

# UNIT 69: RESOLVING DISPUTES

*October 2003*

---

<b>Duty</b>	Analyze the claim, negotiate, and (if necessary) prepare a Contracting Officer's decision.
<b>Conditions</b>	Given a contract and a claim from a contractor.
<b>Overall Standard(s)</b>	Correctly determine the validity of the claim and prepare a proper and complete decision. Protect the Government's interests while treating the contractor fairly and equitably within the terms of the contract.

---

# UNIT 69: RESOLVING DISPUTES

October 2003

## Policies

<i>FAR</i>	<i>Agency Suppl.</i>	<i>Subject</i>
8.405-7		Disputes under a Federal Supply Schedule.
8.605(c)		Disputes regarding price, quality, character, or suitability of supplies produced by Federal Prison Industries, Inc.
22.1026		Disputes regarding labor standards.
33.2		Disputes and appeals.
43.104		Notification of contract changes.
52.212-4(d)		Disputes in contract terms and conditions – commercial items.
52.233-1		Disputes.
52.243-7		Notification of changes.

## Other KSAs

1. Knowledge of Government and commercial contract law.
2. Knowledge of the Contract Disputes Act of 1978.
3. Knowledge of the types of disputes and typical grounds for disputes.
4. Knowledge of decisions by courts and Boards of Contract Appeals (BCAs).
5. Ability to encourage and facilitate cooperation among the various persons involved in resolving contract disputes.
6. Ability to communicate orally and in writing the Government's position in a negotiation or dispute.
7. Ability to analyze complex financial problems using appropriate mathematical analysis techniques.
8. Ability to deal calmly and effectively with the tight deadlines and agitated personalities often encountered in contract disagreements and disputes.
9. Ability to identify rules, principles, or relationships that can be drawn from legal precedents to help in resolving current disputes.
10. Ability to make sound, well-informed, and objective decisions based on the facts presented.

# UNIT 69: RESOLVING DISPUTES

*October 2003*

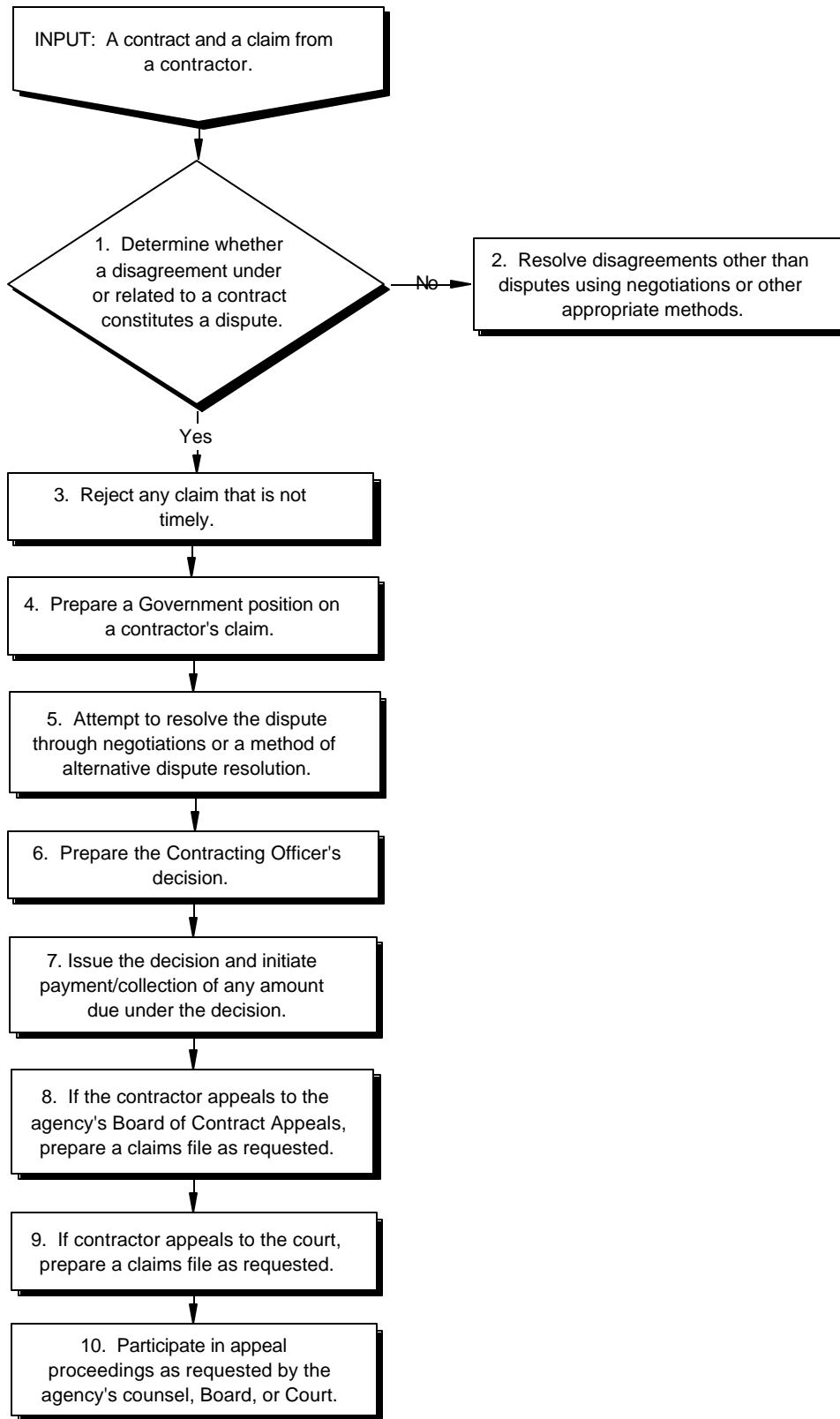
11. Ability to maintain the honesty and integrity of the acquisition process.

