PART 1233—PROTESTS, DISPUTES, AND APPEALS

Authority: 5 U.S.C. 301; 41 U.S.C. 1121(c)(3); 41 U.S.C. 1702; and 48 CFR 1.301 through 1.304.

Source: 87 FR 61159, Oct. 7, 2022, unless otherwise noted.

Subpart 1233.1—Protests

1233.103 Protests to the agency.

1233.104 Protests to GAO.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

1233.214 Alternative dispute resolution (ADR).

Parent topic: SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

Subpart 1233.1—Protests

1233.103 Protests to the agency.

(c) DOT Operating Administrations (OAs) shall consider the use of alternative dispute resolution (ADR) in all agency protest actions.

1233.104 Protests to GAO.

The protest process at the Government Accountability Office (GAO) may include ADR assistance by GAO. The contracting officer shall, with advice of counsel, explore the possibility of using ADR for all GAO protests.

Subpart 1233.2—Disputes and Appeals

1233.211 Contracting officer's decision.

(a)(4)(v) In accordance with FAR 33.211(a)(4)(i) through (vi), contracting officers shall include in a statement of the contracting officer's decision referenced at FAR 33.211(a)(4)(iv), paragraphs substantially as follows:

“This is the final decision of the Contracting Officer. You may appeal this decision to the Civilian Board of Contract Appeals. If you decide to appeal, you must, within 90 days from the date you

receive this decision, mail or otherwise furnish written notice to the Civilian Board of Contract Appeals as set forth below and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

Where to File: All filings must be submitted to the Clerk of the Board. Filings shall be to Civilian Board of Contract Appeals, 1800 F Street NW, Washington, DC 20405 in any of the ways as set forth at their website at *https://cbca.gov/howto/index.html*.

With regard to appeals to the Civilian Board of Contract Appeals, you may, solely at your election, proceed under the board's—

(1) Small claim procedure for claims of $50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), $150,000 or less; or

(2) Accelerated procedure for claims of $100,000 or less.

Instead of appealing to the Civilian Board of Contract Appeals, you may bring an action directly in the United States Court of Federal Claims (except as provided in 41 U.S.C. 7102(d), regarding Maritime Contracts) within 12 months of the date you receive this decision."

1233.214 Alternative dispute resolution (ADR).

(c) The Administrative Dispute Resolution Act (ADRA) of 1990, Public Law 101–552, as reauthorized by the Administrative Dispute Resolution Act (ADRA) of 1996, Public Law 104–320, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, either before or after appeal, and for other purposes. ADR procedures may be used when—

(1) There is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen); and either

(2) Prior to the submission of a claim; or

(3) In resolution of a formal claim.

(d)

(1) Use of ADR shall be coordinated with counsel. For all matters filed with the Civilian Board of Contract Appeals (CBCA), the CBCA Alternate Dispute Resolution (ADR) procedures contained in 48 CFR 6101.54 shall be followed.

(2) For other matters, pursuant to the Administrative Dispute Resolution Act (ADRA), DOT has appointed a Dispute Resolution Specialist, who is responsible for the operations of the Center for Alternative Dispute Resolution. The Center may provide an internal DOT neutral agreeable to the parties to conduct any of the alternative means of dispute resolution set forth in the ADRA, 5 U.S.C. 571(3), on a non-reimbursable basis for DOT operating administrations and their contracting partners. Alternative means of dispute resolution include settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration, or any combination of these methods. The Center may also arrange for an external public or private neutral at the parties' expense.