33.105

(i) For attorney’s fees that exceed $150 per hour, unless the agency determines, based on the recommendation of the Comptroller General on a case-by-case basis, that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceedings involved, justifies a higher fee. The cap placed on attorneys’ fees for businesses, other than small businesses, constitutes a benchmark as to a “reasonable” level for attorney’s fees for small businesses.

(6) Before paying a recommended award of costs, agency personnel should consult legal counsel. Section 33.104(h) applies to all recommended awards of costs that have not yet been paid.

(7) Any costs the contractor receives under this section shall not be the subject of subsequent proposals, billings, or claims against the Government, and those exclusions should be reflected in the cost agreement.

(8) If the Government pays costs, as provided in paragraph (h)(1) of this section, where a postaward protest is sustained as the result of an awardee’s intentional or negligent misstatement, misrepresentation, or miscertification, the Government may require the awardee 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 awardee under any contract between the awardee and the Government.


33.105 Protests 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. The rules may be found at http://www.uscfc.uscourts.gov/rules-and-forms.

[77 FR 56743, Sept. 13, 2012]
Federal Acquisition Regulation

33.205 Relationship of the Disputes statute to Pub. L. 85–804.

(a) Requests for relief under Pub. L. 85–804 (50 U.S.C. 1431–1435) are not claims within the Disputes statute or the Disputes clause at 52.233–1. Disputes, and shall be processed under Subpart 50.1, Extraordinary Contractual Actions. However, relief formerly available only under Pub. L. 85–804; i.e., legal entitlement to rescission or reformation for mutual mistake, is now available within the authority of the contracting officer under the Disputes statute and the Disputes clause. In case of a question whether the contracting officer has authority to settle or decide specific types of claims, the contracting officer should seek legal advice.

(b) A contractor’s allegation that it is entitled to rescission or reformation of its contract in order to correct or