---

**Other Policies and References (Annotate As Necessary):**

# UNIT 69: RESOLVING DISPUTES

October 2003



# UNIT 69: RESOLVING DISPUTES

October 2003

## Tasks

## Related Standards

<p>1. Determine whether a disagreement under or related to a contract constitutes a dispute.</p>	<p>A disagreement between the contractor and Government under the contract does not become a dispute under the disputes clause until one of the parties submits a claim to the other party.</p> <ul style="list-style-type: none"><li>• A claim is a written demand or written assertion by one of the contracting parties seeking, as a matter of right:<ul style="list-style-type: none"><li>– The payment of money in a sum certain;</li><li>– The adjustment or interpretation of contract terms; or</li><li>– Other relief arising under or relating to the contract.</li></ul></li><li>• A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant.</li><li>• However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a claim under the Contract Disputes Act of 1978 until certified as required by FAR 33.207.</li><li>• A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim.</li><li>• The submission may be converted to a claim, by written notice to the Contracting Officer as provided in 33.206(a), if it is disputed either as to liability or amount or is not acted upon in a reasonable time.</li></ul>
--	---

# UNIT 69: RESOLVING DISPUTES

October 2003

Tasks	Related Standards
<p>2. Resolve disagreements other than disputes using negotiations or other appropriate methods.</p>	<p>Make every reasonable effort to resolve disagreements or requests for equitable adjustment before they become claims. For example:</p> <ul style="list-style-type: none"> <li>• With other members of the Government acquisition team (e.g., the cognizant auditor), review the contractor's proposal/request;</li> <li>• Collect other available information related to the proposal/request;</li> <li>• Develop a Government position for negotiations or other method of resolution (e.g., mediation by a neutral party);</li> <li>• Resolve the disagreement;</li> <li>• Document the agreement in a bilateral contract modification; and</li> <li>• Document the resolution process in the contract file using a price negotiation memorandum or similar document.</li> </ul>
<p>3. Reject any claim that is not timely.</p>	<p>The Contracting Officer must issue a written decision on any Government claim initiated against a contractor within 6 years after accrual of the claim, unless the contracting parties agreed to a shorter time period. The 6-year period does not apply to contracts awarded prior to October 1, 1995, or to a Government claim based on a contractor claim involving fraud.</p> <p>Contractor claims must be submitted, in writing, to the Contracting Officer for a decision within 6 years after accrual of a claim, unless the contracting parties agreed to a shorter time period. This 6-year time period does not apply to contracts awarded prior to October 1, 1995.</p> <p>Document the contract file with evidence of the date of receipt of any submission from the contractor deemed to be a claim.</p>

