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Challenging. Redefining. Advancing.

# B2G CONNECT 2010 CONFERENCE

## CONTRACT DISPUTES

*Presented by*  
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# Contract Disputes

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- Government vs. Prime Contractor
- Prime Contractor vs. Government
- Prime Contractor vs. Subcontractor
- Subcontractor vs. Prime Contractor



# Contract Disputes

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- Informal vs. Formal
- FAR 33.204 – Government's Policy
  - Resolve issues by mutual agreement at CO's level
  - Make reasonable efforts to resolve before submission of a formal claim
  - Use ADR to the "maximum extent practicable"



# Contract Disputes

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- Informal Techniques
  - Talking
  - Emailing
  - Letter writing
  - Meetings
  - Request for Equitable Adjustment
  - More meetings
  - ADR



# CONTRACT DISPUTES

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- Alternate Dispute Resolution
  - Conciliation
  - Facilitation
  - Mediation
  - Fact-Finding
  - Minitrials
  - Arbitration
  - Use of ombudsmen
- Voluntary procedure



# Contract Disputes

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- Strategies
  - Detail damage/added costs
  - Show harm to business
  - Demonstrate unfairness
  - Provide back-up documents
  - Congressional assistance (?)
  - Involvement of attorneys (?)
  - Persistency
  - Professional



# Contract Disputes

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- Formal claims
- Contract Disputes Act
- FAR Part 33
  - Written demand
  - Sum certain/adjustment of contract terms
  - Requesting a final decision
  - Submission to CO
  - Certification for claims over \$100,000



# Contract Disputes

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## Certification Requirement

- Claim is made in good faith
- Supporting data are accurate and complete
- Amount requested reflects the amount for which contractor believes Government is liable
- Person submitting is authorized to certify on behalf of the contractor



# Contract Disputes

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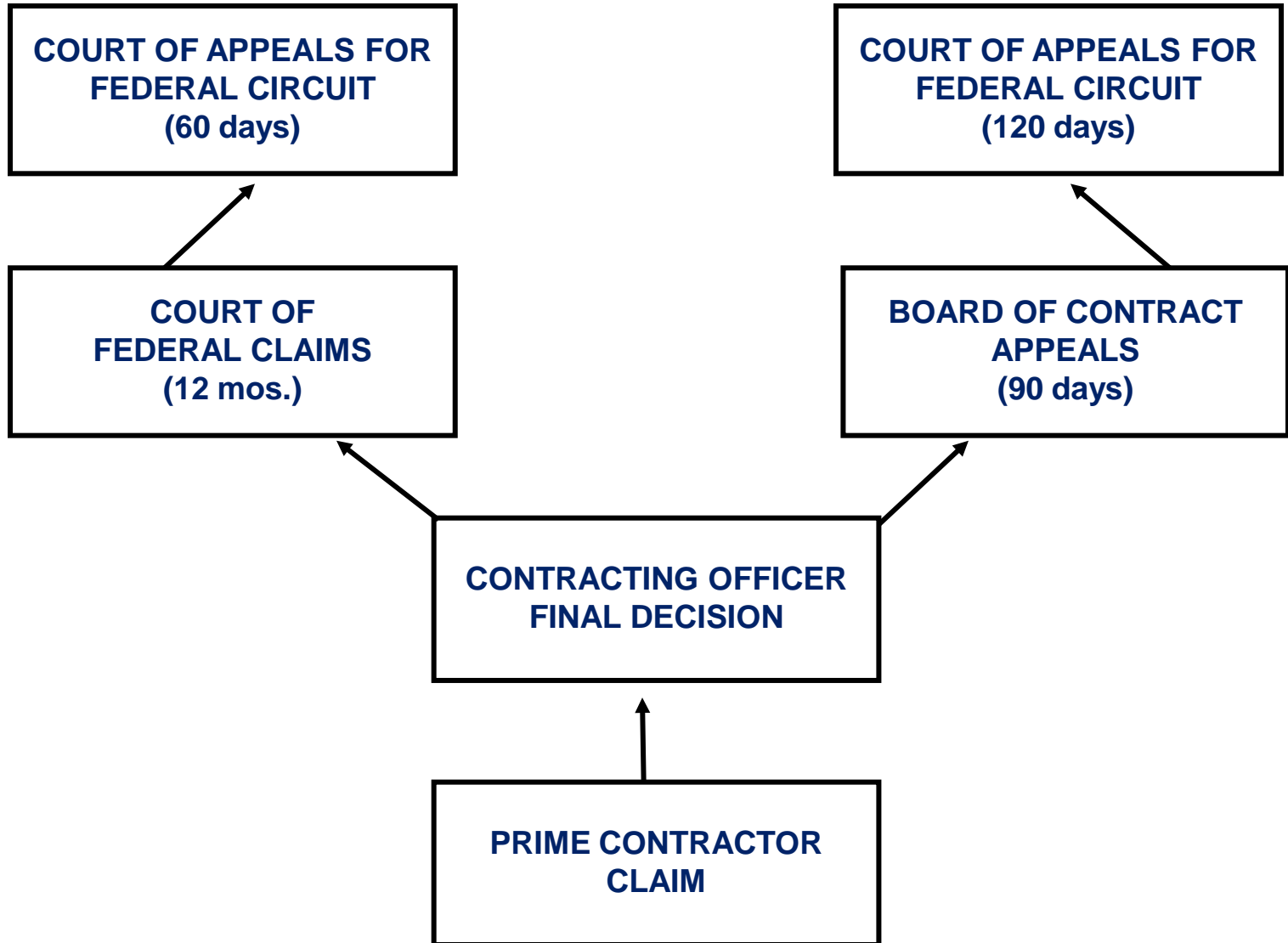
## Advantages of Submitting a Claim

- Requires CO to focus on the dispute
- Creates obligation for CO to issue “final” decision
  - Claims < \$100,000 – 60 days
  - Claims > \$100,000
    - CO must decide in 60 days or notify Contractor the date by which decision will be made
    - Standard = reasonable time
- Starts running of interest
- Gives right to access Board of Contract Appeals or Court of Federal Claims
- Opportunity for mediation or other dispute resolution
- Possible award of attorneys’ fees



# Contract Disputes

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# Contract Disputes

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- Court of Federal Claims
- Armed Services Board of Contract Appeals
  - DOD
  - NASA
- Civilian Board of Contract Appeals
  - Eight Civilian Agencies
    - GSA



# Contract Disputes

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## Subcontractor Claims

- No privity of contract with Government
- No rights under CDA
- Entirely dependent on Prime Contractor
- Subject to disputes provisions of subcontract
- Disputes decided in state or federal courts or by agreed-upon arbitration procedure



# QUESTIONS



*Whyte Hirschboeck Dudek S.C. is committed to challenging the conventional definition of what it means to be a leading law firm. WHD is continually setting new standards—moving the bar higher and higher—when it comes to professional expertise, client responsiveness and redefining how counsel can help clients anticipate challenges and capitalize on future opportunities.*



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