

**§ 604. Fraudulent claims**

If a contractor is unable to support any part of his claim and it is determined that such inability is attributable to misrepresentation of fact or fraud on the part of the contractor, he shall be liable to the Government for an amount equal to such unsupported part of the claim in addition to all costs to the Government attributable to the cost of reviewing said part of his claim. Liability under this subsection<sup>1</sup> shall be determined within six years of the commission of such misrepresentation of fact or fraud.

(Pub. L. 95-563, § 5, Nov. 1, 1978, 92 Stat. 2384.)

**§ 605. Decision by contracting officer****(a) Contractor claims**

All claims by a contractor against the government relating to a contract shall be in writing and shall be submitted to the contracting officer for a decision. All claims by the government against a contractor relating to a contract shall be the subject of a decision by the contracting officer. Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based on a claim by the contractor involving fraud. The contracting officer shall issue his decisions in writing, and shall mail or otherwise furnish a copy of the decision to the contractor. The decision shall state the reasons for the decision reached, and shall inform the contractor of his rights as provided in this chapter. Specific findings of fact are not required, but, if made, shall not be binding in any subsequent proceeding. The authority of this subsection shall not extend to a claim or dispute for penalties or forfeitures prescribed by statute or regulation which another Federal agency is specifically authorized to administer, settle, or determine. This section shall not authorize any agency head to settle, compromise, pay, or otherwise adjust any claim involving fraud.

**(b) Review; performance of contract pending appeal**

The contracting officer's decision on the claim shall be final and conclusive and not subject to review by any forum, tribunal, or Government agency, unless an appeal or suit is timely commenced as authorized by this chapter. Nothing in this chapter shall prohibit executive agencies from including a clause in government contracts requiring that pending final decision of an appeal, action, or final settlement, a contractor shall proceed diligently with performance of the contract in accordance with the contracting officer's decision.

**(c) Amount of claim; certification; notification; time of issuance; presumption**

(1) A contracting officer shall issue a decision on any submitted claim of \$100,000 or less within sixty days from his receipt of a written request from the contractor that a decision be rendered

within that period. For claims of more than \$100,000, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his knowledge and belief, that the amount requested accurately reflects the contract adjustment for which the contractor believes the government is liable, and that the certifier is duly authorized to certify the claim on behalf of the contractor.

(2) A contracting officer shall, within sixty days of receipt of a submitted certified claim over \$100,000—

(A) issue a decision; or

(B) notify the contractor of the time within which a decision will be issued.

(3) The decision of a contracting officer on submitted claims shall be issued within a reasonable time, in accordance with regulations promulgated by the agency, taking into account such factors as the size and complexity of the claim and the adequacy of the information in support of the claim provided by the contractor.

(4) A contractor may request the tribunal concerned to direct a contracting officer to issue a decision in a specified period of time, as determined by the tribunal concerned, in the event of undue delay on the part of the contracting officer.

(5) Any failure by the contracting officer to issue a decision on a contract claim within the period required will be deemed to be a decision by the contracting officer denying the claim and will authorize the commencement of the appeal or suit on the claim as otherwise provided in this chapter. However, in the event an appeal or suit is so commenced in the absence of a prior decision by the contracting officer, the tribunal concerned may, at its option, stay the proceedings to obtain a decision on the claim by the contracting officer.

(6) The contracting officer shall have no obligation to render a final decision on any claim of more than \$100,000 that is not certified in accordance with paragraph (1) if, within 60 days after receipt of the claim, the contracting officer notifies the contractor in writing of the reasons why any attempted certification was found to be defective. A defect in the certification of a claim shall not deprive a court or an agency board of contract appeals of jurisdiction over that claim. Prior to the entry of a final judgment by a court or a decision by an agency board of contract appeals, the court or agency board shall require a defective certification to be corrected.

(7) The certification required by paragraph (1) may be executed by any person duly authorized to bind the contractor with respect to the claim.

**(d) Alternative means of dispute resolution**

Notwithstanding any other provision of this chapter, a contractor and a contracting officer may use any alternative means of dispute resolution under subchapter IV of chapter 5 of title 5, or other mutually agreeable procedures, for resolving claims. The contractor shall certify the claim when required to do so as provided under subsection (c)(1) of this section or as otherwise required by law. All provisions of subchapter IV of chapter 5 of title 5 shall apply to such alternative means of dispute resolution.

<sup>1</sup> So in original. Probably should be "section".

**(e) Termination of authority to engage in alternative means of dispute resolution; savings provision**

In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of the dispute. In any case in which a contractor rejects a request of an agency for alternative dispute resolution proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.

