



Homeland
Security

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Paul Courtney
Chief Procurement Officer

SUBJECT: FAR Class Deviation (Number 25-25) for FAR Part 33 in Support
of Executive Order on Restoring Common Sense to Federal
Procurement

- 1. Purpose.** This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) Part 33 for purposes of implementing the FAR Council's model deviation text to FAR Part 33.
- 2. Background.** [Executive Order \(E.O.\) 14275 on Restoring Common Sense to Federal Procurement](#), signed April 15, 2025, mandates a comprehensive review and simplification of the FAR.

The FAR is being updated to:

- Eliminate non-statutory language
- Remove redundant or obsolete language
- Enhance clarity through plain language
- Align with the new FAR framework
- Preserve essential governmentwide acquisition standards

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative.

- 3. Summary of Changes.** FAR Part 33, Protests, Disputes, and Appeals, has been updated to reflect administration priorities to reduce protests and resolve protests at the lowest level possible. The update represents a significant and deliberate modernization of a critical component of the federal procurement system and is aimed at increasing efficiency, clarity, and fairness in federal acquisitions.

Statutory requirements retained in the RFO FAR Part 33 model deviation include, but are not limited to, the following:

- 5 U.S.C. §§ 571 et seq, Administrative Dispute Resolution Act (ADRA)
- 31 U.S.C. § 1558, Availability of Funds Following Resolution
- 31 U.S.C. §§ 3551 et seq, Procurement Protest System

FAR Class Deviation 25-25 for FAR Part 33 in Support of Executive Order on Restoring Common Sense to Federal Procurement

- 41 U.S.C. §§ 7101 et seq, Contract Disputes
- E.O. 12979, Agency Procurement Protests

| Change | Description |
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| <p>Added</p> | <ul style="list-style-type: none"> • New purpose statement at 33.100, “Purpose of the Bid Protest System”. The new purpose statement sets forth the objectives of the bid protest process (e.g., promote integrity in the process, deter abuse of the bid protest process), and emphasizes that it is not intended to serve as a way for offerors to get additional insight or be used by incumbents to delay contract transition. • Processes within the types of protests are broken down into pre- award and post-award actions for ease of the reader. • New requirements applicable to “Protests to the Agency”. <ul style="list-style-type: none"> ○ 33.104-4(a)(4)(ii) - Contracting officers are required to report protests to the head of contracting activity (HCAs) as soon as practicable after filing. ○ 33.104-4(a)(5)(ii) - Protesters electing independent review at a level above the CO must be provided a redacted copy of the source selection decision, and be provided an opportunity to submit a supplemental statement to the independent review official. ○ These new requirements are expected to increase confidence in the agency protest process, capture more data at the agency level on protests filed with contracting officers, allow for agency management to respond to procurement issues raised in protests, and resolve more protests at the agency level since protesters will have more information available to them. |
| <p>Retained</p> | <ul style="list-style-type: none"> • Most of the “Definitions” now at section 33.102 are retained with only minor, non-substantive wording changes. Only the definition of “Protest venue” was removed, as it is unnecessary considering other changes within the part. • “Protests to the Agency”, now at section 33.104 is retained, with key changes: <ul style="list-style-type: none"> ○ The section is completely reorganized into four distinct subsections for improved clarity and usability. ○ The distinct subsections logically separate the rules for pre-award and post-award protests, which were previously intermingled in paragraphs (e) and (f) of section 33.103. ○ The section retains the requirement for parties to attempt resolution through “open and frank discussions” before filing a formal protest. • “Protests to GAO”, now at 33.105, is retained and significantly streamlined. The previous content on protests to GAO was a lengthy, detailed section that essentially summarized many of the procedural rules found in GAO's own regulations. This section now removes this duplication and points contracting officers to the GAO procedures at 4 CFR Part 21, “Bid Protest Regulations”, instead of repeating them in the |

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| | <p>FAR.</p> <ul style="list-style-type: none"> ● Numerous procedural sections have been consolidated into a single, overarching section titled “Postaward” at 33.205. Separate sections on initiation of a claim (former 33.206), contractor certification (former 33.207), interest on claims (former 33.208), the contracting officer's decision (former 33.211), and Alternative Dispute Resolution (former 33.214), among others, are now reorganized as subsections under 33.205, creating a more intuitive, step-by-step guide to the post-award claims process. ● All clauses and provisions for this part are retained, with plain language and streamlining updates. <ul style="list-style-type: none"> ○ 52.233-1 Disputes, revised to now describe what a defective certification means. ○ 52.233-2 Service of Protest, revised to require protests to be shared with the contracting office within one day of filing with the GAO. ○ 52.233-3 Protest After Award, revised to describe steps for protests post award, such as stop work orders. ○ 52.233-4 Applicable Law for Breach of Contract Claim, remains the same that U.S. law will be applied to address breach. |
| <p>Removed</p> | <ul style="list-style-type: none"> ● Section 33.212, “Contracting Officer's Duties Upon Appeal”, is removed. The section created a general obligation for the contracting officer to provide data, documentation, information, and support to the agency Boards of Contract Appeals (BCA) upon appeal. The contracting officer’s requirements are dictated by the procedural rules of the adjudicative body and do not need to be stated in the FAR. |

This table is not an exhaustive list.

