

White Paper // ***Introduction to the Equitable Adjustment***

One significant difference between contracting with the government and contracting with commercial organizations is the government insistence on the right to make changes in work during contract performance. In return for this right, the government provides the contractor access to an equitable adjustment to the contract price and/or schedule whenever a change is made that will increase or decrease the cost of contract performance or impact contract deliveries or completion.

The equitable adjustment is the difference between the reasonable cost of contract performance without the change or changes and the reasonable cost, actual or estimated, of contract performance with the change or changes. It is not the difference between the proposed or negotiated cost of contract performance and the actual or reasonable cost of contract performance with the change or changes. The purpose of the equitable adjustment is to fairly compensate a contractor for the government modification of a contract. It is not to be considered a vehicle for increasing a contractor's profit or reducing his loss for reasons unrelated to a change.



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Provisions for equitable adjustment are found in various Federal Acquisition Regulation (FAR) clauses:

The primary ones to be concerned with are:

FAR 52.236-2	Differing Site Conditions
FAR 52.237-3	Continuity of Service
FAR 52.242-14	Suspension of Work
FAR 52.242-15	Stop Work Order
FAR 52.242-16	Stop Work Order - Facilities
FAR 52.242-17	Government Delay of Work
FAR 52.243-1	Changes - Fixed Price
FAR 52.243-2	Changes - Cost Reimbursement
FAR 52.243-3	Changes - Time and Material or Labor Hour
FAR 52.243-4	Changes
FAR 52.243-5	Changes and Changed Conditions
FAR 52.243-7	Notification of Changes

It is important that you review each of your contractual actions prior to final negotiation to ensure the inclusion of the appropriate clauses and establish your rights to an equitable adjustment.

Harm, Quantum and Entitlement - The contractor must show a need for an adjustment (harm); the reasonableness of the adjustment amounts requested (quantum), and the connection of these circumstances and amounts to the contract (entitlement).

Express or Formal Changes – With express or formal changes the Contracting Officer (CO) either issues a bilateral change that includes a price agreed to by both parties before execution of the change, or unilateral change issued prior to the two parties agreeing on price. During contract performance the government can order any change within the scope of the contract and the contractor must perform.



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Constructive Changes - Constructive changes on the other hand, are generally more difficult to recognize since the government is usually unaware that it has changed the contract, and for that reason, unlike the express or formal change, does not tell the contractor that a change has occurred.

Impacts on the Equitable Adjustment Process - One of the biggest factors impacting the effective utilization of the equitable adjustment process is a lack of understanding of what the contract requirements are and what efforts performed are “in-scope” and “out-of-scope” to these requirements justifying a need for an equitable adjustment.

Another impact on the equitable adjustment process is not having adequate policies, procedures and business systems that can identify equitable adjustment conditions and segregate the cost impacts. These shortcomings may directly impact the integrity of your request for equitable adjustment and limit the extent of your cost recovery.

Identifying REA Situations - It is difficult to stress how important it is to recognize equitable adjustment situations early. Early recognition makes it easier to: (1) obtain evidence of entitlement; (2) gather actual cost information; and (3) negotiate with the government.

Recognition of changed situations is the first step in preparing and submitting a request for equitable adjustment. All contractor personnel have a responsibility to recognize and promptly report changes in contract performance, which means they must be aware of the negotiated contractual requirements. Deviations from what are contractually required and events that make performance more costly, take longer, and be less efficient must be immediately recognized and the appropriate actions taken to: (1) justify an increase in contract price or change in scheduled performance; and (2) provide a defense against a claim for damages for untimely performance.



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Giving Timely Notice of a Constructive Change – Each of the changes clauses contain a notification requirement that preserves the contractors right to an equitable adjustment. In no case may a request for equitable adjustment be honored after final payment on the contract.

The government generally takes the position that no recovery is allowable unless the contractor has complied with the applicable contractual notification requirement. The boards and courts however, have taken a broader view, holding that the contractual notice requirements do not bar recovery by a contractor unless the government was prejudiced (harmed) by the contractor's failure to provide timely notice or unless the government would have taken corrective actions different from those actually taken had timely notice been given.



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