

33.211 Contracting officer's decision.

(a) When a *claim* by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the *claim* is necessary, the *contracting officer shall*-

- (1) Review the facts pertinent to the *claim*;
- (2) Secure assistance from legal and other advisors;
- (3) Coordinate with the contract administration officer or *contracting office*, as appropriate; and
- (4) Prepare a written decision that *shall* include-
 - (i) A description of the *claim* or dispute;
 - (ii) A reference to the pertinent contract terms;
 - (iii) A statement of the factual areas of agreement and disagreement;
 - (iv) A statement of the *contracting officer's* decision, with supporting rationale;
 - (v) Paragraphs *substantially as follows*:

"This is the final decision of the *Contracting Officer*. You *may* appeal this decision to the agency board of contract appeals. If you decide to appeal, you *must*, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the *Contracting Officer* from whose decision this appeal is taken. The notice *shall* indicate that an appeal is intended, reference this decision, and identify the contract by number.

With regard to appeals to the agency board of contract appeals, you *may*, solely at your election, proceed under the board's-

- (1) Small *claim* procedure for *claims* of \$50,000 or less or, in the case of a small business concern (as defined in the Small Business Act and regulations under that Act), \$150,000 or less; or
- (2) Accelerated procedure for *claims* of \$100,000 or less.

Instead of appealing to the agency board of contract appeals, you *may* bring an action directly in the *United States Court of Federal Claims* (except as provided in [41 U.S.C. 7102\(d\)](#), regarding Maritime Contracts) within 12 months of the date you receive this decision"; and

(vi) Demand for payment prepared in accordance with [32.604](#) and [32.605](#) in all cases where the decision results in a finding that the contractor is indebted to the Government.

(b) The *contracting officer shall* furnish a copy of the decision to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt. This requirement *shall* apply to decisions on *claims* initiated by or against the contractor.

(c) The *contracting officer shall* issue the decision within the following statutory time limitations:

- (1) For *claims* of \$100,000 or less, 60 days after receiving a written request from the contractor that

a decision be rendered within that period, or within a reasonable time after receipt of the *claim* if the contractor does not make such a request.

(2) For *claims* over \$100,000, 60 days after receiving a certified *claim*; provided, however, that if a decision will not be issued within 60 days, the *contracting officer shall* notify the contractor, within that period, of the time within which a decision will be issued.

(d) The *contracting officer shall* issue a decision within a reasonable time, taking into account-

(1) The size and complexity of the *claim*;

(2) The adequacy of the contractor's supporting data; and

(3) Any other relevant factors.

(e) The *contracting officer shall* have no obligation to render a final decision on any *claim* exceeding \$100,000 which contains a *defective certification*, 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.

(f) In the event of undue delay by the *contracting officer* in rendering a decision on a *claim*, the contractor *may* request the tribunal concerned to direct the *contracting officer* to issue a decision in a specified time period determined by the tribunal.

(g) Any failure of the *contracting officer* to issue a decision within the required time periods will be deemed a decision by the *contracting officer* denying the *claim* and will authorize the contractor to file an appeal or suit on the *claim*.

(h) The amount determined payable under the decision, less any portion already paid, *should* be paid, if otherwise proper, without awaiting contractor action concerning appeal. Such payment *shall* be without prejudice to the rights of either party.

Parent topic: [Subpart 33.2 - Disputes and Appeals](#)