

(b) The contracting officer may insert a clause substantially the same as the clause at 652.232–71, Voucher Submission (cost-Reimbursement), in cost-reimbursement type solicitations and contracts.

[59 FR 66764, Dec. 28, 1994]

## **PART 633—PROTESTS, DISPUTES, AND APPEALS**

### **Subpart 633.1—Protests**

Sec.

633.102 General.

633.103 Protests to the agency.

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### **Subpart 633.2—Disputes and Appeals**

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633.270 Disputes and appeals under DOS contracts subject to the Contract Disputes Act of 1978.

AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

### **Subpart 633.1—Protests**

#### **633.102 General.**

All communications relative to protests filed with the Government Accountability Office (GAO) shall be coordinated with the Office of the Legal Adviser.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999; 72 FR 45696, Aug. 15, 2007]

#### **633.103 Protests to the agency.**

(d)(4) The independent review as described in FAR 33.103(d)(4) shall be performed by the Departmental Competition Advocate.

[64 FR 43628, Aug. 11, 1999]

#### **633.104 Protests to GAO.**

(a) General procedures. The Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) coordinates the response of the Department of State to protests filed at the GAO. Contracting activities shall consult L/BA for guidance before taking any actions in response to a protest to GAO.

[64 FR 43628, Aug. 11, 1999]

### **Subpart 633.2—Disputes and Appeals**

#### **633.203 Applicability.**

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

#### **633.214–70 Alternative dispute resolution.**

(a) *Policy.* The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Contracting officers shall consider all possible means of reaching a negotiated settlement, consistent with the Government's best interests, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

(b) *When to use ADR—(1) Factors favoring ADR.* Contracting officers should consider using ADR in those cases where:

- (i) Only facts are in dispute;
- (ii) The facts are clearly not favorable to the Government;
- (iii) The anticipated costs (in time and money) are less than the anticipated costs of litigation;
- (iv) Settlement attempts have reached an impasse;
- (v) ADR techniques have been used successfully in similar situations;
- (vi) There is a need for independent expert analysis; or,
- (vii) The claim has merit but its value is overstated.

(2) *Factors disfavoring ADR.* The following circumstances do not favor use of ADR:

- (i) Cases involving disputes controlled by clear legal precedent, making compromise difficult;
- (ii) The resolution will have a significant impact on other pending cases or on the future conduct of Department business;
- (iii) The dispute is primarily over issues of law;
- (iv) A decision of precedential value is needed;
- (v) A significant policy question is involved;
- (vi) A full public record of the proceeding is important;