

VOLUME 10, CHAPTER 3: “CONTRACTUAL CLAIMS”**SUMMARY OF MAJOR CHANGES**

All changes are denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [bold, italic, blue and underlined font](#).

The previous version dated [December 2013](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
0303	Added policy pertaining to the retention period of financial records (General Records Schedule, Transmittal 23 posted September 17, 2014 and Volume 1, Chapter 9).	Addition
030406.D	Added language prohibiting the transfer of contracts or any interest in the contract to another party (Title 41 United States Code, Subsection § 6304(a)).	Addition
030406.E	Clarified the policy that payments to an assignee are not subject to reduction or setoff for an assignor's liability.	Addition
030602	Added clarifying language for the settlement of contractor claims.	Addition

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CHAPTER 3

CONTRACTUAL CLAIMS

0301 GENERAL

030101. Purpose

This chapter prescribes financial management policy relating to contractual claims against the United States, which must be adjudicated by the responsible party before payment is made or denied. This chapter also addresses the assignment of claims, name change agreements and claims that fall under the Contract Disputes Act (CDA). It also includes the regulatory authority, required documentation, and the responsibilities of the agencies involved.

030102. Authoritative Guidance

Section (§) 3727 of Title 31, United States Code (U.S.C.) ([31 U.S.C. § 3727](#)) provides statutory requirements concerning the assignment of claims and [41 U.S.C. § 7101-7109](#), provide statutory requirements for contracts in dispute. Federal Acquisition Regulation (FAR), [Part 32](#), Contract Financing, and [FAR, Part 42](#), Contract Administration and Audit Services, govern claims for monies due, or to become due, under Government contracts. Specific criteria and required documentation for payment of valid claims are identified in these provisions and included in this chapter.

0302 INTERNAL CONTROLS

Internal controls must be in place to ensure that duplicative or erroneous payments do not occur (for regulatory compliance, refer to Chapter 1). Managers with responsibilities for determining entitlements, authorizing, or executing payments and collections must perform periodic (minimum annual) risk assessments to ensure that sufficient management control mechanisms are available so that Department of Defense (DoD) funds are spent appropriately and in accordance with all applicable laws and regulations. Refer to Volume 4, Chapter 14 for additional guidance related to improper payments and related risk assessments.

*0303 RETENTION

Refer to the U.S. National Archives and Records Administration (NARA), General Records Schedule (GRS), [Transmittal 23](#), Section 1.1, for additional information on document retention. Electronic record storage requires adequate controls to ensure that integrity of the digital images accurately represent the corresponding paper documentation and detect changes to an original digital image. The retention of payment documentation, both paper and electronic records, is the responsibility of the certifying officer. Also refer to Volume 1, Chapter 9 for DoD policy regarding financial records retention.

0304 ASSIGNMENT OF CLAIMS

030401. Conditions for Assignment of Claims

The [FAR, Subpart 32.8](#) prescribes policy for the assignment of claims, which refers to the transfer by the contractor of its right to be paid by the Government for contract performance to a bank, trust company, or other financing institution, as security for a loan made to the contractor.

A. The authorization to assign claims to banks, trust companies, or any financing institution (including Federal lending agencies) of monies due, or to become due, under Government contracts totaling \$1,000 or more is prescribed by [41 U.S.C. § 6305](#) and 31 U.S.C. § 3727, if not prohibited in the contract and when the requirements prescribed by 31 U.S.C. § 3727(c) are met.

B. A contract may prohibit the assignment of claims if the agency determines the prohibition to be in the Government's interest prescribed by FAR, [Subsection 32.803\(b\)](#).

C. When a contractor receives payment by the Government Purchase Card, the contractor may not assign their rights under the contract as prescribed by FAR, [Subsection 52.212-4 \(b\)](#).

D. Unless otherwise expressly permitted in the contract, the assignment must:

1. Cover all amounts payable under the contract not already paid;
2. Not be made to more than one party, except that it may be payable to a party acting as the agent or trustee for more than one party participating in the financing.

E. If an agency pays a party other than the assignee when a properly filed and approved assignment of claims is on record, it may result in Government liability to the assignee.

1. When such an error occurs, the agency remains liable to the assignee for the amount of the payment, subject to potential defenses.

2. The agency will initiate collection against the payee for any erroneous payment.

F. Refer to the Defense Federal Acquisition Regulation Supplement (DFARS), [Subpart 232.8](#) for additional guidance concerning the assignment of claims.

030402. Actions Required for Assignment of Claims

A. The assignee will forward a true copy of the Instrument of Assignment, which is a certified duplicate, or photocopy of the document with no alterations or changes, and an original and one copy of the Notice of Assignment to the disbursing officer of the designated

payment office cited in the contract. Components and agencies must maintain procedures to ensure the appropriate payment office is provided a copy of the instrument of assignment and the signed Notice of Assignment.

