

CHAPTER 3. CLAIMS FROM CONTRACTORS

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CHAPTER 3. CLAIMS FROM CONTRACTORS

3.1 OVERVIEW.

3.1.1 This chapter sets forth the policy relating to claims and assignment of claims of monies due, or to become due, under Government contracts.

3.2 POLICY.

3.2.1 NASA's policy is to promptly process claims received and provide payment if appropriate. Denial of claims and denial of the waiver of claims, are based on laws, statutes, Code of Federal Regulations, decisions of the Comptroller General or the Executive Branch agency out of whose activity the claim arose, and other legal written documentation.

3.3 AUTHORITIES AND REFERENCES.

3.3.1 Contractor Disputes Act of 1978, Public Law 95-563 (50 U.S.C. § 1431 - 1435). Allows Federal Government contractors to sue the United States Government for monetary damages related to their contractual dealings.

3.3.2 Office of Federal Procurement Policy Act of 1974, Public Law 93-400, as amended by Public Law 96-83. Established to provide overall direction for Government-wide procurement policies, regulations and procedures and to promote economy, efficiency, and effectiveness in acquisition processes.

3.3.3 Assignment of Claims Act, 41 U.S.C. §15, 31 U. S. C. § 3727, and Federal Acquisition Regulation (FAR) 32.802. Assignment of Claims Act authorizes assignments to banks, trust companies, or other financing institution (including Federal lending agencies) of monies due, or to become due, under Government contracts totaling \$1,000 or more.

3.3.4 National Aeronautics and Space Administration supplement to the Federal Acquisition Regulation (NASA FAR), Version 04.0, effective November 1, 2004.

3.3.5 Comptroller General Procedures (Comp. Gen.) (e.g., 37 Comp. Gen. 772 (1959)), Provides guidance on appropriation law, the treatment of laws related to expenditure of Federal funds.

3.4 ROLES AND RESPONSIBILITIES.

3.4.1 Agency. The Agency responsibility regarding the handling of claims is limited to the following areas.

- A. The Agency Chief Financial Officer (CFO) acts as the liaison between the responsible Government agency and the Center CFO, when claims can not be disposed of administratively.

- B. The Agency CFO handles the development of vouchers, which are issued to the Centers for payment.

3.4.2 Centers. Center CFO and staff have primary responsibilities in the handling of claims.

- A. Centers are responsible for handling the initial claims that are received from the responsible Government agency. The Center CFO handles the disposing of claims administratively.
- B. Center CFO takes action for those claims that require adjudication by responsible Government agency.
- C. Center CFO is responsible for settling commercial accounts for which they have responsibility.
- D. Center CFO refers doubtful claims to the contracting officer with an explanation of the doubtful aspects.

3.4.3 NASA Shared Services Center (NSSC). The NSSC staff will process the approved payment of claims.

- A. The NSSC responsible for filing the claims that are received from the Center.
- B. The NSSC makes payment to assignees of claims after documentation has been received, reviewed, and approved.

3.4.4 Contracting Officer. 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.

3.4.5 Office of Chief Counsel. Prior to settlement or payment, all claims shall be coordinated with the Office of Chief Counsel.

3.5 DEFINITIONS.

3.5.1 Claims. A claim is 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, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by the Act. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim. The submission may be converted to a claim, by written notice to the contracting officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

