

# Section 14: Contract Claims

---

## Contract Claims

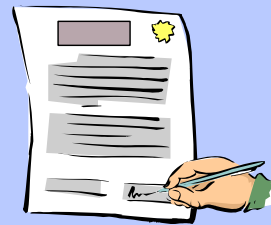
---

### Objectives

1. Identify a Contract Claim As Defined by Statute.
2. Identify When a Claim Has Been Properly Filed.
3. Identify the Significance of a Properly Filed Claim.

*\*When two men in business always agree, one of them is unnecessary.\**

William Wrigley, Jr.



## Who May Pursue A Claim?

---

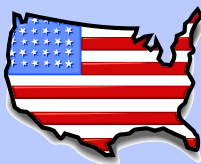
### A. Claim by Contractor:

Written Demand Related to a Contract Submitted to Contracting Officer for a Decision



### B. Claim by Government:

Written Demand prepared by a Contracting Officer and presented to the Contractor in a Contracting Officer's Final Decision



# Section 14: Contract Claims

---

## What is a “Claim”?

---

A claim is:

- a written demand
- by one of the contracting parties
- seeking as a matter of right:
  - the payment of a sum certain, or
  - the adjustment or interpretation of contract terms, or
  - other relief arising under or relating to a contract.
- Contractor Certification (For claims over \$100,000)

\*Source: FAR 2.101; FAR 52.233-1

## CERTIFICATION

---

### Claims Over \$100,000 Must Be Certified

*“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 duly authorized to certify the claim on behalf of the contractor.”*



\*Source: FAR 33.207



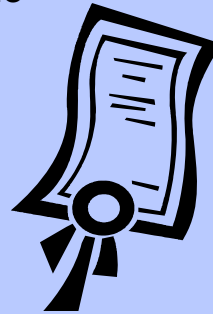
# Section 14: Contract Claims

---

## Incomplete Contractor Certification

- Do not disregard a claim simply because the certification is not complete.
- A defective certification can be corrected.
- Bring this issue to the attention of the Contracting Officer.
- Consult with Office of Counsel.

Source: FAR 33.207(f)



## Sample Claims

Claim letters usually consist of a written narrative and supporting documentation.

Supporting documentation can be a few sheets of paper or binders of printed materials.



Adobe Acrobat  
Document

Okland Claim Letter



Adobe Acrobat  
Document

Alvarez Claim Letter



# Section 14: Contract Claims

## What are NOT Claims?

1. Claims Filed by a Subcontractor-- Unless Sponsored by Prime Contractor
2. Claims by Third Party Beneficiaries
3. Claims by Contractor Against Government Agency Other Than the Contracting Agency:

Examples:     IRS  
                  Department of Labor  
                  Small Business Administration

4. Personal Injury Claims



## Why Contractors File Contract Claims?

A contractor files a claim after award of a contract when he or she believes that actions or events occurred which altered the terms of the contract and caused the contractor to incur additional costs/expenses.

The contractor files a claim in an effort to force the government to compensate him/her for those unanticipated additional costs/expenses.

Common claims:   Defective plans and specifications

                          Differing Site Conditions

                          Government Ordered Contract Changes



# Section 14: Contract Claims

---

## Implications of Submission of a Claim

---

- Be aware that monetary interest begins to accrue on a contractor's claim as of the date the claim is received.
- Be aware that if the contractor's claim is denied, then the contractor's next avenue of appeal is the courtroom.
  - Preserve all documents related to the claim.
  - Identify all facts that could have an impact on the outcome of the appeal and share those facts with the contracting officer prior to the issuance of a decision.

## After Receipt of Claim:

---

\_\_\_\_\_ If the submitted claim seeks a sum certain of \$100,000 or less, the Contracting Officer must issue a written decision within 60 days.

\_\_\_\_\_ If the submitted claim seeks a sum certain of more than \$100,000, the Contracting Officer must issue a written decision within 60 days or notify the contractor "of the time within which a decision will be issued."

Sample Contracting  
Officer Decisions



Adobe Acrobat  
Document

Skanska Decision



Adobe Acrobat  
Document

Alvarez Decision



# Section 14: Contract Claims

## Appeal of the Contracting Officer's Decision

If the Contracting Officer denies the claim, then:



2 ways to appeal

- \_\_\_\_\_ 90 days to appeal to Armed Services Board of Contract Appeals
  
- \_\_\_\_\_ 1 year to appeal to the US Court of Federal Claims (COFC)

## False Claims and Contract Fraud

A False Claim occurs when

Money/payment is demanded by a person or entity who

- misrepresents facts,
- makes a false statement of substantive fact, or
- engages in misleading conduct

Fraud occurs when money is actually paid as a result of misrepresentation of facts.

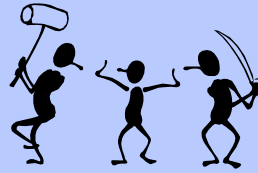
**Watch out for false or fraudulent claims.**



# Section 14: Contract Claims

## Alternative Dispute Resolution (ADR)

Typical Procedures Include:



1. Negotiation and Settlement Conferences
2. Mini-Trial
3. Non-binding Arbitration
4. Mediation
5. Partnering
6. Facilitation

Agency Counsel may contact you for information, documents, or testimony if one or more ADR procedures are attempted.

You should work closely with your Agency Counsel on these matters.

## Appeals/Trial

Both ASBCA and COFC:

- Require that the Agency be represented by an attorney
  - ASBCA: Agency Counsel represents the Agency
  - COFC: DOJ Attorney represents the Agency
- Have discovery processes, including:
  - Requests for document production
  - Interrogatories
  - Depositions
- Allow for fully contested trials (which means, you may be called upon to give trial testimony.)



# Section 14: Contract Claims

---

## Decision

---

- 1) Several Years Before Final Disposition
- 2) Several Claims Adjudicated
- 3) Partially ADRed
- 4) Contractor Claim Sustained. Directed to Pay claimed amount plus interest.
- 5) Funding source and Disposition (Contract Modification).



## Questions?

---



*\*The outcome of any serious research can only be to make two questions grow where only one grew before.\**

Thorstein Veblen