B. The surety, if any, will return an acknowledged copy of the Notice of Assignment to the assignee, who will forward a copy to the designated payment office disbursing officer cited in the contract.

C. If the contracting officer determines that the assignment is valid, then the designated payment office disbursing officer must acknowledge the Notice of Assignment and take the required action as follows:

1. Acknowledge and return a signed copy of the Notice of Assignment to the assignee and file the true copy of the Instrument of Assignment and the original Notice of Assignment.

2. Authorize payment to assignees only after receipt of the following assignment documents:

a. A copy of the Notice of Assignment acknowledged by the contracting officer,

b. A copy of the signed notice and a true copy of the Instrument of Assignment from the assignee, and

c. A copy of the notice acknowledged from the surety or sureties if any, or a copy received from the surety or sureties via the assignee.

D. If the contracting officer rejects the assignment, then the disbursing officer of the designated payment office returns the acknowledged notice and copy of the assignment to the assignee. The designated payment office advises the assignee that the assignment cannot be recognized for the reasons stated by the contracting officer.

030403. Letter Contracts

When entering into an assignment of claims under letter contracts, notices (with copies of assignments) are forwarded by the assignee to the contracting officer and the designated disbursing officer cited in the contract.

A. If a letter contract is assigned, then that assignment is not voided by a subsequent definitization of the contract.

B. Contracting officers and the disbursing officer of the designated payment offices accept, receipt for, and honor the assignment of the proceeds of a definitive contract superseding a letter contract.

030404. Open-End, Call-Type, or Indefinite-Delivery Type Contracts

Assignment of claims under Open-End, Call-Type, or Indefinite-Delivery Type Contracts are authorized, provided orders of \$1,000 or more are placed prior to the assignment, or the basic contract imposes a minimum obligation of \$1,000 or more. When the **designated** payment office cannot determine whether an assignment of claims applies to an individual call or order under indefinite-delivery type contracts, the **designated payment** office withholds payments until the contracting officer determines the status and validity of the assignment. Refer to **FAR Subpart 16.1** for information concerning contract types.

030405. Basic Ordering Agreements

A notice of assignment will not be acknowledged based solely on a basic ordering agreement because the basic ordering agreement is not a contract between the Government and contractor (**FAR, Subsection 16.703(a)**). The contracting officer **must** return the notice and a copy of the assignment to the assignee and advise that assignments may be acknowledged on individual orders of \$1,000 or more. Basic ordering agreements require a Notice of Assignment for each delivery order/supplemental procurement identification number. Consult the agency legal office for determination **if** there is any doubt on any of these types of contracts.

***030406.** Special Considerations for Assignments of Claims

The following are special considerations:

A. Two assignments of the same contract cannot exist without a release from the first assignment (**41 U.S.C. § 6305**). An authorization of a second assignment may **only occur upon** releasing the first assignment and notifying the original parties. Refer to FAR, Section 32.805 for further guidance.

B. If the amount of the contract is increased, then it is not necessary to execute an additional assignment.

C. The date of assignment cannot be before the date of the contract.

* D. The transfer of contracts or any interest in the contract to another party is prohibited (**41 U.S.C. § 6305(a)**).

* E. Payments to the assignee are not subject to reduction or setoff for an assignor's liability unless departments/agencies decide it is in the Government's interest, or if the contracting officer makes a determination prescribed by **DFARS, Subsection 232.803(d)**.

030407. Release of Assignment of Claims

A release of an assignment is a requirement **prior to** a further assignment or reassignment. A release **of an assignment** is also required when the contractor wishes to establish a right to

receive payments after the contractor's obligations to the assignee has been satisfied, and a balance remains due on the contract.

A. If the assignee releases the contractor from an assignment of claims under a contract, the contractor must file a written notice of release together with a true copy of the release of assignment notice to the same offices noted in 030402.A.

B. The contracting office:

1. Signs and returns a copy of the release notice to the contractor.

2. Files the true copy of the instrument of the release of assignment and the original release notice with the contracting office's copy of the contract. The contracting officer and surety's acknowledgment are required. Refer to FAR, Subsection 32.805(e) for additional guidance.

3. Signs, dates, and returns the receipt of the release notices if applicable, to the assignee.

C. The designated payment office makes remaining payments to the contractor once it receives these release documents:

1. A true copy of the instrument of release of assignment, and
2. The original and two copies of the release notice.

030408. Electronic Funds Transfer

If a contractor attempts to change the identity of the payee by changing Electronic Funds Transfer (EFT) or other information in System for Award Management (SAM) without complying with the rules governing novation agreements and assignment of claims, the payment information will be incorrect within the meaning of the "Suspension of Payment" paragraph of the EFT clause in the contract (FAR, Subsection 4.1102(c)). Assignees must be registered separately in SAM to ensure the financial institution identified in the assignment meets the requirement for EFT.

