5233.9002 Contractor appeals to the Armed Services Board of Contract Appeals (ASBCA).

(a) *General*. The DON Office of the General Counsel (OGC) has sole litigation authority for all appeals under DON contracts to the ASBCA. Because of the frequent complexity of these cases, the DON OGC and the contracting activity involved should maintain the continuity of any DON claim team that might have investigated and evaluated the contractor's claim submission. Such teams should continue to function in an assisting capacity under the leadership of the DON OGC Trial Attorney assigned to handle the appeal.

(b) *Litigation report requirement*. With the compilation of ASBCA Rule 4 documents (available at https://www.asbca.mil/Rules/rules.html), a comprehensive litigation report shall be forwarded to the Litigation Division. The report should include:

(1) A detailed narrative statement of facts, preferably in chronological sequence, and with a topical segregation when appropriate, with references to attached supporting documents of expected testimony. If such a statement was previously submitted, it need not be submitted a second time, but should be supplemented or revised if additional information becomes available in the interim.

(2) An analysis and evaluation (classified as attorney-client privileged information) of the factual and legal positions of both sides (including affirmative defenses and counterclaims available to the Government), the available evidence, and the expertise and effectiveness of prospective witnesses.

(3) The advisory report, if any, of the reviewing official or board.

(c) *Settlement negotiations pending appeal*. The conduct of settlement negotiations in connection with any pending appeal should generally be accomplished by a selected team consisting of the trial attorney and representatives of the contracting officer (including contracting activity technical personnel, counsel, negotiator, and auditor if necessary). Other arrangements may be made in specific cases as appropriate. However, no final settlement agreement will be made without the written approval of the contracting officer. When a settlement is made, a memorandum shall be prepared by the negotiating team (and signed by all team members) stating the basis and reasons. The settlement agreement shall be drafted by the contracting activity and trial attorney. The trial attorney shall file any legal papers required to be filed with the ASBCA to effect disposition of the case by mutual agreement of the parties.

(d) *Review and approval*. Negotiated settlements of appeals pending before the ASBCA, as well as negotiated settlements of appeal issues that have been remanded to the DON for quantum determination, will be subject to review and approval at levels established for claims of the same dollar amount.

(e) *Contract modification*. Whenever contract modification and other contract documents are required to implement a settlement of ASBCA or appellate court decision, they should reference the ASBCA proceedings by title and docket number.

Parent topic: Subpart 5233.90 - PROCEDURES