

THE JOURNAL OF FEDERAL AGENCY ACTION

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Government Contract Claims 101: A Contractor's Guide to Requests for Equitable Adjustment, Terminations, and Other Resolutions

Amy L. Fuentes, Ann E. McRitchie, and Anne M. Delmare*

In this article, the authors provide a practical overview of the primary mechanisms for resolving disputes with the federal government, such as Requests for Equitable Adjustment, and outline the life cycle of contract disputes, from informal negotiations to formal litigation.

Even with diligent performance, government contractors frequently encounter issues related to contract changes, government-caused delays, and unexpected terminations that can significantly impact a project's cost and schedule. Resolving disputes with the federal government requires navigating a unique and complex legal framework.

This article provides a practical overview of the primary mechanisms for resolving such disputes, including Requests for Equitable Adjustment (REA), termination for convenience settlement proposals, no-cost settlement proposals, and formal claims under the Contract Disputes Act (CDA). It outlines the life cycle of a contract dispute, from informal negotiations with a contracting officer (CO) to formal litigation before the boards of contract appeals (BCA), U.S. Court of Federal Claims (COFC), and specialized forums such as the Federal Aviation Administration's (FAA) Office of Dispute Resolution for Acquisition (ODRA).

By understanding these distinct pathways, contractors are better positioned to protect their rights, maximize potential recovery, and make strategic decisions when faced with an adverse government action. An effective dispute resolution strategy does not operate in isolation; it recognizes the need to carefully balance the pursuit of legal and financial interests with the practical importance of preserving long-term relationships with government customers.

CDA 101: The Basic Framework

The foundation for resolving most disputes with the U.S. government is the CDA. Codified at 41 U.S.C. Chapter 71, the CDA establishes the procedures and legal framework for all claims “arising under or relating to” a federal contract. Pursuant to the Federal Acquisition Regulation (FAR), most government contracts¹ must include FAR 52.233-1 (Disputes),² which sets out the terms of the CDA and obligates the contractor to continue performance pending resolution of any dispute.

When a dispute arises under a government contract, the CDA process is initiated with the submission of a written “claim” to the responsible CO. As defined in FAR 52.233-1, a claim is a written demand 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. Routine requests for payment, such as invoices, are not considered claims unless they become disputed.

Upon receipt of a properly submitted claim, the CO is required to review the facts and issue a final written decision. The Contracting Officer’s Final Decision (COFD) is critical juncture in the dispute life cycle, as it is binding on the government and final for the contractor unless it is timely appealed. If a contractor disagrees with the COFD—or if the CO fails to issue a decision within the prescribed time frame—the contractor has the right to appeal to one of two primary forums: the appropriate agency BCA or COFC. The selection of forum is a significant strategic decision, as a contractor cannot change forums once an appeal is filed. The failure to timely appeal a COFD can result in the contractor forfeiting its right to recover entirely.

REA

When a contract administration issue involves increased performance costs arising from a formal or constructive change to the contract or temporary stop-work order, before escalating a dispute to a formal claim, contractors often first submit an REA. An REA is a written request submitted to the CO seeking an adjustment to the contract’s price, schedule, or other terms, typically arising from a government action such as a change order, government-caused delay, or the issuance of a stop-work order. Unlike a formal

CDA claim, an REA is intended to be a tool for negotiation and is a largely informal process designed to reach a mutually agreeable resolution without resorting to litigation.

The primary advantages of an REA are its flexibility and that it is not a formal claim under the CDA. The process is less rigid than the CDA claim process. For example, the civilian agencies do not require a formal CDA certification whereas the U.S. Department of Defense (DOD) requires REAs exceeding the simplified acquisition threshold³ to include, at the time of REA submission, the following certification executed by an authorized representative of the contractor:

I certify that the request is made in good faith, and that the supporting data are accurate and complete to the best of my knowledge and belief.

In addition, the costs of preparing the REA, including the cost of outside counsel and accounting firms, are generally considered allowable costs and may be included as part of the REA. This is a significant distinction from formal CDA claims, where claim preparation costs are typically treated as unallowable litigation expenses.

