



39 CFR Part 601

Purchasing of Property and Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising its purchasing regulations governing contract claims and disputes to modify the required language to be included in contracting officer's final decisions, and to make other clarifying updates.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert Dietz at 202-268-6088 or Susan Witt at 202-268-4833

SUPPLEMENTARY INFORMATION: The Postal Service Board of Contract Appeals has changed the address for their electronic filing website. A change to the requirement for the wording of the contracting officer's final decision for contract claims and disputes in paragraph (g)(7) of § 601.109 (now paragraph (h)(7)) is required to update the new internet address. In addition, the following updates to § 601.109 are also being included:

- In paragraph (a), the reference to use of the Supplier Disagreement Resolution (SDR) official as a mediator for alternative dispute resolution (ADR) has been delated since, in practice, pre-claim ADR before the SDR official has not been utilized;
- Paragraph (b) was revised to streamline the recitation of the Postal Service's policy regarding resolution of contractual claims, and remove the reference to ADR;

- Paragraph (c): *Applicability* was added to clarify the types of Postal Service contracts that are subject to the section;
- The designation hierarchy of paragraphs (c) through (g) was adjusted to paragraphs (d) through (h);
- Paragraph (c) (now paragraph (d)) was revised to remove references to non-regulatory internal processes for the contract file, and to remove an outdated reference to contracts awarded prior to October 1, 1995;
- Paragraph (d) (now paragraph (e)) was revised to remove an outdated reference to contracts awarded prior to October 1, 1995;
- Paragraph (g)(1) (now paragraph (h)(1)) was revised to confirm that contracting officers must have the requisite authority to resolve claims under the section;
- Non-substantive stylistic edits were made to paragraphs (g)(2), (3), (5), (6), and (8) (now in paragraph (h));
- Paragraph (g)(4) (now paragraph (h)(4)) was revised to clarify that delivery of the contracting officer's final decision can be by any method that provides evidence of receipt, not only Certified Mail™, return receipt requested; and
- Paragraph (g)(10) was deleted to remove non-regulatory internal processes.

List of Subjects in 39 CFR Part 601

Administrative practice and procedure, Government procurement, Postal Service.

Accordingly, the Postal Service amends 39 CFR part 601 as follows:

PART 601 – PURCHASING OF PROPERTY AND SERVICES

1. The authority citation for 39 CFR part 601 continues to read as follows:

Authority: 39 U.S.C. 401, 404, 410, 411, 2008, 5001-5605.

2. Section 601.109 is revised to read as follows:

§ 601.109 Contract claims and disputes.

(a) *General.* This section implements the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101–7109).

(b) *Policy.* The Postal Service intends and seeks to resolve contractual claims and disputes by mutual agreement at the level of an authorized contracting officer whenever possible. The contracting officer may also consider holding informal discussions between the parties in order to resolve the conflict before issuing any final decision.

(c) *Applicability.* This section shall apply to all claims arising out of, or relating to, any contract, including any agreement entered into under authority delegated pursuant to § 601.104 for:

(1) The procurement of property, including license or leasehold interests in real property, other than fee simple title to real property in being;

(2) The procurement of services;

(3) The procurement of construction, alteration, repair, or maintenance of real property; or

(4) The disposal of personal property.

(d) *Supplier claim initiation.* Supplier claims must be submitted in writing to the contracting officer for final decision within six years after accrual of a claim unless the parties agreed in writing to a shorter time period.

(e) *Postal Service claim initiation.* The contracting officer must issue a written decision on any Postal Service claim against a supplier within six years after accrual of a claim unless the parties agreed in writing to a shorter time

period. The six-year time period does not apply to a Postal Service claim based on supplier fraud.

(f) *Certified claims.* Each supplier claim exceeding \$100,000 must be accompanied by a certification in accordance with the supplier's contract.

(g) *Misrepresentation or fraud.* When the contracting officer determines that the supplier is unable to support any part of the claim and there is evidence or reason to believe the inability is attributable to either misrepresentation of fact or fraud on the supplier's part, the contracting officer must deny that part of the claim and refer the matter to the Office of Inspector General.

(h) *Decision and appeal—(1) Contracting officer's authority.* A contracting officer, within the limitations of his or her delegated authority, is authorized to decide or settle all claims arising under or relating to a contract subject to the Contract Disputes Act, except for:

(i) Claims or disputes for penalties or forfeitures prescribed by statutes or regulation that a Federal agency administers; or

(ii) Claims involving fraud.

(2) *Contracting officer's final decision.* The contracting officer must review the facts pertinent to the claim and issue a final decision in writing. The decision must include a description of the claim or dispute with references to the pertinent contract terms, a statement of the factual areas of agreement and disagreement, and a statement of the contracting officer's final decision with supporting rationale.

(3) *Insufficient information.* When the contracting officer cannot issue a decision because the supplier has not provided sufficient information, the contracting officer should request the required information. A supplier's failure to

timely provide the requested information is an adequate reason to deny the claim.

(4) *Furnishing decisions.* The contracting officer must furnish a copy of the written decision to the supplier, and delivery may be by any method that provides evidence of receipt.

(5) *Decisions on claims for \$100,000 or less.* If the supplier has asked for a decision within 60 days on a claim of \$100,000 or less, the contracting officer must issue a final decision within 60 calendar days of its receipt. The supplier may consider the contracting officer's failure to issue a decision within the applicable time period as a denial of its claim and may file a lawsuit or appeal on the claim.

(6) *Decisions on certified claims.* For a certified claim over \$100,000, the contracting officer must either issue a final decision within 60 days of its receipt, or notify the supplier within the 60-day period of the time when a decision will be issued. The time period established must be reasonable, taking into account the size and complexity of the claim, the adequacy of the supplier's supporting data, and any other relevant factors.

(7) *Wording of decisions.* The contracting officer's final decision must contain the following paragraph: "This is the final decision of the contracting officer pursuant to the Contract Disputes Act of 1978 and the clause of your contract entitled *Claims and Disputes*. You may appeal this decision to the Postal Service Board of Contract Appeals by filing a notice of appeal within ninety days from the date you receive this decision. You may file the notice of appeal online through the USPS Judicial Officer Department's Electronic Filing System website located at <https://usps-judicialoffice.journaltech.com/public-portal>, or by mailing or otherwise furnishing the notice of appeal to the Postal Service Board of Contract

Appeals. You also may appeal by mailing or otherwise furnishing the written notice of appeal to the contracting officer within 90 days from the date you receive this decision. The notice should identify the contract by number, reference this decision, and indicate that an appeal is intended. Alternatively, you may bring an action directly in the United States Court of Federal Claims within 12 months of the date you receive this decision.”

(8) *Additional wording for decisions of \$50,000 or less.* When the claim, or claims, denied total \$50,000 or less, the contracting officer must add the following to the paragraph: “In taking an appeal to the Postal Service Board of Contract Appeals, you may include in your notice of appeal (1) an election to proceed under the Board's small claims (expedited) procedure, which provides for a decision within approximately 120 days, or (2) an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter.”

(9) *Additional wording for decisions over \$50,000 up to \$100,000.* When the claim or claims denied total \$100,000 or less, but more than \$50,000, the contracting officer must add the following to the paragraph: “In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter.”

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