



FAR FACTS
SEASON 2023, EPISODE NINETEEN
FAR PART 33

1. For purposes of **FAR Part 33**, the word “day” means “calendar day.” **FAR 33.101.**
2. Only “interested parties” have the right to file a protest. An “interested party” is defined as an “actual or prospective offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.” **FAR 33.101.**
3. An offeror can file a contract award protest at one of three venues: the agency that issued the solicitation, the Government Accountability Office (“GAO”) or the U.S. Court of Federal Claims. **FAR 33.102(a).**
4. Small business size status determination protests may only be filed at the Small Business Administration. **FAR 33.102(a); see also FAR 19.302.**
5. No person may file a protest at the GAO for a procurement integrity violation unless that person reported to the contracting officer the information constituting evidence of the violation within 14 days after the person first discovered the violation. **FAR 33.102(f).**
6. Agency level protests are defended by agency legal counsel and are often decided by the procurement contracting officer. Contractors are entitled to request an independent review of an agency level protest at a level above the contracting officer. **FAR 33.103(d)(4).**
7. Protests based upon alleged apparent improprieties in a solicitation are required to be filed before bid opening or the closing date for receipt of proposals. **FAR 33.103(e).**
8. Pursuing an agency protest does not extend the time for obtaining a “stay” at the GAO. **FAR 33.103(f)(4).**
9. Agencies shall use their best efforts to resolve agency protests within 35 days after the protest is filed. **FAR 33.103(g).**
10. GAO protests are defended by agency counsel and are decided by an “attorney advisor” who is employed by the GAO.
11. The GAO bid protest regulations can be found at 4 CFR Part 21. **FAR 33.104.**
12. A protester is required to furnish a copy of its complete GAO protest to the agency official and location designated in the solicitation or, in the absence of such designation, to the contracting officer, so it can be received no later than 1 day after the protest is filed with the GAO. **FAR 33.104(a); see also FAR 52.233-3 (Protest After Award clause).**

13. If requested, the procuring agency is required to provide reasonable access to the GAO bid protest file to any contractor who can demonstrate that it is an interested party. **FAR 33.104(a)(3)(ii).**
14. The automatic “stay” (i.e., suspension of contract award or contract performance) provided to contractors who timely file a protest at the GAO may only be lifted (a.k.a. “stay override”) only by the head of the contracting activity. *See* **FAR 33.104(b)(1) and (c)(2).**
15. The GAO is not required to hold hearings to help decide a bid protest. **FAR 33.104(e).**
16. GAO is required to issue its bid protest decision within 100 days from the date of the bid protest filing or within 65 days under the “express option.” **FAR 33.104(f).**
17. A procuring agency is not required to follow a bid protest decision issued by the GAO. But if the agency has not fully implemented the GAO recommendations within 60 days of receiving the recommendations, the head of the contracting activity responsible for that contract must report the failure to GAO no later than 5 days after the 60 day period. **FAR 33.104(g).**
18. Protests before the U.S. Court of Federal Claims are defended by the U.S. Department of Justice and decided by an Article I judge.
19. Protests before the U.S. Federal Court of Claims are based upon paper filings and oral hearings, often take more time to be decided than agency or GAO protests, and are more expensive than agency or GAO bid protests.
20. FAR Part 33 applies to all disputes with respect to contracting officer decisions on matters “arising under” or “relating to a contract.” **FAR 33.203(c).**
21. Contract claims must be filed by contractors and the Government within “6 years after accrual of a claim.” **FAR 33.206.**
22. All claims exceeding \$100,000 must include the certification set forth at **FAR 33.207(c).** The certification must be executed by any person “authorized to bind the contractor with respect to the claim.” **FAR 33.207(e).**
23. Contracting officer final decisions must include all of the required elements set forth at **FAR 33.211.**
24. Any failure of the contracting officer to issue a decision with the require time periods set forth at FAR 33.211(c) will be deemed a decision by the contracting officer denying the claim and authorizes the contractor to file an appeal at either a Board of Contract Appeals or the U.S. Court of Federal Claims. **FAR 33.211(g).**
25. Contractors must file an appeal before a Board of Contract Appeals within 90 days receipt of a contracting officer’s final decision. Appeals to the U.S. Court of Federal Claims must be filed within 12 months receipt of the contracting officer’s final decision. **FAR 33.211(a)(4)(v).**
26. Contractors are required to continue performance under a federal Government contract pending a final resolution of any appeal. **FAR 33.213.**