The informal nature of an REA, however, presents limitations. The CO is not bound by a statutory deadline to issue a decision. FAR 43.204(b)(1)(i) states that a CO shall negotiate equitable adjustments resulting from change orders “in the shortest practicable time.” In the absence of a fixed deadline to respond, the REA process can leave a contractor waiting for a response and hinder timely recovery. Additionally, CDA interest (described further below) does not accrue while an REA is under consideration. If negotiations reach an impasse, the REA must be converted into a formal CDA claim to obtain a COFD and preserve appeal rights.

Although a CO’s responsibilities for negotiating REAs are addressed in FAR 43.204, REAs are not expressly defined in the FAR. In contrast, a “claim” has its own definition at FAR 2.101. As a result, the distinction between an REA and a formal claim can be difficult to discern. Contractors should be cautious, as an REA that meets all the legal criteria of a claim may be treated as such, and a subsequent denial by the CO could be deemed a final decision, triggering the clock on a limited appeal period. Contractors should avoid using phrases such as a request for a “final decision” in connection with an REA. If a CO issues something that could *arguably* be construed as a final decision, contractors should immediately

seek clarification from the CO and evaluate whether the appeal clock has been triggered, as discussed below.

Termination for Convenience and Termination Settlement Proposals

The federal government possesses the broad contractual right to terminate a contract for its convenience. This allows an agency to unilaterally end performance when it is in the government's interest, without the contractor being at fault. Although challenging the termination itself can be difficult and requires proof of abuse of discretion or bad faith, contractors can focus on maximizing their financial recovery through a Termination Settlement Proposal (TSP).

Upon receiving a termination for convenience notice, a contractor must immediately take several steps as outlined in the notice and/or applicable FAR clause. These steps include stopping all terminated work, safeguarding government property, and flowing down the termination notice to all subcontractors. The next step is for the contractor to prepare and submit a TSP, which constitutes the formal request for compensation. The TSP is not an adversarial claim but usually serves as the starting point for negotiations with the CO. A contractor generally has one year from the effective date of the termination to submit its final TSP, though the termination notice itself may establish a shorter deadline. Failure to meet this deadline may result in the CO issuing a unilateral determination of the amount owed, which, if unacceptable, can be challenged through a formal claim.

The costs recoverable in a TSP depend on the contract type. For most noncommercial contracts, a termination for convenience effectively converts the terminated portion of a fixed price contract into a cost reimbursement contract. Under this framework, a contractor is generally entitled to recover:

- payment for all work performed and accepted prior to termination;
- in the case of supply contracts, recovery for lost value of any termination inventory;
- a reasonable profit on the work performed;

- reasonable costs incurred in settling the terminated work, which includes the accounting, legal, and clerical expenses necessary to prepare the TSP; and
- subcontractor settlement costs and other wind-down expenses.

For commercial item contracts under FAR Part 12, the recovery calculation differs. Recovery is often based on a percentage of the contract price reflecting the work performed plus any reasonable charges resulting from the termination for convenience. If negotiations over the TSP reach an impasse, the contractor must convert the settlement proposal into a formal certified claim under the CDA to obtain a final decision from the CO and preserve the contractor's right to appeal.

Certified CDA Claims

When informal negotiations via an REA or a TSP are unsuccessful, or when a contractor strategically chooses a more formal path (such as when the CO has indicated an unfavorable decision or unduly delays action on the REA or TSP), the CDA provides the mechanism to assert legal rights through a certified claim. Unlike the informal REA process, a CDA claim is a formal, statutorily defined submission with strict requirements that serve as jurisdictional prerequisites for any future appeal. Failure to adhere to these requirements can lead to the dismissal of an otherwise meritorious claim on purely procedural grounds.