0305 NOVATION AND CHANGE OF NAME AGREEMENTS

030501. Legal considerations

A. A novation agreement is a legal instrument executed by all of the following: the contractor (transferor), the successor in interest (transferee), and the United States Government. The transferor guarantees the performance of the contract, the transferee assumes all obligations under the contract, and the Government recognizes the transfer of the contract and related assets. Refer to FAR Subpart 42.12 for additional information.

B. A change of name agreement is a legal instrument executed by the contractor and the Government that recognizes the legal name change of the contractor without affecting the original contractual rights and obligations of the parties.

C. Title 41 U.S.C. § 6305 prohibits the transfer of Government contracts. However, as prescribed by FAR, Subsection 42.1204(a), the Government may recognize another party as the successor in interest to a Government contract when the third party's interest in the contract arises out of the transfer of all the contractor's assets or the entire portion of the assets involved in performing the contract. Examples include, but are not limited to:

1. Sale of these assets with a provision for assuming liabilities,
2. Transfer of these assets incident to a merger or corporate consolidation, or
3. Incorporation of a proprietorship or partnership, or formation of a partnership.

030502. Contractor and Contracting Officer Responsibilities

The contractor provides evidence to the contracting officer responsible for processing and executing novation and change of name agreements.

A. The contracting officer enters into a bilateral modification to the contract, which changes the name of the contractor.

B. Refer all questions regarding the novation and change of name agreements to the contracting officer.

030503. Transfer of Contractual Obligation

When a contracting officer approves the transfer of a contractual obligation to another contractor, the transferor guarantees the performance of the contract by the transferee (a satisfactory performance bond may be accepted instead of the guarantee).

A. A transferee assumes all the transferor's obligations under the contract and the transferor waives all rights under the contract with the Government. Refer to the FAR, Section 42.1204 for additional guidance.

B. When it is in the Government's interest not to concur with the transfer of a contractual obligation from one company to another company, the original contractor remains under contractual obligation to the Government.

0306 CONTRACT DISPUTES

030601. Contractor Claims

[The Civilian Board of Contract Appeals \(Contract Disputes Act of 1978 \(CDA\)\)](#), (41 U.S.C. § 7101-7109) allows Federal Government contractors to file a claim with the United States Government for monetary damages and other legal remedies related to their contractual dealings.

A. The CDA waives the Government's sovereign immunity, permitting contractors to appeal a contracting officer's final decision to the appropriate board of contract appeals or file suit in the Court of Federal Claims.

B. Routine submissions for payment are not considered claims under the CDA. The submission may be converted to a claim, by written notice to the contracting officer as provided in [FAR, Subsection 33.206\(a\)](#).

C. All claims by contractors against the United States Government must be a written demand or assertion submitted to the contracting officer for a decision. A contractor asserting a claim exceeding \$100,000 must provide a certification as required by FAR, [Subsection 33.207\(c\)](#).

*030602. Claims Settlement

The Bureau of Fiscal Service administers and certifies payments from the Judgment Fund for the settlement and final judgment by the United States District Courts and on final judgments by the Court of Federal Claims (Treasury Financial Manual, Part 6, Volume 1, [Chapter 3100, 28 U.S.C. § 2517](#) and [31 U.S.C. § 1304](#)). Reimbursement of the Judgment Fund is payable from funds current at the time the award is made by the activity accountable for the contract obligation.

030603. Interest Penalties

Interest on amounts due the contractor on claims under the CDA are payable to the contractor from the date the contracting officer receives the claim, or the date payment would otherwise be due, whichever is later (FAR, [Subsection 33.208\(a\)](#)). [Title 41 U.S.C. § 7109](#) provides the authority for the Secretary of the Treasury to establish the interest rate. Refer to the [Department of the Treasury's website](#) for interest rates applicable to CDA claims. Under the CDA, only simple interest is paid, as noted in [FAR, Subsection 33.208\(b\)](#); compound interest (interest on interest) is not payable under the CDA.

030604. Questionable and Fraudulent Claims

A. If any part of a claim that is attributable to misrepresentation of fact or fraud on the part of the contractor, then the contracting officer will refer the matter to the agency official responsible for investigating fraud in accordance with [FAR, Section 33.209](#).

B. Fraudulent and questionable claims should not be paid. For additional information concerning fraudulent and questionable claims [refer to](#) Volume 5, Chapter 12.