



Claim Basics: Five key considerations for government contract claims

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Although numerous provisions in federal contracts entitle contractors to contract adjustments for changes, delays and other unforeseen events occurring during the course of contract performance, contractors often find that requests for additional compensation or other relief are resisted by government contracting officials.

When the contractor and the government cannot agree on what compensation or other relief the contractor should receive, the claims process, as governed by the Contract Disputes Act (CDA) and related provisions of the Federal Acquisition Regulation (FAR), comes into play. Below are five important things to know about filing and prosecuting claims against the government:

1. Claim Content – Formal Requirements.

The formal requirements for what must be included in a claim are fairly limited.

FAR § 52.233-1 provides that a claim must (i) be in writing to the contracting officer, (ii) seek, as a matter of right, the payment of money, the adjustment of contract terms, or other relief arising under the contract, and (iii) include the required certification if the claim exceeds \$100,000.

It is critical that contractors comply with these requirements. The failure to do so can result in a significant delay in resolving the claim, as the contractor may be required to begin the process over and re-submit the claim in proper form.

Moreover, contractors may also lose money, as interest on claimed amounts does not begin to accrue until a proper claim is submitted.

2. Claim Content – Additional Considerations.

In addition to the procedural requirements set forth above, claims should also include narrative and factual information detailing what is being claimed and why the contractor is entitled to relief.

At a minimum, the claim submission should include a description of the dispute and relevant facts, references to pertinent contract provisions, and references to relevant documents.

It also is important to bear in mind that unlike the private sector, where claimants might initiate a lawsuit with inflated damage calculations as a way to get the defendant's attention or as a bargaining tactic, such actions are ill-advised in the context of a CDA claim.

Claims submitted to the government should be based on clearly articulated facts which support the actual amount the contractor honestly believes is owed. When a contractor artificially inflates a claim, the consequences are potentially severe, including forfeiture of the claim or liability to the government for an amount equal to the unsupported portion of the claim.

3. Timing Requirements.

Under the CDA, as implemented by FAR § 33.206, claims must be submitted to the contracting officer within six years after accrual.

While this six-year period is seemingly forgiving, it should not be ignored, as contractors will find themselves without recourse once the period has expired.

Furthermore, the fact that a contractor has six years to file a formal claim does not mean that contractors can or should wait to advise contracting officials of the right to relief. For example, the standard "Changes" clause for fixed-price contracts (FAR § 52.243-1) instructs contractors to assert their right to an equitable adjustment within 30 days from receipt of the change.

While a formal claim need not be immediately filed, failure to timely advise contracting officials of the contractor's right to an adjustment may prejudice a contractor's ability to succeed on a subsequently filed claim.

4. Resolution of Claims by the Contracting Officer.

Claims are submitted to the contracting officer. Contractors should be aware, however, that submission of the claim to the contracting officer does not foreclose the opportunity to negotiate the claim with the contracting officer.

Contractors should make efforts to keep the dialogue open and explore possibilities for settlement both while the claim is pending and, even after the issuance of an adverse decision.

If the claim cannot be settled by mutual agreement, the contracting officer will prepare a Final Decision, which will include a description of the dispute and a statement of the contracting officer's decision, with supporting rationale.

5. Appealing the Contracting Officer's Decision.

A contracting officer's Final Decision does not end the claims process. The Final Decision may either (i) be appealed within 90 days of receipt to the appropriate Board of Contract Appeals, or (ii) be appealed within 12 months to the United States Court of Federal Claims.

The factors to be considered in determining whether to file an appeal at the Board or Court of Federal Claims vary from case to case and it is recommended that contractors discuss the decision with legal counsel prior to filing an appeal.

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