The essential elements of a valid CDA claim are as follows:

- *Written Demand Seeking Relief as a Matter of Right.* The claim must be a written demand submitted to the CO seeking relief as a matter of legal right, not as a request for discretionary action. It must clearly state the basis for the contractor's entitlement.
- *Sum Certain.* If the claim seeks monetary compensation, it must demand a "sum certain," which is a specific, ascertainable dollar amount. Estimates are insufficient; the amount must be clearly stated so the CO can make a decision on a definite quantum.
- *Submission to the CO.* The CDA requires that all claims be submitted to the contract's CO for a final decision. This

step is fundamental, as there can be no appeal without a claim first being presented to and decided (or deemed denied) by the CO.

- Per the Disputes clause at FAR 52.233-1, contractor claims must be submitted within six years of the claim's "accrual." Accrual generally occurs when all events that fix the alleged liability and permit the assertion of the claim were known or should have been known. As a practical matter, claims should be submitted as soon as practicable.
- *Certification for Claims Over \$100,000.* For any claim exceeding \$100,000, the contractor must provide a certification. The certifying official must be authorized to bind the contractor with respect to the claim and must state the following, precisely:

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 authorized to certify the claim on behalf of the Contractor.

A defect in this certification will not deprive a court or board of jurisdiction, but it must be corrected before a final judgment is entered. The costs associated with preparing a formal claim are generally considered unrecoverable litigation expenses, unlike the preparation costs for an REA.

Nonmonetary Claims (i.e., Challenging a Default Termination, an Unfavorable CPAR, or Option Exercise of Questionable Validity)

In addition to a claim for money damages, the Contract Disputes Clause authorizes a contractor to seek "nonmonetary" relief, which includes a request for "adjustment or interpretation of contract terms, or other relief arising from or relating to the contract." FAR 2.101 (definition of "claim"). A nonmonetary claim most commonly arises in the following situations: challenging the justification of a termination for default, challenging the enforceability of a CO's exercise of an option period of performance, or challenging the

reasonableness and propriety of an adverse Contractor Performance Assessment Report (CPAR). In addition, a nonmonetary claim may be asserted to resolve a dispute regarding rights in tangible or intangible property, including rights in intellectual property, compliance with cost accounting standards, whether a government-directed change is within the scope of a contract or a “cardinal” change, or other disputes regarding the interpretation of contract terms and conditions.

As with monetary claims, a claim for nonmonetary relief must be in writing and submitted to the CO for a final decision and seek the requested nonmonetary relief “as a matter of right.” However, unlike a monetary claim, there is no “sum certain” requirement and no certification requirement. If the CO denies a claim for nonmonetary relief, the contractor has the same opportunity to appeal the decision (with the same deadlines as a monetary claim) to the pertinent BCA or file a complaint with the COFC. A BCA or COFC has jurisdiction to issue declaratory relief on an appeal of a claim for nonmonetary relief but not the absolute obligation to do so in all cases. For example, for contract interpretation disputes that would lead to a request for an equitable adjustment that could mature into a monetary claim, a BCA or COFC could decline to issue a declaratory judgment in favor of awaiting a later equitable adjustment claim by the contractor, which the U.S. Court of Appeals for the Federal Circuit has noted is “analogous to the traditional rule that courts will not grant equitable relief when money damages are adequate.” Still, a claim for nonmonetary relief can be an effective tool for a contractor to resolve a wide range of disputes regarding contract administration that either have not resulted in monetary damages, such as a dispute regarding a termination for default, an unfavorable CPAR or whether an option period was validly exercised.

Government Claim Against the Contractor

Although contractors most often invoke the CDA to pursue claims against the government, the CDA likewise governs disputes in which the government asserts that the contractor owes it money. These so-called government claims may arise from issues such as erroneous or duplicate payments, reinspection costs for nonconforming supplies, or government expenses incurred to correct defects. Termination of a contract for default is also considered a

type of government claim. The FAR establishes procedures for the CO to demand repayment of such debts. If the contractor and CO are unable to agree on the existence or amount of the debt or the contractor fails to repay a properly demanded amount, the CO may issue a COFD. A contractor wishing to challenge that COFD with respect to a government claim must follow the same CDA appeal process described herein.

