

Contract Administration

Activity 49: Resolving Disputes

Procedures for resolving disputes between a contractor and the Government.

Related Flow Charts: [Flow Chart 49](#)

Tasks	FAR Reference(s)	Additional Information
1. Determine whether a disagreement under or related to a contract constitutes a dispute.	FAR 2.101 Claim [definitions]. FAR 52.233-1 Disputes.	<p>A disagreement between the contractor and Government under the contract does not become a dispute under the Disputes clause until one of the parties submits a claim to the other party.</p> <ul style="list-style-type: none">• A claim is a written demand or written assertion by one of the contracting parties seeking, as a matter of right:<ul style="list-style-type: none">○ The payment of money in a sum certain;○ The adjustment or interpretation of contract terms; or○ Other relief arising under or relating to the contract.• Claims arising under or relating to the contract include those supported by remedy granting clauses, breach of contract claims, and mistakes alleged after award.• A written demand (or written assertion) seeking the payment of money in excess of \$100,000 is not a valid Claims Disputes Act (CDA) claim until the contractor properly certifies it.• A request for an equitable adjustment (REA) is not a routine request for payment and satisfies the FAR definition of “claim.” (See <i>Reflectone, Inc. v. Dalton</i>, 60 F.3d 1572 (Fed. Cir. 1995)).• A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a valid CDA claim. A contractor may convert such a submission into a

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		<p>valid claim if:</p> <ul style="list-style-type: none"> ○ The contractor complies with the submission and certification requirements of the Disputes clause; and ○ The contracting officer: <ul style="list-style-type: none"> ▪ Disputes the submission as to either liability or amount; or ▪ Fails to act in a reasonable time.
<p>2. Resolve disagreements other than disputes using negotiates or other appropriate methods.</p>	<p>FAR 33.204 Policy [disputes and appeals]</p>	<p>The Government's policy is to try to resolve all contractual issues in controversy by mutual agreement at the contracting officer's level. Make every reasonable effort to resolve disagreements or requests for equitable adjustment before they become claims. For example:</p> <ul style="list-style-type: none"> • With other members of the Government acquisition team (e.g., the cognizant auditor), review the contractor's proposal/request; • Collect other available information related to the proposal/request; • Develop the Government's position for negotiations or other method of resolution (e.g., mediation by a neutral party); • Resolve the disagreement; • Document the agreement in a bilateral contract modification; and • Document the resolution process in the contract file using a price negotiation memorandum or similar document.

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3. Reject any claim that is not timely.	FAR 33.206(a) Initiation of a claim. FAR 52.233-1(d)(1) Disputes clause.	Contractor claims must be submitted, in writing, to the contracting officer for a decision within six years after accrual of a claim. This six-year time period does not apply to contracts awarded prior to October 1, 1995. Document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim.

Tasks	FAR Reference(s)	Additional Information
4. Prepare the Government's position on the contractor's claim.	FAR 33.206(b) Initiation of a claim.	<p>As a minimum:</p> <ul style="list-style-type: none"> • Determine if the contractor is precluded from pursuing the claim under the Disputes clause. For example, action may be precluded because: <ul style="list-style-type: none"> ○ The matter is covered by an existing release of claims; ○ Relief is barred by another contract clause; ○ The requested relief (e.g., relief under P.L. 85-804) is not covered by the Disputes clause; or ○ The contractor did not provide the certification at FAR 33.207(b) for a claim exceeding \$100,000. • With other members of the government acquisition team (e.g., the cognizant auditor), analyze the information submitted with a contractor's claim. • Collect other available information related to the proposal/request. • Develop the Government's position on: <ul style="list-style-type: none"> ○ Whether to accept, partially accept, or reject the claim. ○ The amount of any adjustment or interest in accordance with FAR 33.208 related to the claim. ○ Whether to refer the matter to the agency official responsible for investigating fraud, because the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to: <ul style="list-style-type: none"> ▪ Misrepresentation of fact; or ▪ Fraud on the part of the contractor.