(Pub. L. 95-563, §6, Nov. 1, 1978, 92 Stat. 2384; Pub. L. 101-552, §6(a), Nov. 15, 1990, 104 Stat. 2745; Pub. L. 102-572, title IX, §907(a)(1), Oct. 29, 1992, 106 Stat. 4518; Pub. L. 103-355, title II, §§2351(a)[(1)], (b), (e), 2352, Oct. 13, 1994, 108 Stat. 3322; Pub. L. 104-106, div. D, title XLIII, §§4321(a)(6), (7), 4322(b)(6), Feb. 10, 1996, 110 Stat. 671, 677; Pub. L. 104-320, §6, Oct. 19, 1996, 110 Stat. 3871; Pub. L. 105-85, div. A, title X, §1073(g)(3), Nov. 18, 1997, 111 Stat. 1906.)

AMENDMENTS

1997—Subsecs. (d), (e). Pub. L. 105-85 struck out “(as in effect on September 30, 1995)” after “title 5” wherever appearing.

1996—Subsec. (a). Pub. L. 104-106, §4321(a)(6), made technical correction to Pub. L. 103-355, §2351(a). See 1994 Amendment note below.

Subsec. (d). Pub. L. 104-320, §6(1), substituted “The contractor shall certify the claim when required to do so as provided under subsection (c)(1) of this section or as otherwise required by law.” for “In a case in which such alternative means of dispute resolution or other mutually agreeable procedures are used, the contractor shall certify that the claim is made in good faith, that the supporting data are accurate and complete to the best of his or her knowledge and belief, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable.”

Pub. L. 104-106, §4322(b)(6), inserted “(as in effect on September 30, 1995)” after “title 5” in two places.

Subsec. (e). Pub. L. 104-320, §6(2), struck out first sentence which read as follows: “The authority of agencies to engage in alternative means of dispute resolution proceedings under subsection (d) of this section shall cease to be effective on October 1, 1999, except that such authority shall continue in effect with respect to then pending dispute resolution proceedings which, in the judgment of the agencies that are parties to such proceedings, require such continuation, until such proceedings terminate.”

Pub. L. 104-106, §4322(b)(6), inserted “(as in effect on September 30, 1995)” after “title 5”.

Pub. L. 104-106, §4321(a)(7), made technical amendment to Pub. L. 103-355, §2352(b). See 1994 Amendment note below.

1994—Subsec. (a). Pub. L. 103-355, §2351(a)(1), as amended by Pub. L. 104-106, §4321(a)(6), inserted after second sentence “Each claim by a contractor against the government relating to a contract and each claim by the government against a contractor relating to a contract shall be submitted within 6 years after the accrual of the claim. The preceding sentence does not apply to a claim by the government against a contractor that is based on a claim by the contractor involving fraud.”

Subsec. (c). Pub. L. 103-355, §2351(b), substituted “\$100,000” for “\$50,000” wherever appearing.

Subsec. (c)(4). Pub. L. 103-355, §2351(e), substituted “tribunal concerned” for “agency board of contract appeals” and “tribunal concerned,” for “board.”

Subsec. (e). Pub. L. 103-355, §2352(b), as amended by Pub. L. 104-106, §4321(a)(7), inserted after first sentence “In any case in which the contracting officer rejects a contractor's request for alternative dispute resolution proceedings, the contracting officer shall provide the contractor with a written explanation, citing one or more of the conditions in section 572(b) of title 5 or such other specific reasons that alternative dispute resolution procedures are inappropriate for the resolution of the dispute. In any case in which a contractor rejects a request of an agency for alternative dispute resolution proceedings, the contractor shall inform the agency in writing of the contractor's specific reasons for rejecting the request.”

Pub. L. 103-355, §2352(a), substituted “October 1, 1999” for “October 1, 1995”.

1992—Subsec. (c)(1). Pub. L. 102-572, §907(a)(1)(A), struck out “and” after “belief,” and inserted before period at end “, and that the certifier is duly authorized to certify the claim on behalf of the contractor”.

Subsec. (c)(6), (7). Pub. L. 102-572, §907(a)(1)(B), added pars. (6) and (7).

1990—Subsecs. (d), (e). Pub. L. 101-552 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 4321(a) of Pub. L. 104-106 provided that the amendment made by that section is effective as of Oct. 13, 1994, and as if included in Pub. L. 103-355 as enacted.

For effective date and applicability of amendment by section 4322(b)(6) of Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103-355, see section 10001 of Pub. L. 103-355, set out as a note under section 251 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Section 907(a)(2) of Pub. L. 102-572 provided that: “The amendment made by paragraph (1)(B) [amending this section] shall be effective with respect to all claims filed before, on, or after the date of the enactment of this Act [Oct. 29, 1992], except for those claims which, before such date of enactment, have been the subject of an appeal to an agency board of contract appeals or a suit in the United States Claims Court.”

Section 907(a)(4) of Pub. L. 102-572 provided that: “The amendments made by paragraph (1)(A) [amending this section] shall be effective with respect to certifications executed more than 60 days after the effective date of amendments to the Federal Acquisition Regulation implementing the amendments made by paragraph (1)(A) with respect to the certification of claims.” [For effective date of implementing regulations, see 59 F.R. 11368, Mar. 10, 1994.]