Frequently, when the government has a claim against the contractor, no-cost settlements come into play. A no-cost settlement is often used to close out a termination or avoid a termination notice. It is used where the parties—the government and contractor—agree that neither party owes the other party money once the contract is terminated. There are three conditions that must be met to use a no-cost termination: (1) the contractor will accept a no-cost settlement, (2) the government did not furnish government property, and (3) there are no outstanding payments, debts due the government, or other contractor obligations.⁴ It is an administrative off-ramp that does not trigger a more involved termination settlement process.

COFDS, Deemed Denials and Interest

The COFD is the jurisdictional bridge between an agency-level dispute and any appeal under the CDA. FAR 52.2331 requires that claims be submitted to the CO and provides that the CO's decision is final and conclusive unless timely appealed under 41 U.S.C. Chapter 71. Customarily, a COFD will also describe the appeal process and timing at the appropriate BCA and COFC.

In situations where a CO refuses or fails to issue a final decision, a contractor may wish to consider filing an appeal to the relevant BCA or COFC to compel the CO to issue a final decision by a set deadline.⁵ This may be helpful when a contractor determines it would be useful to know the CO's formal position on a claim.

Components of a COFD

FAR 33.205-6 states that a COFD should include a written decision that (1) includes the CO's decision and supporting rationale for the decision reached and (2) substantially conveys the following:

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—

(A)(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

(B)(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.

However, contractors should beware that although a COFD may not necessarily strictly comply with all these criteria, it triggers (or arguably triggers) a contractor's appeal clock when issued.

COFD Timing and Deadlines

For contractor claims of \$100,000 or less, the Disputes clause requires the CO, if requested in writing, to issue a decision within 60 days after receiving the written request. For certified claims over \$100,000, the CO must, within 60 days of receipt of the written request, either issue a decision or notify the contractor of the date by which a decision will be made. The CDA similarly requires that COs issue decisions on submitted claims within a reasonable time, taking into account the size and complexity of the claim.

Agency guidance emphasizes that the CO is responsible for reviewing the pertinent facts, obtaining advice from counsel and other advisors as needed, and issuing a written decision that

complies with FAR 33.205-6. The date the CO receives the claim must be documented in the contract file because it governs both decision timing obligations and interest accrual.

Deemed Denials and the Effect of Inaction

Where the CO fails to issue a decision within the CDA's time framework or the extended date previously provided, the claim may be treated as "deemed denied" under FAR 33.205-6(g), permitting the contractor to proceed to appeal without waiting indefinitely for a written decision.

Only final CO decisions—express or deemed—are appealable under 41 U.S.C. § 7104.

CDA Interest on Claims

The CDA provides contractors with a statutory right to interest on amounts found due on a contractor's claim. Under 41 U.S.C. § 7109 and the FAR Disputes clause, interest begins to accrue on a valid claim from the date the CO receives the claim (certified, if required) until the date of payment. Even where a certification is later found to be defective, interest runs from the date of the CO's initial receipt of the claim, not from the date of correction.

CDA interest is calculated at a rate set by the U.S. Department of the Treasury Secretary for each successive six-month period, based on prevailing commercial rates for new five-year loans. DOD guidance similarly notes that once a claim is approved and designated for payment, the contractor is entitled to interest at the current Treasury Department rate. Practice-focused commentary underscores that CDA interest accrues only on properly submitted CDA claims—not on informal REAs—and can significantly enhance the value of a delayed recovery.

The Requirement to Continue Performance

In most instances where the contractor and government have a disagreement (e.g., the contractor understands the government to have changed the scope pursuant to the Changes clause but the CO believes no changes have occurred), FAR 52.233-1 *requires*

contractors to “proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.”

Contractors generally risk cure notices and even terminations for default for failure to proceed with performance, even if they are simultaneously pursuing the dispute resolution process described herein, on the basis that they have repudiated the contract. If the contractor is found to have repudiated the contract, it runs the risk that the tribunal will find that its repudiation bars recovery on its claim. Accordingly, contractors should be careful in their responses to Cure or Show Cause Notices, or similar notices, to indicate that they acknowledge their obligation to continue performance and avoid language that suggests otherwise.

