



UNITED STATES OFFICE OF PERSONNEL MANAGEMENT  
Washington, DC 20415

Management Services  
Division

**Contracting Policy No. 33.1**  
**Agency Protest Procedures**

**Purpose:** This Contracting Policy offers guidance on the receipt of and response to an Agency protest regarding a contract action by the Contracting Group in the United States Office of Personnel Management (OPM).

**Effective Date:** Immediately

**Expiration Date:** None (May only be cancelled or superseded)

**Background:**

Subpart 33.1 of the Federal Acquisition Regulation (FAR) provides guidance on protests, which are written objections by an interested party to some action taken by an Agency during the acquisition process. Interested parties may file a protest with either the Government Accountability Office (GAO) or the Agency itself.

FAR 33.104 describes the actions to be taken when an interested party files a protest with the GAO. This guidance constitutes a complete set of instructions, which we in the Contracting Group must follow in handling GAO protests.

FAR 33.103 describes the actions to be taken when an interested party files a protest with the Agency. FAR 33.103(d)(4) allows protestors to request an independent review of the protest at a level above the contracting officer (CO), provides general guidance on the review procedure, but requires each Agency to provide more detailed procedures.

The following policy describes what an Agency protest is and how the Contracting Group must respond to it, and establishes the procedures for an independent review required by FAR 33.103(d)(4).

**The Policy:**

**(1) Filing a Protest with OPM**

As mentioned above, FAR 33.103(d)(4) allows interested parties to request an independent review of their protest at a level above the CO. It also stipulates that the official(s) designated to conduct the independent review (a) need not be within the contracting officer's supervisory chain, and (b) when practicable, should not have had previous personal involvement in the

procurement.

(a) When protesting an OPM acquisition, an interested party may choose *either* to have the CO review the protest, *or* to have the Senior Procurement Executive conduct the independent review described in FAR 33.103(d)(4). If the interested party requests SPE review, but the SPE has had significant personal involvement in the procurement, then the SPE must designate some other official to conduct the review. In any case, the SPE may appoint other personnel as necessary to assist in the review and preparation of the decision.

(b) Interested parties may file a protest of an OPM acquisition with either the CO or the Chief of the Contracting Group. In either case, the interested party must indicate whether they elect to have the CO or the SPE conduct the review of the protest.

## **(2) Processing the Protest**

When a CO or the SPE receives a protest filed with OPM, they must immediately take the following actions, in the order in which they are presented:

(a) Determine whether or not the protest is timely. To be considered timely:

(i) Protests based on alleged apparent improprieties in a solicitation must be filed before bid opening or the closing date for receipt of proposals.

(ii) In all other cases, protests must be filed no later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

However, even if the protest is not filed in a timely manner, the agency may consider the merits of any protest, for good cause shown, or where it determines that a protest raises issues significant to the agency's acquisition system (FAR 33.103(e)).

(b) Determine whether or not the protest contains all the information that is required by FAR 33.103(d)(2):

(i) Name, address, and fax and telephone numbers of the protester.

(ii) Solicitation or contract number.

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

(c) Attempt to convince the protestor to withdraw the protest.

(d) If the protestor will not withdraw the protest, suspend award of the contract/order if the protest was received before award, or suspend performance of the contract/order if the protest was received within 10 days after contract award or within 5 days after the debriefing date offered to the protestor. If contract/order award is suspended, the CO or SPE must notify any other offerors whose offers are being considered for award, and request extension of the expiration dates of the offers to allow time for handling the protest (FAR 33.103(f)).

However, the CO or SPE may continue with award of the contract/order or continuation of performance, if they justify in writing that this action is required for urgent and compelling reasons or is determined to be in the best interest of the Government. Such justification and/or determination must be approved at a level above the CO, if the protest was filed with the CO, or by the Senior Procurement Executive, if the protest was filed with the SPE (FAR 33.103(f)).

## **(2) Response to the Protest:**

(a) The CO or SPE must consider all protests. In preparing a response to a protest, the CO or SPE must seek the advice of the Office of General Counsel (OGC), and may also need to coordinate with the requiring organization. To the extent permitted by law and regulation, the CO or SPE and the protestor may exchange relevant information (FAR 33.102(a) and 33.103(g)).

(b) The CO or SPE's response must be well-reasoned and fully responsive to the allegation(s) contained in the protest and explain the Agency's position. It must also contain a statement that if the protestor disagrees with the protest decision, the company may appeal to the GAO within 10 calendar days of knowledge of initial adverse agency action (FAR 33.103(h) and 33.103(d)(4)).

(c) The CO or SPE should attempt to resolve the protest in an inexpensive, informal, procedurally simple, and expeditious manner. Where appropriate, the use of alternative dispute resolution techniques, third party neutrals, and another agency's personnel are acceptable protest resolution methods. But regardless of how the protest is handled, the CO or SPE must do everything possible to resolve the protest within 35 days after it is filed (FAR 33.103(c) and (g)).

(d) The response to a protest must be coordinated with OGC and approved by the Senior Procurement Executive prior to being issued. When it is finalized and approved, the CO or SPE must prepare four final copies, and distribute one copy each to the protestor, OGC, the requiring organization, and the Contracting Group. The CO or SPE must provide the protest decision to the protestor using a method that provides evidence of receipt (FAR 33.103(h)).

## **(4) Prescribed OPM-Specific Clause**



**OPM-X OPM Protest Procedures**

[FAR 33.103]

(a) An interested party who files a protest with OPM has the option of requesting review and consideration of the protest by either the Contracting Officer (CO) or the Senior Procurement Executive (SPE). The protest must clearly indicate the official to whom it is directed.

(b) If the protest is directed to the SPE, a copy of the protest must be sent to the Chief of the Contracting Group at the same time the protest is filed with the CO in accordance with FAR 52.233-2. The address of the Chief of the Contract Group is:

Tina B. McGuire, Chief  
Contracting Group, CCFAS  
U.S. Office of Personnel  
1900 E Street N.W., Room 1342  
Washington, DC 20415

(c) Review and consideration of a protest by the SPE is an alternative to review and consideration by the CO.