4. Instructions.

- The Department of Homeland Security (DHS) acquisition workforce shall follow the RFO Part 33 deviation text instead of FAR Part 33 as codified at 48 CFR Chapter 33. The Council’s RFO Part 33 model deviation text is available at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-33> and is incorporated into this deviation.
- For new solicitations or contracts, when using any provisions or clauses that have been revised, utilize the RFO model deviation language in Attachment 1.
- For open solicitations or awarded contracts, the contracting officer has discretion regarding the need to enforce or amend the provisions or clauses. Note that without some of the removed provisions or clauses, the contracting officer may be required to separately address certain aspects in the contract.
- Contracting activities must review templates and related standard operating procedures to align with this class deviation and remove unnecessary processes and steps.

5. **Applicability.** This class deviation applies to all DHS procurements.
6. **Authority.** This class deviation is issued under the authority of E.O. 14275, [OMB Memo M-25-25](#), 48 CFR 1.4, and RFO FAR 1.304.
7. **Effective Date.** This class deviation is effective November 3, 2025, and remains in effect until rescinded or incorporated into the FAR.
8. **Points of Contact.** Questions regarding this class deviation may be directed to Acquisition Policy and Legislation Branch at Acquisition.Policy@hq.dhs.gov.

Attachments:

1. FAR Part 33 Solicitation Provisions and Contract Clauses Revisions

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 52.2—Text of Provisions and Clauses

52.233-1 Disputes.

As prescribed in 33.205-9(a) , insert the following clause:

Disputes (AUG 2025) (DEVIATION 25-25)

Definitions. As used in this clause-

(a) *Claim* means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C. chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C. chapter 71. The submission may be converted to a claim under 41 U.S.C. chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

Defective certification means a certification that alters or otherwise deviates from the language in paragraph (d)(2)(iii) of this clause or which is not executed by a person authorized to bind the contractor with respect to the claim. Failure to certify must not be deemed to be a defective certification.

(b) This contract is subject to 41 U.S.C. chapter 71, Contract Disputes.

(c) Except as provided in 41 U.S.C. chapter 71, all disputes arising under or relating to this contract must be resolved under this clause.

(d)(1) A claim by the Contractor must be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor must be subject to a written decision by the Contracting Officer.

(2)(i) The Contractor must provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have

not been submitted as all or part of a claim.

(iii) The certification must state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor.”

(3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.

(e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision must be final unless the Contractor appeals or files a suit as provided in 41 U.S.C. chapter 71.

(g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor must inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.

(h)(1) The Government must pay interest on the amount found due and unpaid from the date that-

(i) The Contracting Officer receives the claim (certified, if required); or

(ii) Payment otherwise would be due, if that date is later, until the date of payment.

(2) For claims having defective certifications, interest must be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims must be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which applies to the period during which the Contracting Officer receives the claim and then at the rate that applies for each 6-month period as fixed by the Treasury Secretary while the claim is pending.

(i) The Contractor must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract. The Contractor must comply with any decision of the Contracting Officer.

(End of clause)

Alternate I (AUG 2025) (DEVIATION 25-25). As prescribed in 33.205-9(a), substitute the following paragraph (i) for paragraph (i) of the basic clause:

(i) The Contractor must proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

52.233-2 Service of Protest.

As prescribed in 33.107(a), insert the following provision:

Service of Protest (AUG 2025) (DEVIATION 25-25)

(a) Protests, (as defined in FAR 33.102), that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), must be served on the Contracting Officer identified in the solicitation by obtaining written and dated acknowledgment of receipt from them.

(b) The copy of any protest must be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

52.233-3 Protest after Award.

As prescribed in 33.107(b), insert the following clause:

Protest after Award (AUG 2025) (DEVIATION 25-25)

(a) Upon receipt of a stop-work order, the Contractor must immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the order during the period of work stoppage. After receiving the final decision in the protest, the Contracting Officer must either—

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor must resume work. The Contracting Officer must make an equitable adjustment in the delivery schedule or contract price, or both, and the contract must be modified, in writing, accordingly, if—

(1) The stop-work order results in an increase in the time required for, or in the

Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal submitted at any time before final payment under this contract.

(c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer must allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer must allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract between the Contractor and the Government.

(End of clause)

Alternate I (AUG 2025) (DEVIATION 25-25). As prescribed in 33.107(b), substitute in paragraph (a)(2) the words "the Termination clause of this contract" for the words "the Default, or the Termination for Convenience of the Government clause of this contract." In paragraph (b) substitute the words "an equitable adjustment in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other terms of the contract that may be affected" for the words "an equitable adjustment in the delivery schedule or contract price, or both."

52.233-4 Applicable Law for Breach of Contract Claim.

As prescribed in 33.205-9(b), insert the following clause:

Applicable Law for Breach of Contract Claim (AUG 2025) (DEVIATION 25-25)

United States law will apply to resolve any claim of breach of this contract.

(End of clause)