

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220



Procurement
Instruction
Memorandum
No. 01-02
May 21, 2001

MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS

FROM: Corey M. Rindner, Director *Corey M. Rindner*
Office of Procurement

SUBJECT: DTAR Change 98-12, Changes to DTAR Part 1033 -
Protests, Disputes, and Appeals

Purpose: This PIM modifies portions of DTAR Part 1033 - Protests, Disputes, and Appeals. It updates DTAR sections to correspond to FAR; incorporates FAR conventions; empowers the BCPOs to perform independent reviews of agency level protests; and updates GSBICA coverage.

Background: Based upon the consensus of the Treasury procurement community leadership, independent reviews of agency level protests are best performed by the bureaus. In addition, DTAR Part 1033 has not kept up with numbering changes in the FAR.

Effective Date: Immediately.

Expiration Date: This PIM remains in effect until canceled or superseded.

Changes: The following changes were made to DTAR coverage:

Original DTAR Cite	Changes
1033.101	The definition for the GSBICA refers to "Disputes and Appeals," not "Protests." Definition was moved to 1033.201. Also the definition was updated to reflect OCC coverage.
1033.102	FAR Drafting Guide used.
1033.103(d)(1)	DTAR cite changed to correspond to FAR cite. FAR Drafting Guide used.
1033.103(d)(4)	Expanded to address FAR issues. Also empowered BCPOs to perform independent reviews.
1033.104(a)(3)(i)	DTAR cite changed to correspond to FAR cite. Adds clarity.

Original

DTAR Cite	Changes
1033.104(a)(3)(ii)	Modified and added to 1033.104(a)(3)(iv).
1033.104(a)(4)(i)	FAR Drafting Guide used.
1033.104(a)(7)	Deleted. FAR coverage is adequate.
1033.104(b)(1), 104(c)(2), 209, 211, and 212	FAR Drafting Guide used.
1033.213	DTAR cite changed to correspond to FAR cite.

The remainder of Part 1033 remains unchanged.

DTAR Replacement Pages: Remove DTAR page 33-1 and 33-2 and insert the attached DTAR pages 33-1 and 33-2.

Questions regarding this PIM may be addressed to Nancy Kerlin at 202-622-0946 or nancy.kerlin@do.treas.gov.

Attachment

PART 1033 - Protests, Disputes, and Appeals

Subpart 1033.1 - Protests

- 1033.102 General.
- 1033.103 Protests to the agency.
- 1033.104 Protests to GAO.

Subpart 1033.2 - Disputes and Appeals

- 1033.201 Definitions.
- 1033.203 Applicability.
- 1033.209 Suspected fraudulent claims.
- 1033.210 Contracting Officer's authority.
- 1033.211 Contracting Officer's decision.
- 1033.212 Contracting officer's duties upon
appeal.
- 1033.213 Obligations to continue
performance.

Subpart 1033.1 --Protests

1033.102 General.

- (b) This determination may be made by the SPE.

1033.103 Protests to the agency.

(d)(3) Upon receipt of the agency protest, the CO must immediately notify the BCPO and legal counsel, providing the latter with a copy.

(d)(4) An independent review is available only as an appeal of the contracting officer's decision on an agency protest. The BCPO or the BCPO's designee will conduct independent reviews. The BCPO's designee must be at least one level above the contracting officer. In cases where the BCPO is the contracting officer/source selection authority, Treasury's Office of Procurement may conduct the independent review. Solicitations must specify the availability of the independent review.

1033.104 Protests to GAO.

(a)(3)(iv) The report must be appropriately titled and dated, cite the GAO file number, and be signed by the CO. Reports must be coordinated with legal counsel. Reports will be transmitted to GAO by the BCPO.

(a)(3)(iv)(B) If the protest is made before an award, the agency report must contain either a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties and/or additional Government expense, or, an estimate of the length of time an award may be delayed without difficulty in performance or significant expense.

(a)(4)(i) The protestor's copy must be hand-carried or express mailed. (Regular mail delivery will not suffice.)

(b)(1) The HCA must obtain legal counsel's review.

(c)(2) The HCA must obtain legal counsel's review.

Subpart 1033.2 -- Disputes and Appeals

1033.201 Definitions.

Agency Board of Contract Appeals means the General Services Administration Board of Contract Appeals (GSBCA). The GSBCA is the authorized representative of the Secretary of the Treasury in hearing, considering, and determining all appeals of decisions of CO's filed by contractors pursuant to FAR Subpart 33.2. Appeals must be governed by the Rules of the GSBCA (48 CFR Chapter 61, Part 6101).

1033.203 Applicability.

- (b)(2) Submit request per 1001.7000(a).

1033.209 Suspected fraudulent claims.

CO's must refer these matters to the OIG or other appropriate investigative organization.

1033.210 Contracting officer's authority.

It is Treasury's policy to encourage the use of Alternate Disputes Resolution (ADR) procedures. A decision to use ADR procedures requires review and approval by legal counsel.

1033.211 Contracting officer's decision.

(a)(4)(v) Include specific reference to GSBCA, 18th and F Streets, NW, Washington, DC 20405.

1033.212 Contracting officer's duties upon appeal.

Your legal counsel is responsible for representing you before the GSBCA. Legal counsel will prepare all correspondence in connection with the appeal with the assistance of the CO and other appropriate personnel. CO's must prepare the appeal file as prescribed in Rule 4 of the Rules of Procedure of the GSBCA. The file must be forwarded to legal counsel within 15 days from receipt of notice. Legal counsel must have 15 days to review the file, and file the appeal file with the GSBCA.

1033.213 Obligation to continue performance.

(b) At the discretion of the CO, FAR 52.233-1, Disputes, with its Alternate I may be used.