

REA vs. CLAIM

DO YOU KNOW THE DIFFERENCE?

INTRODUCTION

Requests for Equitable Adjustment (REA) and Claims are similar by definition; however, the purposes for filing either a REA or a Claim are **quite different**. It is important for a contractor to know the differences in order to understand which may be used in any given situation. Some of the differences between a REA and a Claim include:

- Consultant fees, attorney fees, profit, and overhead are recoverable under a REA, whereas they are not recoverable under a Claim.
- A REA is considered collaboration between a Government Contracting Officer and a contractor attempting to resolve an issue and reach an amicable resolution; a Claim however, is a formal dispute which may lead to litigation.
- A REA must be **certified** if it is submitted to the Department of Defense, regardless of the dollar amount submitted. A Claim however, must be certified if the claim amount exceeds \$100,000 and must additionally include specific wording and a signature by an authorized company official.
- A REA does not require a Government Contracting Officer's **final decision** but, a Claim does require a Government Contractor's final decision as a jurisdictional requirement.
- A REA does not allow recovery of interest. A Claim does allow for recovery of interest, provided that a contractor properly submits a certified Claim, and interest begins accruing on the date of certification.
- A REA can be filed as soon as a modification to a contract arises and must be filed within a year of a modification. However, a Claim must be filed within 30 days of cancellation of a stop-work order, or within 90 days in other situations. A Claim based upon defective specifications is not time-barred because the Government had knowledge of the defective specifications.

This article will discuss only a few of those differences.

DEFINITION

As referenced in the Federal Register, FAR § 2.101 "Final Rule":

"Claim" means a written demand or written assertion by one of the contracting parties seeking as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to the contract. However, a written demand or written assertion by the contractor seeking the payment of money exceeding \$100,000 is not a Claim under the Contract Disputes Act of 1978 until certified as required by the Act. (See FAR § 2.101).

A **Request for Equitable Adjustment (REA)**, on the other hand, allows a contractor to recover costs associated with any suspensions of work or terminations for convenience or other constructive changes by the owner of a project. Use of a REA is guided by a number of FAR clauses such as FAR 52.236-2, FAR 52.42-14, FAR 52.243-1,

52.249-2, and 52.212-13. (Differing Site Conditions, “Suspension of Work”, Changes – Fixed Price, Termination for Convenience, and Stop Work Order, respectively).

DISTINCTION

The time frame allowed for filing of a Claim versus filing a REA is different. When a Claim is filed, it must be in writing and must be certified if the dollar amount of the Claim exceeds \$100,000 as directed by FAR § 33.207(c). A Claim must also be submitted to a Government Contracting Officer for a final decision. REAs however, do not require certification unless they are submitted to the Department of Defense and “...exceed the simplified acquisition threshold.” (See 10 U.S.C. 2410(a)). REAs also do not require a Contracting Officer’s final decision and are not limited by the same time constraints as Claims.

A Claim must be filed within 30 days upon returning to work, if it is related to a Stop Work Order, or 90 days if related to other contract changes. Conversely, a REA should be filed as soon as there is a need to request additional time or money due to an unforeseeable Government change or delay. A REA must be filed within a year of a change to a contract i.e. an addition, deletion, substitution or change to the work required. http://www.acq.osd.mil/dpap/cpf/docs/contract_pricing_finance_guide/vol4_ch6.pdf

REAs require that costs be “allowable, allocable, and reasonable” and can include overhead, profit, and consulting fees/preparation costs. Claims do not allow for any consulting fees or preparation costs and do not allow any legal expenses to be recovered. (See FAR 31.205-47(f)(1)).

CONCLUSION

It is important to note that a REA can be converted into a Claim, but a Claim cannot be converted into a REA. The reason for this is that a REA is considered a recovery remedy for increased contract performance costs associated with unforeseen Government modifications to the original contract. A Claim is considered a “routine request for payment” and usually involves a voucher or invoice. An REA is “...anything but a ‘routine request for payment.’” (See *Reflectone, Inc. v. Dalton*, 60 F.2d 1572, 1577 (Fed. Cir. 1995)).

A contractor may, at any given point, decide to file either a Claim or a REA depending upon its situation and contractual requirements. Assistance by a consultant should be obtained to protect a contractor’s interests properly and thoroughly. The experts at Excell Consulting International, Inc. can assist and evaluate your company’s position and provide valuable and cost-effective protection for your business. With empowerment through partnership, **you can rest assured that you will be guided through the Claim and REA processes.**

In the end, you will be glad you made the call.

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TOMORROW.”**

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