

How to file a claim under your HCR contract

By David Hendel

Ever been in one of these scenarios: You ran extra trips months ago, but still haven't been paid? Or, the Postal Service changed the contract, which increased your performance cost? Or, the Postal Service unilaterally withheld payment from you and you do not agree the withholding was appropriate?

All of these are ripe scenarios for filing a claim under the Claims and Disputes clause of your HCR contract. On Tuesday, January 19, 2016, in conjunction with the Star Route meeting in Las Vegas, I will be presenting a seminar on this very topic. (To sign up for the seminar, see the end of this article.) In the meantime, here's an overview on the basics about filing a claim under your HCR contract.

Who?

There are two parties in every HCR claim: you (the contractor) and the Postal Service. From your end, the person who signs the claim letter must be an official of the company who is authorized to do so.

If the amount of your claim is over \$100,000, you must have an official who is authorized to bind your company sign a certification. The official must certify that the claim is made in good faith, the supporting data is accurate and complete to the best of your knowledge, and the amount requested accurately reflects the contract adjustment for which you believe the Postal Service is liable.

The Postal Service's representative is always the contracting officer. For your claim to be considered, it must be sent to the contracting officer, who is the only official authorized to consider your claim. Keep in mind that the claims process is a two-way street, so the contracting officer can assert a claim against you as well.

What?

A claim can be simple or complex, and is generally submitted as a letter to the contracting officer. Your letter must describe the basis for your claim and set out an exact dollar amount. You should also provide supporting data that backs up your claim and shows how you calculated the claim amount.

While there are no magic words that must be used, 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 from the below described events."

Following this introduction, you should explain what your claim is based on, including a complete description of any changes made by the Postal Service and how they impacted your performance cost. If your claim is for unpaid extra trips, you should identify each extra trip, either in the letter itself or an attachment. Your letter should also state the time period covered by the claim.

At the end of your letter, you may want to remind the contracting officer that a final decision is due within 60 days, so you could add the following line:

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

There are no special requirements on how to transmit your claim, but it's usually best to send it by Certified Mail – Return Receipt Requested so that you have proof of receipt. You can also send a copy by email, noting that the original is being sent by U.S. Mail.

When?

In most cases, before invoking the claims process, you should give the Postal Service a chance to resolve the matter informally. That means sending an invoice or payment request to the contracting officer for the amount you believe is due, along with information showing how you have calculated the amount being sought. If you have performed extra trips and not been paid for them, you should first submit an invoice or advise the contracting officer in writing about them before invoking the claims process.

After you have taken steps to inform the Postal Service about unpaid extra trips, late slips, or service changes, you should give the Postal Service a reasonable time to consider the matter. This is where the process often breaks down. Unless the matter is particularly complicated, it is unreasonable to wait more than 30 days from the date of your submission. If you have not been paid or notified that payment is on the way by then, it's probably time to start the claims process.

Once you file a claim, the contracting officer has 60 days to review the matter and issue a "final decision." It's not really a "final decision," because if the claim is denied you can take the matter to the Postal Service Board of Contract Appeals or federal court.

How much?

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 an exact amount plus an indefinite amount. 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, that amount may be based on 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 them.

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.

You are also entitled to interest from the date you submit your claim to the date you receive payment. And if your claim is based on an undisputed item, such as performance of an extra trip, you may be entitled to Prompt Payment Act interest from the date when payment should have been made.

Why?

Filing a claim ensures that interest will accrue on amounts you are due, requires the Postal Service to fairly consider the matter, 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 may contact you to resolve it before the 60-day time period for a final decision runs. But claims are often denied, even if they are valid, so don't be discouraged if your claim is denied and you disagree with the decision.

While the contracting officer's action is called a "final decision," it 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.

HCR claims seminar in Las Vegas

Want to learn more about the claims process? Then sign up for a new seminar I will be presenting called, "Claims and Disagreements under Postal Service HCR contracts." The seminar will be presented on January 19, 2016, at 9:00 – 10:30 a.m., at the Golden Nugget Hotel in Las Vegas, NV in conjunction with the National Star Route Mail Contractors Association's Central and Western Area regional meeting. Separate registration is required.

The seminar fee is \$195 for Star Route Association members, \$295 for non-members; a \$50 discount applies to each additional person who attends from the same company. Those wishing to register may go to <https://www.regonline.com/hcr> or contact seminar coordinator Pam Clark at 314-345-6648 or pam.clark@huschblackwell.com.