Appeals to the BCA and COFC

Upon receiving an adverse COFD or after a claim has been “deemed denied,” a contractor has a critical strategic choice to make regarding its appeal. The CDA provides two mutually exclusive forums for challenging the CO’s decision: the agency BCA or COFC.

This choice is generally binding; once an appeal is filed in one venue, the contractor is typically precluded from pursuing the same claim in the other.⁶ The appeal in either forum is a *de novo* proceeding, meaning the case is considered anew on its merits, not merely a review of the CO’s decision.

BCA

A contractor may appeal a COFD to the appropriate BCA within 90 days of receipt. The primary boards are the (1) Armed Services Board of Contract Appeals, which hears disputes arising from contracts with the DOD, its components and NASA, and (2) the Civilian Board of Contract Appeals, which has jurisdiction over disputes with most civilian agencies.

A contractor must file its notice of appeal with the appropriate board within 90 days of receiving the COFD. The boards are administrative tribunals staffed by administrative judges with expertise in government contract law. The government is represented by agency counsel and retains authority to negotiate and

approve settlements. Board proceedings are generally considered to be faster, more informal and less expensive than federal court litigation, making them an attractive option for many contractors.

COFC

Alternatively, a contractor may appeal a COFD directly at the COFC. The COFC is an Article I federal court located in Washington, D.C., with nationwide jurisdiction over monetary claims against the U.S. government. A contractor has *one year* from the date of receipt of the COFD to file its complaint at the COFC. Litigation at the COFC follows the formal rules of federal court procedure, and the government is represented by trial attorneys from the U.S. Department of Justice (DOJ), who have exclusive authority to approve settlement.

This forum often involves more extensive discovery and a longer timeline than a board appeal, which typically results in higher litigation costs. The choice between the boards and COFC involves weighing factors such as the complexity of the case, value of the claim, desire for a faster resolution, and strategic considerations regarding different precedent and procedural rules between the case law at the BCA and court.

ODRA and Other Agency-Specific Dispute Processes

Although the CDA provides a uniform framework for most federal agencies, contractors must be aware that certain agencies operate under unique procedural rules. The most prominent example is the FAA, which is exempt from many standard procurement statutes and regulations and resolves disputes through its ODRA.

The ODRA process, governed by its own rules at 14 C.F.R. Part 17, differs significantly from the standard CDA pathway. Instead of submitting a claim to a CO for a final decision, a contractor initiates a “contract dispute” by filing directly with the ODRA. This filing must be made within two years of the claim’s accrual, a shorter period than the CDA’s six-year statute of limitations. The initial submission to the ODRA must be a comprehensive written package containing a detailed chronological statement of facts and

legal grounds, request for a specific remedy with a sum certain, and all pertinent supporting documentation.

A defining feature of the ODRA is its strong emphasis on alternative dispute resolution (ADR). The ODRA rules encourage informal discussions and make a Dispute Resolution Officer or an Administrative Judge available to facilitate a voluntary settlement through mediation or early neutral evaluation. ADR is the primary means of case resolution, with formal adjudication reserved for when ADR is declined or fails to resolve the matter completely. This collaborative, ADR-focused approach stands in contrast to the more formal and often adversarial process of obtaining a COFD before proceeding to a board or the COFC. Contractors with FAA agreements must navigate this distinct system to preserve their rights.

Appeals from the BCA, COFC, or ODRA

Receiving a final decision from the BCAs, COFC, or ODRA does not necessarily conclude the matter, as decisions of each forum may be appealed to a federal appellate court for review. Decisions of either the Civilian or Armed Services BCA may be appealed by either the contractor or agency to the Federal Circuit within 120 days of receiving a copy of the decision.⁷ Similarly, decisions of the COFC may be appealed to the Federal Circuit by either the contractor or DOJ within 60 days of the entry of judgment by the court.⁸ By contrast, final decisions in ODRA proceedings (formally, orders of the FAA administrator) may be appealed by the contractor to the U.S. Court of Appeals for the District of Columbia Circuit or geographical circuit in which the contractor resides or has its principal place of business—which excludes the Federal Circuit—within 60 days of the issuance of the ODRA final decision.⁹

