

Contracts Disputes Act

What Every Contractor Needs to Know

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Request for Equitable Adjustment vs. CDA Claim

- A claim under the Contracting Disputes Act can be filed when there is a “dispute.”
- If the Government has yet to disagree with a Contractor’s interpretation of a contract or request for compensation, there is no dispute.
- If there is no dispute, the Contractor should file a Request for Equitable Adjustment instead.
- There is not specific time limit for Government review of a Request for Equitable Adjustment.
- However, the Government must be reasonable in its review and duration

Statute of Limitations

Six Year Statute of Limitations

- There is a six-year statute of limitations on contractor and government claims. See FAR 33.206. “Initiation of a Claim,” which states:
 - (a) Contractor claims shall be submitted, in writing, to the contracting officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995. The contracting officer shall document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim by the contracting officer.
 - (b) The contracting officer shall issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period shall not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.

Claim Components

For a contractor claim the CDA requires that:

1. The contractor must submit the demand in writing to the CO,
2. The contractor must submit the demand as a matter of right, and
3. The demand must contain a sum certain ([FAR § 2.101](#))

The claim must request, expressly or implicitly, a final decision of the CO, who must issue a decision thereon, or fail to decide the claim within the prescribed time.

If the contractor's claim exceeds \$ 100,000, it must be certified.

[41 U.S.C. § 7103\(b\)\(1\)](#)

Claim Must Be for a Sum Certain

The requirement for a "sum certain" is not in the CDA but is in the [FAR § 2.101](#) definition of a "claim" as "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."

[Precision Standard, Inc., ASBCA No. 55865, 2011-1 BCA P 34,669 at 170,788-89](#) ("at least \$ 151,749.06" is not a sum certain because "the contractor's use of qualifying language leaves the door open for the request of more money on the same basis," so appeal dismissed for lack of CDA jurisdiction).

Claim Certification

- (b) Certification of claims.--
 - (1) Requirements generally.--For claims of more than \$ 100,000 made by a contractor, the contractor shall certify that --
 - (A) the claim is made in good faith;
 - (B) the supporting data are accurate and complete to the best of the contractor's knowledge and belief;
 - (C) the amount requested accurately reflects the contract adjustment for which the contractor believes the Federal Government is liable; and
 - (D) the certifier is authorized to certify the claim on behalf of the contractor.
 - (2) Who may execute certification.--The certification required by paragraph (1) may be executed by an individual authorized to bind the contractor with respect to the claim.
 - (3) Failure to certify or defective certification.... A defect in the certification of a claim does not deprive a court or an agency board of jurisdiction over the claim. Prior to the entry of a final judgment by a court or a decision by an agency board, the court or agency board shall require a defective certification to be corrected.

[41 U.S.C. § 7103\(b\)](#)

Contracting Officer's Final Decision

- When a contractor's claim cannot be resolved with the Contracting Officer, the Contracting Officer shall prepare a Final Decision pursuant to [FAR 33.211](#). The Contracting Officer has a duty to impartially and objectively render a final decision. This duty has been compared to an impartial, unbiased judge. Penner Installation Corp. v. United States, 116 Ct. Cl. 550 (1950) A Contracting Officer who follows a decision of his superiors without making a personal and independent judgment on the merits is invalid. John A. Johnson Contracting Corp. v. United States, 132 Ct. Cl. 645 (1955)
- The Contracting Officer's Final Decisions shall describe the claim or dispute; refer to the pertinent contract terms; state the factual areas of agreement and disagreement; and set forth the Contracting Officer's decision, with its supporting rationale ([FAR 33.211\(a\)\(4\)](#)).
- Final Decisions shall also include notification that the contractor may appeal the decision to the Board of Contract Appeals within 90 days or the COFC within 12 months of receipt of the final decision. [FAR 33.211\(a\)\(4\)\(v\)](#) provides wording for the notification of the contractor's appeal rights. Contracting Officers shall send Final Decisions to the contractor in a manner that provides evidence of receipt (such as certified mail, return receipt requested) ([FAR 33.211\(b\)](#)).
- Where a contractor has requested in writing that a decision be rendered within 60 days, any failure of the Contracting Officer to issue a Final Decision within that period may be deemed a decision denying the claim and will authorize the contractor to file an appeal upon the claim ([FAR 33.211\(g\)](#)). In claims exceeding \$100,000, Contracting Officers shall issue a Final Decision within 60 days or provide a written notification within 60 days as to when such a decision will be issued (after consultation with assigned legal counsel) ([FAR 33.211\(c\)\(2\)](#)). The Contracting Officer shall issue a Final Decision within a reasonable time ([FAR 33.211\(d\)](#)).

Contractor's Duty to Proceed in Face of Dispute

- Disputes Clause (FAR 52.233-1) requires contractor to proceed with performance in accordance with directions from the contracting officer.
- When faced with a disagreement over whether a change exists, the contractor should continue performance and file a claim for an equitable adjustment with the contracting officer.
- The contractor should keep good records of the additional work (labor and material), as well as the time to perform this additional work.

There are three exceptions to the Duty to Proceed recognized by the boards and courts:

1. The specifications are so defective that performance cannot continue without assured failure;
2. The contractor cannot proceed until it receives a response to a clarification request; and
3. The Government materially breached the contract, i.e. cardinal change.

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