EFFECT OF CONTRACT PROVISIONS PROVIDING FOR SUBMISSION OF CLAIMS EARLIER THAN SIX YEARS AFTER ACCRUAL

Section 2351(a)(2) of Pub. L. 103-355 provided that: “Notwithstanding the third sentence of section 6(a) of the Contract Disputes Act of 1978 [41 U.S.C. 605(a)], as added by paragraph (1), if a contract in existence on the date of the enactment of this Act [Oct. 13, 1994] requires that a claim referred to in that sentence be submitted earlier than 6 years after the accrual of the claim, then the claim shall be submitted within the period required by the contract. The preceding sentence does not apply to a claim by the Federal Government against a contractor that is based on a claim by the contractor involving fraud.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256, 606, 609, 611 of this title; title 5 section 504; title 10 section 2324; title 28 section 1491; title 31 section 3907.

**§ 606. Contractor's right of appeal to board of contract appeals**

Within ninety days from the date of receipt of a contracting officer's decision under section 605 of this title, the contractor may appeal such decision to an agency board of contract appeals, as provided in section 607 of this title.

(Pub. L. 95-563, § 7, Nov. 1, 1978, 92 Stat. 2385.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 256 of this title; title 10 sections 2324, 2410m.

**§ 607. Agency boards of contract appeals**

**(a) Establishment; consultation; Tennessee Valley Authority**

(1) Except as provided in paragraph (2) an agency board of contract appeals may be established within an executive agency when the agency head, after consultation with the Administrator, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board of at least three members who shall have no other inconsistent duties. Workload studies will be updated at least once every three years and submitted to the Administrator.

(2) The Board of Directors of the Tennessee Valley Authority may establish a board of contract appeals for the Authority of an indeterminate number of members.

**(b) Appointment of members; chairman; compensation**

(1) Except as provided in paragraph (2), the members of agency boards shall be selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of title 5, with an additional requirement that such members shall have had not fewer than five years' experience in public contract law. Full-time members of agency boards serving as such on the effective date of this chapter shall be considered qualified. The chairman and vice chairman of each board shall be designated by the agency head from members so appointed. Compensation for the chairman, the vice chairman, and all other members of an agency board shall be determined under section 5372a of title 5.

(2) The Board of Directors of the Tennessee Valley Authority shall establish criteria for the appointment of members to its agency board of contract appeals established in subsection (a)(2) of this section, and shall designate a chairman of such board. The chairman and all other members of such board shall receive compensation, at the daily equivalent of the rates determined under section 5372a of title 5, for each day they are engaged in the actual performance of their duties as members of the board.

**(c) Appeals; inter-agency arrangements**

If the volume of contract claims is not sufficient to justify an agency board under subsection (a) of this section or if he otherwise considers it appropriate, any agency head shall arrange for appeals from decisions by contracting officers of his agency to be decided by a board of contract appeals of another executive agency. In

the event an agency head is unable to make such an arrangement with another agency, he shall submit the case to the Administrator for placement with an agency board. The provisions of this subsection shall not apply to the Tennessee Valley Authority.

**(d) Jurisdiction**

Each agency board shall have jurisdiction to decide any appeal from a decision of a contracting officer (1) relative to a contract made by its agency, and (2) relative to a contract made by any other agency when such agency or the Administrator has designated the agency board to decide the appeal. In exercising this jurisdiction, the agency board is authorized to grant any relief that would be available to a litigant asserting a contract claim in the United States Court of Federal Claims.

**(e) Decisions**

An agency board shall provide to the fullest extent practicable, informal, expeditious, and inexpensive resolution of disputes, and shall issue a decision in writing or take other appropriate action on each appeal submitted, and shall mail or otherwise furnish a copy of the decision to the contractor and the contracting officer.

**(f) Accelerated appeal disposition**

The rules of each agency board shall include a procedure for the accelerated disposition of any appeal from a decision of a contracting officer where the amount in dispute is \$100,000 or less. The accelerated procedure shall be applicable at the sole election of only the contractor. Appeals under the accelerated procedure shall be resolved, whenever possible, within one hundred and eighty days from the date the contractor elects to utilize such procedure.

**(g) Review**

(1) The decision of an agency board of contract appeals shall be final, except that—

(A) a contractor may appeal such a decision to the United States Court of Appeals for the Federal Circuit within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) the agency head, if he determines that an appeal should be taken, and with the prior approval of the Attorney General, transmits the decision of the board of contract appeals to the Court of Appeals for the Federal Circuit for judicial review under section 1295 of title 28, within one hundred and twenty days from the date of the agency's receipt of a copy of the board's decision.

(2) Notwithstanding the provisions of paragraph (1), the decision of the board of contract appeals of the Tennessee Valley Authority shall be final, except that—

(A) a contractor may appeal such a decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of receipt of a copy of such decision, or

(B) The Tennessee Valley Authority may appeal the decision to a United States district court pursuant to the provisions of section 1337 of title 28, within one hundred twenty days after the date of the decision in any case.