

TMA Procedures, Guidance, and Information (PGI)

TMA PGI 233 – PROTESTS, DISPUTES, AND APPEALS

(May 15, 2012)

PGI 233.1 – Protests

PGI 233.103-90 - Agency Level Protests

- (1) TRICARE Acquisition Directive (TAD) 33-01 establishes TRICARE Management Activity (TMA) policy for agency level protests of contract actions in accordance with [Federal Acquisition Regulation \(FAR\) Subpart 33.1, "Protests"](#) and [Defense FAR Supplement \(DFARS\) Subpart 233.1, "Protests."](#)
- (2) Overview – An offeror may file a protest of an agency contract action with either the Government Accountability Office (GAO), or directly with the issuing agency. For protests filed with the GAO, the GAO has established their own review procedures; for protests filed with the issuing agency, the procedures set forth in FAR 33.103 and DFARS 233.170 govern the protest process, and are supplemented by TAD 33-01 and the TMA-specific procedures outlined in these Procedures, Guidance, and Information.
- (3) The CO will include language in the solicitation which explains that an independent review is available, upon request, as stated in TAD 33-01, paragraph 4.1. The content of this language should be substantially similar to the following:

An interested party filing a protest with TRICARE Management Activity (TMA) has the option of requesting review by either the Contracting Officer (CO) or an independent review Official (IRO), who is a TMA official at a level above the CO. Alternately, an interested party may request IRO review as an appeal of the CO's protest decision.

Where applicable, an interested party must clearly state in the protest that IRO review is requested, and must specify the nature of the independent review sought – whether as an alternative to CO review or as an appeal of the CO's decision.

Regardless of which review is requested, all protests must be complete and submitted to the CO within the timeframes specified in FAR Subpart 33.1.

- (4) The CO, in coordination with the Chief or Director of the contracting office, will forward requests for IRO review to the Head of the Contracting Activity (HCA), who is responsible for appointing the IRO. When practicable, the IRO should have had no previous personal involvement with the acquisition.
- (5) Agency level protests will be carried out by the CO, or IRO where appropriate, in accordance with the following procedures:
 - a. Upon receiving an agency level protest, notify the protester acknowledging receipt;

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- b. Review the protest to ensure it is submitted within the timeframes allowed by FAR 33.103(e) and 33.103(f)(3);
 - c. Review the protest to ensure it contains the information required by FAR 33.103(d)(2). Request any required information missing from the protest.
 - d. In the event that neither suspension of award nor suspension of performance are warranted:
 - i. Coordinate with the program office to develop the required justification of urgent and compelling reasons for award and determination that the award is in the government's best interest, and
 - ii. Submit the document to the HCA for approval.
 - e. Ensure copies of the agency protest decision are included in the contract file and distributed to the HCA, Chief or Director of the contracting office, and OGC.
- (6) As applicable, the CO will document the contract file with the IRO Letter signed by the HCA.