- 3.5.2 Responsible Government Agency. The Responsible Government Agency is the Federal Office that is required by statute or regulation to pay a specific type of claim.
- 3.5.3 Assignment. Assignment is defined as a transfer of assignment of any part of a claim against the United States Government or of an interest in the claim or the authorization to receive payment for any part of the claim. An assignment maybe made only after a claim is allowed, the amount of the claim is decided, and a warrant for payment of the claim has been issued.
- 3.5.4 Surety. A surety is an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows: 1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond, 2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others, and 3) A co-surety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.
- 3.6 CIVIL CLAIMS AGAINST NASA.
- 3.6.1 Filing requirements for claimants. NASA will consider claims presented in writing with the signature and address of the claimant or an authorized representative. All claims are filed through the responsible government agency depending on the type of claim filed, descriptions of each is found in the U.S C. Title 31 Chapter 3702. A claim filed by a claimant's representative must be supported by a duly executed power of attorney or other documentary evidence of the agent's or attorney's right to act for the claimant. Initial claims will be filed by the claimant at the Center where the activities originally took place. If the claim cannot be administratively disposed of, it will be transmitted through the NASA Agency CFO to the responsible government agency. Claimants must be aware of the statutory limitations of filings claims and shall forward all disallowed claims directly to the responsible government agency.
- 3.6.2 Statutory time limitation for filing claims. Every claim against NASA (except a claim by a State, Territory, Possession, or the District of Columbia) that requires a determination by NASA must be submitted within 6 years from the date the claim accrued, unless otherwise provided for by law (28 U.S.C. § 2501). The responsible government agency will determine whether the claim has been made within the time prescribed by law. If the claim is not received by the responsible government agency within the statutory time period, it will be returned to the claimant and no further action will be deemed necessary. NASA Agency CFO will be notified of the action taken by the responsible government agency. All matters relating to claims will be handled promptly.
- 3.6.3 Non-receipt of check claims. Pursuant to 31 U.S.C. § 3702, a claim for non-receipt of a check which the records of the responsible government agency or the Department of the Treasury (Treasury) show as being paid must be presented to the responsible Government agency or the Treasury within 1

year after the date of issuance of the check. The claimant may present a claim directly to the Treasury or to the responsible government agency if the statutory period of limitation is about to expire. Since the Treasury has the paid check records and processes the related claims, the preferred procedure is to make the submission to the Treasury. A check claim that is received by a Center, which might be adversely affected by the 1-year limitation, should be immediately transmitted to the Treasury.

3.7 CLAIM SUBMISSION REQUIREMENTS.

- 3.7.1 Assistance to claimants. Pursuant to 18 U.S.C. § 205, a Government employee may neither assist nor act, on behalf of a claimant in prosecuting any claim against the United States other than in the proper discharge of official duties; and may not receive any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim.
- 3.7.2 False claims. When there are suspicions of fraud or irregularities regarding a claim either prior to payment or subsequent to payment, the Chief Counsel of the Center should be informed to determine appropriate action. Also, upon discovery of fraud or irregularities, the NASA Agency CFO and the NASA Office of Inspector General must be immediately notified by telephone and submission of a written notice.
- 3.7.3 Processing of claims by the responsible government agency. NASA's claims are submitted to the responsible government agency and are settled on the basis of the facts established by the Center and the written and documentary evidence submitted by the claimant. Settlements are determined by establishing the legal liability of NASA in the situation, supported by the written record only. The responsible Government agency will determine if a claim is allowed partially disallowed or wholly disallowed (28 U.S.C. § 2401).
- 3.7.4 Payments to Reimburse Treasury for Payments in Settlement of Contractor Claims. Upon certification by the Government Accountability Office, the amounts of contractor claims settled pursuant to the Contract Disputes Act of 1978 may be paid to the contractor by the Treasury from the permanent judgment fund. Amounts paid to contractors are reimbursable to the Treasury from the appropriation available for the purpose of the contract or by obtaining additional funds for such purpose. The Treasury will bill the contract Center financial management office. If funds are not available in the proper account to cover invoices received from the Treasury, request additional funds through appropriate channels. Amounts reimbursed to the Treasury must be charged to current funds. Expired funds cannot be used (63 Comp Gen 308 1984).

3.8 ASSIGNMENT OF CLAIMS.

- 3.8.1 Assignment of Claims. A contractor may assign moneys due or to become due under a contract if all the following conditions are met:

1. The contract specifies payments aggregating \$1,000 or more.
2. The assignment is made to a bank, trust company, or other financing institution, including any Federal lending agency.
3. The contract does not prohibit the assignment.
4. Unless otherwise expressly permitted in the contract, the assignment:
 - a. Covers all unpaid amounts payable under the contract;
 - b. Is made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and
 - c. Is not subject to further assignment.
5. The assignee sends a written notice of assignment together with a true copy of the assignment instrument to the:
 - a. Contracting officer or the agency head;
 - b. Surety on any bond applicable to the contract; and
 - c. Disbursing officer designated in the contract to make payment.

3.8.2 Transfer of Assignment. Title 41 U.S.C. § 15 prohibits transfer of Government contracts from the contractor to a third party. The Government may, when in its interest, recognize a third party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of, (1) All the contractor's assets; or (2) The entire portion of the assets involved in performing the contract.