described at 1815.7001.

(e) NASA shall summarily dismiss and take no further action upon any protest to the Agency if the

substance of the protest is pending in judicial proceedings or the protester has filed a protest on the same acquisition with the GAO prior to receipt of an Agency protest decision.

(4) When a bidder or offeror submits an Agency protest to the CO or alternatively requests an independent review by the Assistant Administrator for Procurement, the decision of the CO or the Assistant Administrator for Procurement shall be final and is not subject to any appeal or reconsideration within NASA.

(f) Protests received at NASA offices or locations other than that of the cognizant contracting officer shall be immediately referred to the contracting officer for disposition (see 1833.106(a)).

(1) The Senior Procurement Executive is the approval authority for contract award. Requests shall be processed through the cognizant Program Operations Analyst.

(3) The Senior Procurement Executive is the approval authority for authorizing continued contract performance. Requests shall be processed through the cognizant Program Operations Analyst.

#### 1833.104 Protests to GAO.

The Senior Procurement Executive has the sole authority to decide whether to defend a protest to GAO or to direct remedial action. NASA personnel shall take no action to respond to or resolve any protest filed with the GAO other than in accordance with this part and other guidance provided by NASA Headquarters (HQ).

(a)(2) The cognizant HQ Office of Procurement, Program Operations Analyst shall notify the contracting officer of protest receipt, and the contracting officer shall immediately give notice of the protest to all interested parties. Oral contracting officer notices shall be subsequently confirmed in writing, and the contracting officer shall also send a copy of the written confirmation to the cognizant HQ Program Operations Analyst, the HQ Office of General Counsel (OGC), and the installation Chief Counsel.

(3)(i) The contracting officer shall send four copies of the protest report, consisting of the protest file, the contracting officer's statement of facts, and a draft memorandum of law to OGC within 20 days after GAO notification of protest receipt. Also include a copy of the file index in electronic format. The contracting officer shall retain a minimum of two copies of the protest file.

(ii) When an actual or prospective offeror requests access to a protest file, the contracting officer shall take the following actions, except (a) and (b) are not required if already accomplished:

(a) Send a copy of the protest file index to OGC within 10 days of receipt of the request.

(b) Send a copy of the protest file to OGC within 15 days of receipt of the request.

(c) With OGC's concurrence, send the protest file and index to the requesting party to ensure delivery within 20 days after receipt of the request.

(iii) OGC shall submit the protest file to GAO.

(4)(i) OGC shall provide copies of the report to the protestor(s), any intervenors, and the installation Chief Counsel.

(b)(1) As part of the process to obtain approval for contract award from the head of the contracting activity (HCA), coordination with the Senior Procurement Executive and HQ OGC is required.

(c)(1) The contracting officer shall consult the cognizant Program Operations Analyst before terminating a protested contract.

(2) As part of the process to obtain approval for continued contract performance from the HCA, coordination with the Senior Procurement Executive and HQ OGC is required.

(f) The Agency may request GAO reconsideration of its decision within 10 days of issuance. If reconsideration is appropriate, the installation Chief Counsel shall forward a draft request for reconsideration, with any additional supporting documentation, to OGC within 6 days of issuance of the GAO decision.

1833.106 Solicitation provision and contract clause.

(a) The contracting officer is the designated recipient of Agency protests in paragraph (a) of the provision at FAR 52.233-2.

1833.106-70 Solicitation provision.

The contracting officers shall insert the provision at [1852.233-70](#) in all solicitations.

#### Subpart 1833.2--Disputes and Appeals

1833.209 Suspected fraudulent claims.

The contracting officer shall report suspected fraudulent claims to the Headquarters Offices of Inspector General and OGC, Acquisition Integrity Program.

1833.210 Contracting officer's authority.

See NASA Policy Directive 2010.2 on use of Alternative Dispute Resolution.

1833.211 Contracting officer's decision.

(a)(4)(v) The Armed Services Board of Contract Appeals is the NASA Administrator's authorized representative for hearing appeals of contracting officer's final decisions. Accordingly, contracting officers shall cite that fact in the final decision letter, provide the Board's mailing address (Armed Services Board of Contract Appeals, Skyline Six, 5109 Leesburg Pike, Falls Church, VA 22041-3208), and include a notification that the Board's operating procedures appear in Part 48, Code of Federal Regulations, Chapter 2, Appendix A.

1833.215 Contract clause.

The Contracting Officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I whenever continued is vital to national security, the public health and welfare, important Agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impracticable.