

## **Subpart 533.2 - Disputes and Appeals**

**Parent topic:** [Part 533 - Protests, Disputes, and Appeals](#)

### **533.209 Suspected fraudulent claims.**

In GSA, the agency official responsible for investigating fraud is the Office of Inspector General.

### **533.211 Contracting officer's decision.**

The contracting officer's written decision must include the paragraph at FAR 33.211(a)(4)(v). The contracting officer shall state in the decision that a contractor's notice of appeal to the Civilian Board of Contract Appeals (CBCA) should include a copy of the contracting officer's decision.

### **533.212 Contracting officer's duties when an appeal is filed.**

#### **533.212-1 General.**

- (a) The contractor may elect to appeal the contracting officer's decision by filing a notice of appeal with the Civilian Board of Contract Appeals (CBCA) or by filing suit in the United States Court of Federal Claims (COFC). In cases brought before the CBCA, GSA is represented by the GSA Office of General Counsel (OGC). In cases brought before the COFC, GSA is represented by the Department of Justice (DOJ), with the assistance of OGC.
- (b) When a case is brought before the CBCA or the COFC, OGC will notify the contracting officer of the designated litigation counsel (the GSA attorney responsible for handling the case). The contracting officer shall provide assistance to designated litigation counsel as specified in this section or as otherwise requested by designated litigation counsel.
- (c) Notwithstanding the filing of an appeal, the contracting officer retains existing authorities with respect to the administration of the contract. However, the contracting officer is not authorized to represent GSA before the CBCA or the COFC or to an attorney representing the contractor. If the contracting officer is contacted by an attorney for the contractor, the contractor's attorney must be referred to GSA's designated litigation counsel.
- (d) If a contractor appeals a decision that has been deemed to be denied in accordance with the Contract Disputes Act (CDA), the CBCA or COFC may require the contracting officer to issue a decision in accordance with the CDA at 41 U.S.C. §605.

#### **533.212-2 Procedures when an appeal is filed.**

- (a) Timeliness. If the contracting officer believes that the appeal is untimely filed, either at the

CBCA or COFC, the contracting officer shall immediately transmit to designated litigation counsel copies of documentary evidence related to timeliness, including a copy of the final decision and certified mail receipt.

(b) CBCA Appeal File.

(1) When an appeal is filed before the CBCA, the contracting officer shall prepare the file of documentary exhibits required in the Board's Rules of Procedure at <https://www.cbca.gsa.gov>, in accordance with the Board's rules governing the Appeal File.

(2) Generally, the Appeal File shall include all documents referenced in and supporting the agency's position, including, the contract, the claim, and the contracting officer's decision.

(3) The contracting officer should consult with the counsel to obtain general assistance in preparing the Appeal File, and consult with designated litigation counsel to determine requirements specific to the appeal, including possible electronic submission of the Appeal File. If the contract is voluminous and the dispute pertains only to a discrete portion of the contract, the contracting officer should consult with designated litigation counsel to determine whether inclusion of a portion of the contract is acceptable.

(4) In preparing the Appeal File, the contracting officer must adhere to the following particular requirements:

(i) The exhibits must be placed in a 3-ring binder(s), with numbered tabbed division sheets separating each exhibit.

(ii) The exhibits must be assembled in chronological order, with the oldest exhibit coming first.

(iii) If a multi-page exhibit lacks internal pagination, page numbering must be added, by hand, label, stamp or other means.

(iv) An index must be prepared including a brief description of each exhibit, the date of the exhibit, and the tab number corresponding to the exhibit.

(5) The contracting officer shall submit the proposed Appeal File, together with an electronic version of the index, to designated litigation counsel within 20 days of receiving notice of appeal, or shorter, if notified that accelerated procedures apply. Should the volume of exhibits or other factors require additional time for preparation of the Appeal File, the contracting officer should immediately notify designated litigation counsel in order that an extension may be obtained.

(6) After designated litigation counsel has reviewed the proposed Appeal File and index, the contracting officer shall make revisions as requested. Unless otherwise requested, the contracting officer shall produce five copies of the Appeal File and transmit four copies to designated litigation counsel.

(c) COFC Litigation Report.

(1) When a case is filed at the COFC, the agency is required to furnish a litigation report to DOJ. The contracting officer shall furnish all necessary information to designated litigation counsel for preparation of the litigation report.

(2) At a minimum, the information to be furnished shall include—

- (i) A narrative of the factual background underlying the dispute;
- (ii) A copy of the claim and the contracting officer's decision;
- (iii) Copies of documents related to the dispute, including copies of documents referenced in the claim or contracting officer's decision;
- (iv) Name and contact information for GSA and other personnel involved in the dispute.

(d) *Answer to Complaint.* When an appeal is filed at the CBCA or COFC, the contractor is required to file a formal pleading called a Complaint, which sets forth the allegations of fact upon which the claim is based. The Government, except for the situation discussed below, is obligated to respond to the Complaint by admitting, denying, or otherwise responding to the contractor's allegations in a formal pleading called the Answer. The contracting officer shall assist designated litigation counsel in the drafting of the Answer by advising whether the contractor's allegations of fact should be admitted or denied. If a response to an allegation in the complaint requires information in the possession of other GSA personnel, the contracting officer shall conduct sufficient research reasonably necessary in order to form a belief as to the truth of the allegation. If the information necessary to form a belief as to the truth of the allegation is not in GSA's possession, the contracting officer shall so advise designated litigation counsel. In some cases, the Government may respond to the Complaint by filing a motion to dismiss in lieu of filing an Answer. Designated litigation counsel will advise the contracting officer if a motion to dismiss will be filed.

(e) *Discovery.* After the complaint and answer are filed with the CBCA or COFC, each party will usually commence discovery. The contracting officer shall assist designated litigation counsel in responding to all discovery requests, including providing information in response to interrogatories, identifying and locating requested documents, and assisting with production of witnesses for depositions.

### **533.212-3 Preservation of Evidence.**

When an appeal is filed, the contracting officer is required to ensure that evidence in his or her control related to a dispute is preserved. In addition to physical documentation, such evidence includes electronic data stored on agency computer systems. The contracting officer shall assist designated litigation counsel with preservation of evidence by identifying relevant files containing physical documentation, including not only the contract file but files containing information related to the dispute that are maintained by other GSA organizations. The contracting officer shall also assist designated litigation counsel in identifying other GSA personnel whose electronic data, including email, word processing documents, spreadsheets, and other electronic files may include information relating to the dispute.

### **533.212-4 Settlement.**

Notwithstanding the contracting officer's claim of settlement authority, the contracting officer is not authorized to settle a case brought before the CBCA or COFC. Only OGC may authorize settlement of a case before the CBCA or concur on behalf of GSA to the settlement of a case before the COFC, subject to internal OGC approval requirements. The contracting officer shall provide requested assistance to designated litigation counsel in the negotiation, review, and approval of settlements.

## **533.214 Alternative dispute resolution (ADR).**

It is GSA's policy to use ADR to effect the prompt, efficient and just resolution of disputes. The contracting officer should refer to GSA Order CSL 5050.1, Using Alternative Dispute Resolution Techniques, and consult with designated litigation counsel on the use of ADR.