The Rapidly Evolving Termination and Claims Landscape Under the Trump Administration

Over the past year, the Trump administration has implemented sweeping changes to the federal acquisition landscape, including aggressive budget realignment, an unprecedented federal government shutdown, and a series of executive orders and Department of Government Efficiency initiatives focused on a “cost efficiency

initiative” and review of “covered contracts and grants.” In response to these changes, agencies have increasingly relied on stop-work orders followed by terminations for convenience—often on the grounds that certain programs are no longer “essential” or aligned with evolving agency priorities. This has produced a surge in termination settlement proposals, related REAs and formal claims and has materially raised the stakes for contractors navigating the claims process.

In parallel, DOJ and agency inspectors general have signaled heightened scrutiny of cost submissions and settlement positions. As recent analysis notes, contractors and grant recipients negotiating termination settlement proposals or grant closeout packages face increased risk under the False Claims Act (FCA) where they misstate, inflate, or inadequately support claimed costs, even if the errors are inadvertent. Misrepresentation of costs, inclusion of unallowable or nonallocable expenses, or provision of incomplete information can be construed as submitting false claims or false statements in connection with a termination settlement, exposing contractors to treble damages and per-claim penalties.

For contractors, this rapidly evolving environment has several practical implications:

- *Expect More—and Faster—Terminations and Stop-Work Orders.* Executive-level “cost efficiency” initiatives and program reviews have driven agencies to terminate contracts and grants for convenience at scale and on compressed timelines, often after an initial stop-work period and with cascading impacts on subcontractors, consultants and supply chains.
- *Assume Your TSP Will Be Closely Examined.* TSPs now routinely trigger audit and FCA scrutiny, particularly where claimed costs are not clearly allowable, allocable, and reasonable under FAR Part 31 or where the supporting documentation is thin or inconsistent.
- *Treat REAs and Follow-On CDA Claims as Litigation-Ready.* In an era of mass terminations, shutdown-driven disruptions, and widespread scope changes, REAs and claims arising out of termination-related events (including stop-work periods and reprocurements) should be drafted with the same rigor applied to filings before the BCA, COFC, or ODRA, including careful quantum methodology and

cost accounting standards–compliant cost buildup where applicable.

- *Coordinate Termination Strategy with Broader Compliance.* Internal controls, recordkeeping, and training around cost accumulation, timekeeping, and subcontractor settlements are essential both to maximize recovery and mitigate FCA and audit risk in the termination and closeout phase.

In this environment, it is critical for contractors to move quickly and deliberately when a termination or stop-work order is issued: reviewing the notice, identifying the applicable termination and disputes clauses, confirming all deadlines, preserving contemporaneous cost and performance records, and mapping out a coordinated strategy for the TSP, any related REAs and potential CDA claims. Early engagement with experienced government contracts counsel can help align termination settlement strategy with the current enforcement and policy landscape, position the contractor for maximum recovery, and reduce collateral FCA and audit risks in today's termination-heavy environment.

Practical Tips for Contractors

Successfully navigating the contract dispute process requires more than just technical understanding of the law; it demands proactive management and strategic foresight. The following practical tips can help contractors protect their rights and maximize recovery.

- *Maintain Meticulous, Contemporaneous Records.* A well-documented claim is the most defensible one. Contractors should maintain detailed, contemporaneous records of all work performed, costs incurred and communications with the government, especially those concerning changes, delays, or performance issues. Where possible, contractors should establish separate cost codes to track expenses related to specific events such as stop-work orders or termination settlement activities. In situations where the government directs work outside the contract scope, documentation of the CO's direction is critical, as is documentation of any instructions from the COR and communication of those directions back to the CO. Poor recordkeeping can not

only undermine recovery but may also expose contractors to allegations of noncompliance or fraud. Contractors with insufficient records may be able to reconstruct their costs and other elements of a claim, but tribunals place far more credibility on contemporaneous records.

