

Having Trouble Getting Paid? File a Claim – Here's How

By David Hendel

Does this scenario sound familiar: The Postal Service has changed an aspect of your performance, such as increasing mileage or the number of delivery points, stretching out the schedule, or requiring different equipment. You dutifully and diligently perform, but you don't get paid for the extra work you are doing. You submit various requests to get paid, but nothing seems to happen. Before you know it, three or four months have passed, no action has been taken to modify the contract and you still haven't been paid.

If you find yourself in this predicament and want to stop the run-around, you should consider filing a claim pursuant to the "Claims and Disputes" clause of your contract. Here's the basics on how to file a claim.

When to file a claim

Before filing a claim, give the Postal Service a reasonable opportunity to resolve the matter administratively. That means sending an invoice or payment request to the contracting officer for the contract changes, along with information showing how you have calculated the amount being sought. Typically, you are entitled to recover not only your direct costs, but also indirect costs, overhead, G&A, and profit. You are not limited to the rates and amounts in the cost categories in your Cost Worksheet, and you are entitled to make a profit on any new work, even if you are not currently making a profit on your existing contract. You may also be entitled to recover professional fees (accounting and legal) reasonably incurred in putting the claim together.

If no action has been taken on your invoice or payment request, it's time to file a claim. There's no reason why you should wait more than, say, 60 days after you have performed a change to get paid for it. Once you file a claim, you also start the running of interest on amounts that you are due.

Call it a claim

The claim letter must be sent to the contracting officer, not the administrative official who handles other matters relating to your contract. In most cases, only a contracting officer has authority to act on a claim and make changes to your contract.

While there are no magic words that must be invoked, your claim letter should state that you are filing a "claim." For example:

"This is a claim pursuant to the contract's 'Claims and Disputes' clause in the amount of \$ _____ for the cost impact of the below described changes."

Your letter should also state the period of time covered by the claim. Then, your letter should describe in detail what changes occurred and how those changes increased your cost of performance.

Request an exact amount and support it

Your claim must set out a "sum certain," which means an exact dollar amount. An exact amount means an exact amount – not a range or a stab in the dark. You must also explain how you calculated the amount, and you should provide copies of the supporting data that you used to calculate the amount due.

While your claim must seek an exact dollar amount, the claim may incorporate estimates. If any part of your claim relies on estimates, then say so. Explain what part of the claim is based on estimates and how you arrived at the estimates.

Ask for a contracting officer's final decision

Within 60 days after you file a claim, you are entitled to receive a contracting officer's final decision. While there is no requirement to mention this in your claim letter, it is good practice to do so. So, the last line of your claim letter should read:

"A contracting officer's final decision on this claim is requested within 60 days of your receipt of this letter."

This will remind the contracting officer of the time limit that applies to responding to claim letters. For claims that would reasonably require more than 60 days to review, the contracting officer can take a longer period of time. In such cases, the contracting officer must still reply within 60 days and state when a final decision will be issued. In most cases, there should be no reason why a decision cannot be issued in 60 days.

If the amount of your claim exceeds \$100,000, you will need to file a certification as to the accuracy and completeness of your claim. Consult the "Claims and Disputes" clause for the exact terms of the certification.

Next steps

Filing a claim begins the running of interest and prevents the Postal Service from continuing to give you the run-around. The Postal Service is now "on the clock," and can no longer indefinitely put off resolution of the matter.

If your claim has merit, the contracting officer should take steps to resolve it before the 60-day time period for a final decision runs. Unfortunately, on many occasions, even obviously meritorious claims are denied. One spurious reason frequently employed is that the Postal Service lacks funds to pay your claim. That rationale does not justify refusing to pay a claim and

would be thrown out by a reviewing court or board. If that's the rationale you've been given, the contracting officer probably believes your claim has merit.

The contracting officer's final decision is only "final" if you do nothing about it. You have the right to have your claim heard by either the Postal Service Board of Contract Appeals (PSBCA) or the U.S. Court of Federal Claims. If you want your claim heard by one of these tribunals, you must appeal the final decision within 90 days for PSBCA review or one year for court review. Both tribunals are independent bodies and will not afford any weight to the contracting officer's final decision when evaluating the merits of your claim.