

Subpart 5233.2 - DISPUTES AND APPEALS

Parent topic: Part 5233 - PROTESTS, DISPUTES, AND APPEALS

5233.201 Definitions.

"Disruption", as used in this part, means the cost effect upon, or the increased cost of performing, the unchanged work due to a change to the contract.

"Delay", as used in this part with respect to contractors, claims or requests for equitable adjustments, means the time-oriented cost effects or length of a suspension in scheduled contract work or a period of time-oriented cost effects or length of a suspension in scheduled contract work or a period of time a contractor is required to perform beyond the contract delivery or completion date, allegedly due to contractually remediable Government actions or inactions. Delay can be expressed in terms of time or cost or some combination of time and cost.

5233.203 Applicability.

(b)(2) The HCA is delegated the authority to make the determination that the application of the Act to the contract would not be in the public interest.

5233.204 Policy.

5233.204-90 General.

(a) *Multi-discipline approach.* Since claims by contractors often involve difficult and complex legal, factual and financial issues requiring extensive fact-finding or analysis to determine whether or not the Government is liable, a multi-disciplined team should generally be established to analyze the claim.

(b) *Formal and constructive changes.*

(1) When DON actions alleged by the contractor, after appropriate evaluation, constitute a change, the contracting officer shall promptly formalize such constructive change(s) in writing as soon as the parties have negotiated an acceptable adjustment to the contract price and delivery clauses, irrespective of whether the contract contains the clause at FAR 52.243-7, Notification of Changes.

(2) In exceptional cases where disruption, delay or other claimed impacts are known to exist and cannot be currently resolved, the contracting activity may proceed with equitable adjustments covering the interrelated formal changes coupled with usage or qualified release. The qualified

release should specifically identify the inter-relationship with the contractor's claim such as delay or disruption impacts reserving to the contractor the right to pursue and demonstrates support for a separate equitable adjustment therefore under the contract.

(c) Rejection of "total cost" and "total time" based claims.

Claims based on "total cost" or "total time" approaches are considered only as a last resort. A contractor (claimant) filing a total cost or total time-based claim should establish that there is no other feasible, acceptable basis for computing the claimant's increased costs or delays and prove that there is no way of correlating government actions and omissions to historical cost elements or even to reasonable substantiated cost estimates.

5233.209 Suspected fraudulent claims.

The Naval Criminal Investigative Service is the agency official responsible for investigating fraud.

5233.211 Contracting officer's decision.

(a)(1) When reviewing the facts pertinent to a claim, the contracting officer shall determine if the claimant established:

(A) the existence of a legal basis for entitlement,

(B) facts meeting the elements of proof required to support the basis of entitlement, and

(C) adequate factual support for the amounts claimed.

(b) Copies of the contracting officer's decision shall receive the same distribution as the related contract and also shall be furnished to any assignee, guarantor, or surety of the contractor.