- *Document Actual Costs Rigorously.* The government strongly prefers the “actual cost method” for pricing adjustments. Relying on total cost methods or unsupported estimates is disfavored and invites scrutiny. The contractor’s accounting system should be capable of segregating and verifying the direct costs attributable to the government’s action. It is critical to establish new “charge codes” and otherwise document costs relating to a change.
- *Be Strategic About Timing and Approach.* The decision to submit an informal REA or a formal CDA claim is a critical strategic choice. An REA can preserve the agency relationship and allow for recovery of preparation costs, but the government faces no decision deadline. A CDA claim starts the clock on a potential decision and, crucially, on the accrual of CDA interest, but it is a more adversarial step, and its preparation costs are generally unallowable. Contractors should also carefully consider the statute of limitations as it is sometimes not entirely clear when a claim “accrued.”
- *Be Intentional with Submittals and Communications.* Because REAs and claims are substantively similar and the distinction between them can be difficult to discern, contractors should clearly and expressly state on the face of each submission whether it is intended to be an REA or a CDA claim. Moreover, unless required by the agency, REAs should not contain the CDA certification or request a final decision. Throughout the REA negotiation process, contractors should use intentional language (e.g., avoid any reference to or requests for a “final decision”). Finally, contractors should carefully consider whether a CO’s denial of an REA contains any indicia of a COFD such that it may be construed as one. Unilateral modifications should also be carefully vetted for any indicia of a COFD. If there is any doubt, request written confirmation from the CO.
- *Mitigate Costs.* Contractors have a duty to reasonably mitigate their costs during work stoppage or in winding down a contract post-termination. During a work stoppage, for

example, contractors should document efforts to reassign employees to other work or have them take training or leave. The government will not pay for costs that could have been reasonably avoided.

- *Ensure Proper Certification.* For claims exceeding \$100,000, the CDA certification must be executed precisely as stated in FAR 52.233-1(d)(2)(iii). Ensure the individual signing is authorized to bind the contractor and fully understands the attestations being made regarding the claim's good faith and accuracy.
- *Don't Forget About Nonmonetary Claims.* When an adverse action by a CO occurs that does not cause immediate financial damage, contractors should remember that a nonmonetary claim can be an important tool to solve the problem and secure meaningful relief. For example, when an assessing official or reviewing official declines to revise an unfavorable CPAR that fails to consider all relevant information or misapplies the evaluation standards of FAR 42.1503, the contractor can continue to dispute the unfavorable CPAR via a claim for nonmonetary relief explaining how the CPAR is arbitrary and capricious.

Conclusion

The landscape of government contract disputes is governed by a complex web of statutes, regulations, and procedural deadlines. A contractor's ability to recover time and money lost to government-caused changes, delays, or terminations depends on a strategic, well-documented, and timely approach. Understanding the fundamental differences between REAs, termination settlement proposals, and formal CDA claims is the first step toward protecting your rights and maximizing your recovery. Given the high stakes and potential for forfeiture of rights, contractors should engage experienced legal counsel early in the process.

Notes

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1. FAR 33.202 states that the CDA is not applicable to contracts with a foreign government or an agency of that government or an international organization or a subsidiary body of that organization if the agency determines that the application of the CDA to the contract would not be in the public interest.

2. All citations to the FAR are to the Revolutionary FAR Overhaul current as of April 2026.

3. FAR 2.101 provides that the simplified acquisition threshold is currently \$350,000.

4. FAR 49.109-4.

5. See 41 U.S.C. 7102(f)(5).

6. Note: If a contractor's initial decision to appeal to a BCA does not operate to bind it and it later pursues the COFC path, the statute's 12-month filing deadline for the COFC runs from receipt of the COFD. As a result, "trying the board first" can create timing risks for filing and may foreclose the option of later filing at the COFC if the statutory deadline expires.

7. 41 U.S.C. § 7107(a)(1).

8. 28 U.S.C. § 2522; *id.* § 2107(a), (b).

9. 49 U.S.C. § 46110(a); 14 C.F.R. § 17.43(a); 28 U.S.C. § 1295.