# UNIT 69: RESOLVING DISPUTES

October 2003

## Tasks

## Related Standards

Tasks	Related Standards
4. Prepare a Government position on a contractor's claim.	<p>As a minimum:</p> <ul style="list-style-type: none"><li>• Determine if the contractor is precluded from pursuing the claim under the Disputes clause. For example, action may be precluded because:<ul style="list-style-type: none"><li>– The matter is covered by an existing release of claims;</li><li>– Relief is barred by another contract clause;</li><li>– The requested relief (e.g., relief under P.L. 85-804) is not covered by the Disputes clause; or</li><li>– The contractor did not provide the certification at FAR 33.207(b) for a claim exceeding \$100,000.</li></ul></li><li>• With other members of the Government acquisition team (e.g., the cognizant auditor), analyze the information submitted with a contractor's claim.</li><li>• Collect other available information related to the proposal/request.</li><li>• Develop a Government position on:<ul style="list-style-type: none"><li>– Whether to accept, partially accept, or reject the claim.</li><li>– The amount of any adjustment or interest in accordance with FAR 33.208 related to the claim.</li><li>– Whether to refer the matter to the agency official responsible for investigating fraud, because the contractor is unable to support any part of the claim and there is evidence that the inability is attributable to:<ul style="list-style-type: none"><li>? Misrepresentation of fact; or</li><li>? Fraud on the part of the contractor.</li></ul></li></ul></li></ul>

# UNIT 69: RESOLVING DISPUTES

October 2003

## Tasks

## Related Standards

<p>5. Attempt to resolve the dispute through negotiations or a method of alternative dispute resolution.</p>	<p>Try to resolve all disputes by mutual agreement at the Contracting Officer's level, unless FAR 33.210 precludes such action.</p> <p>If negotiations fail or are impractical, encourage the use of alternative dispute resolution (ADR) whenever the four essential requirements can be met:</p> <ul style="list-style-type: none"><li>• Existence of an issue in controversy.</li><li>• A voluntary election by both parties to participate in the ADR process.</li><li>• An agreement on alternative procedures and terms to be used in lieu of formal litigation. However, only agree to binding arbitration in accordance with agency guidelines.</li><li>• Participation in the process by officials of both parties who have the authority to resolve the issue in controversy.</li></ul> <p>If the Contracting Officer rejects a contractor's request for ADR proceedings, the Contracting Officer must provide the contractor a written explanation citing one or more of the conditions in 5 U.S.C. 572(b) or such other specific reasons that ADR procedures are inappropriate for the resolution of the dispute.</p> <p>If a contractor rejects an agency's request for ADR proceedings, the contractor must inform the agency in writing of the contractor's specific reasons for rejecting the request.</p>
--	--



# UNIT 69: RESOLVING DISPUTES

October 2003

## Tasks

## Related Standards

Tasks	Related Standards
<p>6. Prepare the Contracting Officer's decision.</p>	<p>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 must:</p> <ul style="list-style-type: none"> <li>• Secure assistance from legal and other advisors;</li> <li>• Coordinate with the contract administration office or contracting office, as appropriate; and</li> <li>• Prepare a Contracting Officer's decision that:               <ul style="list-style-type: none"> <li>– Can be issued within the statutory time limits presented in FAR 33.211(c); and</li> <li>– As a minimum includes the following:                   <ul style="list-style-type: none"> <li>? Description of the claim or dispute.</li> <li>? Reference to the pertinent contract terms.</li> <li>? Statement of the factual areas of agreement or disagreement.</li> <li>? Statement of Contracting Officer's decision with supporting rationale sufficient, standing alone, to support the Government's position and refute any contrary position in the contractor's written claim.</li> <li>? Contractor appeal rights using language substantially as presented in FAR 33.211(a)(v).</li> <li>? Demand for payment if the decision results in a finding that the contractor is indebted to the Government.</li> </ul> </li> </ul> </li> </ul>
<p>7. Issue the decision and initiate payment/collection of any amount due under the decision.</p>	<p>Issue the decision within the statutory time limits presented in FAR 33.211(c).</p> <p>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.</p> <p>Pay the amount determined payable under the decision (if otherwise proper), less any portion already paid, without awaiting contractor action concerning any appeal. Such payment is made without prejudice to the rights of either party.</p>

# UNIT 69: RESOLVING DISPUTES

*October 2003*

<b>Tasks</b>	<b>Related Standards</b>
8. If the contractor appeals to the agency's Board of Contract Appeals, prepare a claims file as requested.	Prepare the file in accordance with any instructions provided by the BCA.
9. If contractor appeals to the court, prepare a claims file as requested.	Prepare the file in accordance with any instructions provided by the court.
10. Participate in appeal proceedings as requested by the agency's counsel, Board, or Court.	Provide any additional information and/or testimony required.