

Understanding claims under the Contract Disputes Act and Requests for Equitable Adjustment (REAs) is essential for government contractors. Claims and REAs are the mechanism for contractors seeking to recover additional time and/or costs from the government.

REQUESTS FOR EQUITABLE ADJUSTMENT & CLAIMS

As of May 1, 2018	Requests for Equitable Adjustment (REAs)	Contract Disputes Act (CDA) Claims
Definition	An REA is a request for compensation (time, money, or both) based on changes, suspensions of work, or other issues that may arise during contract performance.	A CDA claim is a written demand seeking the payment of money in sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to a contract.
Timing for Submission	May be submitted at any time during performance and before the contract is closed out. However, some Federal Acquisition Regulation (FAR) provisions impose specific notice requirements.	Must be filed within six years of when the claim accrued.
Recipient	The contracting officer.	The contracting officer.
Bases of Recovery	Breach of contract term/condition or FAR provision (e.g., changes, differing site condition, suspension of work).	Breach of contract term/condition, FAR provision (e.g., changes, differing site condition, suspension of work), or termination.
Recoverability of Attorney Fees	Attorney fees incurred in preparing and negotiating an REA are allowable if the REA was not submitted in preparation for filing a claim or initiating an adversarial process.	Attorney fees incurred in preparing a claim are not allowable.
Certification Requirements	REAs submitted under contracts with the Department of Defense must be certified if the claim exceeds the simplified acquisition threshold (currently \$250,000). REAs submitted to civilian agencies are not required to be certified.	Claims in excess of \$100,000 must be certified by an individual authorized to bind the contractor.
Timing of Agency's Response	An agency is not required to respond to an REA within a specified time.	If the claim is for \$100,000 or less, the contracting officer must issue a final decision within 60 days. If the claim exceeds \$100,000, the contracting officer must either issue a decision within 60 days or notify the contractor of the time within which a decision will be issued.
Challenging an Adverse Decision	A contractor may submit a revised REA or convert the REA into a claim.	A contracting officer's final decision may be appealed to a Board of Contract Appeals within 90 days or the U.S. Court of Federal Claims within one year.

PRICE ADJUSTMENTS

REAs are often confused with Price Adjustments, but the rules controlling Price Adjustments are distinct.

- Similar to REAs, but legal entitlement due to increase/decrease in labor costs when a new wage determination (WD) or collective bargaining agreement incorporated into contract.
- Recover difference between employees' current hourly rates and newly issued rates, associated labor costs (social security, unemployment taxes, etc.), and increased fringe benefits.
- Do not recover general administrative costs, overhead, or profit.
- Submit request within 30 days of a new WD being incorporated into contract.
- No Price Adjustment will be granted where escalation pricing built into bid.

KEY CONSIDERATIONS FOR REAS & CLAIMS

Governmental Authority

Although every contract has a contracting officer assigned to it, it is not uncommon for the contracting officer to interact rarely, if ever, with the contractor. Instead, directions often come from a contract specialist or contracting officer's representative. These communications may include requests to perform out of scope work, instructions to perform additional work, or other changes to the contract requirements. A contractor in this position will often view the government employee as its customer and assume the contracting officer is aware of and authorized the communications. This is a dangerous assumption. If a contractor follows the directions of the contract specialist or contracting officer's representative, incurs additional costs, and then seeks compensation for those costs, it will be extremely difficult for the contractor to recover, as in most instances only a contracting officer has the authority to change the terms of a contract or otherwise bind the government. If a contractor finds itself in this unfortunate situation, there are legal arguments that can be made to support recovery. However, it is best to avoid this issue by requesting and receiving written direction from the contracting officer before doing anything that differs from the terms of the contract.

Know Your Contract

REAs and claims often arise out of situations in which a contractor is not familiar with the terms of its contract. For example, a contractor may have a firm-fixed-price contract and assume that the government cannot reduce the price paid because of personnel absences as long as the contractor is providing quality services and the government is otherwise satisfied with performance. However, if the contract requires a specific number of personnel or labor hours, and those requirements are not met because of absences, the government may be able to reduce payment. This is just one example of the type of misunderstanding that can occur. REAs and claims may arise when a contractor was not aware of what laws applied to the contract, the qualifications that personnel must meet, how contract line item numbers are structured, and more. Understanding the contract can help a contractor avoid an REA or claim and increase the likelihood of success if a claim or REA becomes necessary.

Releases

Agencies often include releases in pay applications, modifications, settlement agreements, and contract closeout documents. A release provision in any of these documents may prevent a contractor from successfully seeking compensation or an extension of time under a contract. The release could be narrow and limit recovery from a defined set of issues or broad and prevent recovery for all claims predating the release. The government can use a release to deny an REA or a claim, and a release may lead to a swift dismissal of an appeal of a contracting officer's final decision. To protect its rights, a contractor should negotiate narrow release provisions whenever possible and carve out claims from any broad releases. And, contractors should document these negotiations to the fullest extent possible to prepare proactively for a dispute over the scope and meaning of the release. These proactive measures can make the difference between a successful and an unsuccessful claim or REA.



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