

protester a written explanation of the basis for the award that is responsive to the allegations of the protest. The contracting officer will advise the protester that the protester may appeal the determination to one of the following:

(i) The DAS for A&MM.

(ii) The Director, Office of Construction and Facilities Management, in the case of a contract awarded by the Office of Construction and Facilities Management.

(iii) The Comptroller General.

(3) If suspension of contract performance is not required by FAR 33.103(f)(3) but the contracting officer determines that the award is questionable, the contracting officer, after consulting with OGC, will advise the contractor of the protest and invite the contractor to submit comments and relevant information. The contracting officer must submit the case promptly to the DAS for A&MM for advice. The DAS for A&MM may consult with OGC and will either advise the contracting officer of the appropriate action to take, or submit the case to the Comptroller General, through the Assistant Secretary for Management, for a decision. The contracting officer will provide interested parties with a copy of the final decision.

(f) *Agency appellate review of the contracting officer's protest decision.* An interested party may request an independent review of a contracting officer's protest decision by filing an appeal with the DAS for A&MM or, for solicitations issued by the Office of Construction and Facilities Management, with the Director, Office of Construction and Facilities Management. To be considered timely, the appeal must be received by the appropriate official named in this paragraph within 10 calendar days of the date the interested party knew, or should have known, whichever is earlier, of the basis for the appeal. Appeals must be addressed as provided in paragraph (a)(3) of this section. Appeals do not extend GAO's timeliness requirements for appeals to GAO. By filing an appeal as provided in this paragraph, an interested party may waive its rights to further appeal to the Comptroller General at a later date. Agency responses to ap-

peals submitted to the agency shall be reviewed and concurred in by OGC (025).

#### **833.104 Protests to GAO.**

(a) *General procedures.* (1) Procedures for protests to GAO are at 4 CFR Part 21 (GAO Bid Protest Regulations). If guidance concerning GAO procedure in this section differs from 4 CFR Part 21, 4 CFR Part 21 applies.

(2) When a protest before or after award has been filed with GAO, the contracting officer must submit a report to the DAS for A&MM, or the Director, Office Construction and Facilities Management, as appropriate, within 5 workdays after receipt of verbal or written notice of the protest, whichever occurs first. The report must include a copy of the documentation indicated in FAR 33.104(a)(3).

(3) Contracting officers are responsible for the notification procedures outlined in FAR 33.104(a)(4).

(b) *Protests before award.* When VA receives notice from GAO of a pre-award protest filed directly with GAO, award will normally not be made until the matter is resolved. However, award may be made despite the protest if the DAS for A&MM, or the Director, Office of Construction and Facilities Management, as appropriate, approves the findings of the HCA required by FAR 33.104(b)(1) and GAO has been notified as provided by FAR 33.104(b)(2). The Director, Acquisition Resources Service, or the Director, Office of Construction and Facilities Management, as appropriate, is responsible for notifying GAO.

(c) *Protests after award.* When, after award of a contract, VA receives notice from GAO of a protest filed directly with GAO, the contracting officer must, if required to do so by FAR 33.104(c)(1), immediately suspend performance. However, contract performance need not be suspended, despite the protest, if the SPE approves the HCA's findings required by FAR 33.104(c)(2) and GAO has been notified under FAR 33.104(c)(3). Authority to approve the HCA's findings is further delegated to the DSPE and, for solicitations issued by the Officer of Construction and Facilities Management, the Director, Office of Construction and Facilities

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Management. The Director, Acquisition Resources Service, or the Director, Office of Construction and Facilities Management, as appropriate, is responsible for notifying GAO.

### 833.106 Solicitation provisions.

(a) The contracting officer shall insert the provision at 852.233-70, Protest content/alternative dispute resolution, in each solicitation expected to exceed the simplified acquisition threshold.

(b) The contracting officer shall insert the provision at 852.233-71, Alternative protest procedure, in solicitations expected to exceed the simplified acquisition threshold.

## Subpart 833.2—Disputes and Appeals

### 833.209 Suspected fraudulent claims.

The contracting officer must refer matters relating to suspected fraudulent claims to the Office of Inspector General for investigation and referral to the Department of Justice. The contracting officer may not initiate any collection, recovery, or other settlement action while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Office of the Inspector General.

### 833.211 Contracting officer's decision.

(a) When a dispute cannot be settled by agreement and a final decision under the Disputes clause of the contract is necessary, the contracting officer must furnish the contractor the contracting officer's final decision in the matter.

(b) The contracting officer must identify the decision, in writing, as a final decision and include a statement of facts in sufficient detail to enable the contractor to fully understand the decision and the basis on which it was made. The decision must set forth those facts relevant to the dispute with which the contractor and the contracting officer are in agreement, and as clearly as possible, the area of disagreement.

(c) For VA contracts, the Board of Contract Appeals noted in FAR 33.211 is the Civilian Board of Contract Appeals

(CBCA), 1800 F Street, NW., Washington, DC 20405.

### 833.212 Contracting officer's duties upon appeal.

(a) When a contracting officer receives notice of appeal in any form, the contracting officer must do the following:

(1) Annotate the appeal with the date of mailing (or date of receipt, if otherwise conveyed).

(2) Within 10 days, forward the original notice of appeal and a copy of the contracting officer's final decision letter to the OGC.

(3) Concurrently transmit copies of the notice of appeal and the final decision letter to the DAS for A&MM. (In cases of construction contracts administered by the Office of Construction and Facilities Management, copies of the appeal and the final decision letter need not be transmitted to the DAS for A&MM but instead should be sent to the Director, Office of Construction and Facilities Management.)

(b) Within 20 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer must assemble and transmit to the OGC, an appeal file consisting of all documents pertinent to the appeal, including all of the following:

(1) The decision and findings of fact that are being appealed.

(2) The contract, including specifications and pertinent amendments, plans and drawings.

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued.

(4) Transcripts of any testimony taken during the course of proceedings and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal.

(5) Any additional information considered pertinent.

### 833.213 Obligation to continue performance.

(a) As provided in FAR 33.213, contracting officers shall use FAR clause 52.233-1, Disputes, with its Alternate I. Clause 52.233-1 requires the contractor