Tasks	FAR Reference(s)	Additional Information
<p>5. Attempt to resolve the dispute through negotiations or a method of alternative dispute resolution.</p>	<p>FAR 33.204 Policy [disputes and appeals] FAR 33.210 Contracting officer's authority [disputes and appeals]. FAR 33.214 Alternative dispute resolution (ADR).</p>	<p>After preparing the Government's position on the claim, the contracting officer should discuss it with the contractor. This affords the contractor the opportunity to provide all relevant facts on the situation. It also provides any additional information that the contracting officer may need before making the final decision. There may be the occasion when the claim is resolved informally. In the event the claim can be resolved, a modification or an implementation of an agreement on the claim will be incorporated into the contract.</p> <p>If negotiations fail or are impractical, encourage the use of alternative dispute resolution (ADR) whenever the four essential requirements can be met:</p> <ul style="list-style-type: none"> • Existence of an issue in controversy. • A voluntary election by both parties to participate in the ADR process. • An agreement on alternative procedures and terms to be used in lieu of formal litigation. However, only agree to binding arbitration in accordance with agency guidelines. • Participation in the process by officials of both parties who have the authority to resolve the issue in controversy. <p>If the contracting officer rejects a contractor's request for ADR proceedings, the contracting officer must provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute.</p> <p>If a contractor rejects an agency's request for ADR proceedings, the contractor must inform the agency in writing of the contractor's specific reasons for rejecting the request.</p>

Tasks	FAR Reference(s)	Additional Information
<p>6. Prepare the contracting officer's written decision.</p>	<p>FAR 1.602-2 Responsibilities [contracting officers].</p> <p>FAR 33.211 Contracting officer's decision [disputes and appeals].</p>	<p>When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the claim is necessary, the contracting officer must:</p> <ul style="list-style-type: none"> • Secure assistance from legal and other advisors; • Coordinate with the contract administration office or contracting office, as appropriate; and • Prepare a contracting officer's decision that: <ul style="list-style-type: none"> ○ Can be issued within the statutory time limits presented in FAR 33.211(c); and ○ As a minimum includes the following: <ul style="list-style-type: none"> ▪ Description of the claim or dispute. ▪ Reference to the pertinent contract terms. ▪ Statement of the factual areas of agreement or disagreement. ▪ Statement of contracting officer's decision with supporting rationale sufficient, standing alone, to support the Government's position and refute any contrary position in the contractor's written claim. ▪ Contractor appeal rights using language substantially as presented in FAR 33.211(a)(v). ▪ Demand for payment if the decision results in a finding that the contractor is indebted to the Government.

Tasks	FAR Reference(s)	Additional Information
<p>7. Issue the decision, and initiate payment/collection of any amount due under the decision.</p>	<p>FAR 33.211 Contracting officer's decision [disputes and appeals].</p>	<p>The decision must be issued within the statutory time limits presented in FAR 33.211(c).</p> <p>Furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.</p> <p>Pay the amount determined payable under the decision (if otherwise proper), less any portion already paid, without awaiting contractor action concerning any appeal. Such payment is made without prejudice to the rights of either party.</p>
<p>8. If the contractor appeals to the agency's Board of Contract Appeals, prepare a claims file as requested.</p>	<p>FAR 33.212 Contracting officer's duties upon appeal.</p>	<p>A contracting officer's decision may be appealed within ninety days after receipt to the Board of Contract Appeals having jurisdiction over the contract.</p> <p>To main BCAs have been tasked with hearing appeals from contracting officers' final decisions. The Armed Services Board of Contract Appeals (ASBCA) is generally responsible for deciding appeals from decisions of contracting officers in the Department of Defense, the Department of the Army, the Department of the Navy, NASA, and when specified, the CIA. The Civilian Board of Contract Appeals (CBCA) hears disputes from all other executive agencies except the United States Postal Service (USPS), the Postal Rate Commission, and the Tennessee Valley Authority. 41 U.S.C. §§ 7101-7109. The USPS is served by the PSBCA. In addition, the Government Accountability Office Contract Appeals Board (GAOCAB) handles contract disputes arising in the legislative branch, and the Office of Dispute Resolution for Acquisition (ODRA) handles contract disputes and bid protests arising out of Federal Aviation Administration procurements.</p> <p>The contracting officer is required to prepare an administrative report, commonly referred to as the "Rule 4 File," within thirty days. This file contains a copy of the contracting officer's decision, the claim, pertinent contract provisions, drawings, and correspondence which will assist the Board in reviewing the issues pertinent to the appeal.</p>

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9. If contractor appeals to the Court, prepare a claims file as requested.	United States Court of Federal Claims Rules (RCFC) 8, 12, and 13.	A contracting officer's decision may be appealed within twelve months after receipt to the United States Court of Federal Claims. The Government must answer the complaint within 60 days of the date it receives the complaint.
10. Participate in appeal proceedings as requested by the agency's counsel or Board of Contract Appeals, or the Court.	FAR 33.212 Contracting officer's duties upon appeal.	Provide any additional information and/or testimony required.