Dispute, Claim, Request for Adjustment (REA), or Request for Information (RFI)? Which Comes First and What Can I Recover?

Moderator: Mercedes Enrique, President and CEO, Custom Mechanical Systems Corp.
Speaker: Caroll Winslow, P.E., Consultant, Custom Mechanical Systems Corp.
Dispute, Claim, REA, or RFI?

-->Which Comes First & What is Recovered

Presented by:

Caroll D. Winslow, P.E.
Dispute, Claim, REA, or RFI-Which Comes First & What is Recovered

OBJECTIVE
Consider forms of making requests/demands for money/time. Choice of forms, basic elements—Notice, contract interp, docs, schedule, pricing. What should you think about? *Should we be Partnering?* Q&A
PARTNERING

First, consider is there an early, less costly solution. A solution found through partnering. Be a partnering CHAMPION.

The beginning of strife is as when water first trickles from a crack in a dam; therefore resolve the matter before it becomes worse. (Works for military construction too!) Pvb

– Partnering is relating. Seek to build a good business relationship with your partner.

– Mutual respect. Honest and open communications.
PARTNERING, continued

– Submit the lowest key request as a partner in seeking help or relief.

– Submit a higher order request or demand only if low key doesn’t suffice. Still maintain a partnering attitude.

– WE have a problem. WE can find a solution.
Claim, Dispute, REA, RFI, Help!

- **Claim:** Per FAR, a written demand by either party seeking payment of sum certain, adjustment in interpretation or other relief. (paraphrase)

- **Dispute:** A claim submitted under the CDA/Disputes Clause. Must be certified if over $100K.
  - Advantages- Starts admin process with deadlines for both parties. Could get your day in court. Chance of win and get interest. Forces Gov action.
DISPUTE, continued

- Disadvantages- This means partnering failed; must certify >$100K; Cert Cost or Pricing Data, >$700K, expensive, legal/expert costs. At Board or Court, time quickly jumps to one or more years, unless <$100K. Risk of loss or low recovery. Interest is possible, but NO prep costs allowed. Sustain an Audit by DCAA?
REQUEST FOR EQUITABLE ADJUSTMENT (REA)

- **REA** is a DOD provision; is not considered a claim, not a CDA dispute.
- Advantages: Fits with partnering; Not as costly to present; prep costs can be recovered; Probably get more timely results.
- Disadvantages: REA Certification required; Certified Cost or Pricing Data required. No interest recovery. May still have to go to CDA dispute and time gets extended, if not resolved as an REA. Audit possible.
REQUEST FOR INFORMATION (RFI)

• Early notation submitted asap when problem with plans, specs, interpretation, submittal issue, or direction is encountered.
• Indicate urgency! Communicate quickly; State deadlines for resolving.
• Make cost & time consequences clear.
• Use specified form.
CLAIMS/REQUESTS IN GENERAL

POINTS TO CONSIDER

• Give *timely* notice; Don’t wait for the next meeting. Timing could be crucial to recovery.

• Make the *case* based on *causation, liability & damages*, the three legged stool for any claim:
  - **Causation**: Base your position on the Contract plans & specs & clauses. (Causation Theory, the cause) Tell why is there a problem.
CLAIMS AND REQUESTS IN GENERAL, cont.

-Liability: Who and why is the Gov, owner, or contractor liable for causing the problem.
*Whose action, inaction, or lateness caused the problem? Who failed in a contractual DUTY?
*Who is responsible according to the contract and applicable clause(s)? Could someone outside the contract be responsible?
CLAIMS AND REQUESTS IN GENERAL, cont.

-Damages: *Estimated or actual costs of claim chargeable to the liable party. Includes the delay and delay cost, such as extended field OH or Eichleay for Home Office OH/G&A. Both direct and indirect costs.

*Calculate the labor, equipment, materials, and markups at all levels, including subs. Include impact costs and time related costs as applicable. Avoid duplication with direct costs.
CLAIMS AND REQUESTS IN GENERAL, cont.

*Two Common Pricing Methods:
- Calculated reasonable cost of the change. Directly price the cost increase. Could be actual cost or projected or both depending on timing.
- Total cost. Price the work with the claim issue and subtract the as-bid or should have cost without the issue. Use actual costs if supportable. Least favored.

Remember that any cost must be: **REASONABLE, ALLOCABLE, AND ALLOWABLE.**
REASONABLE, ALLOWABLE, ALLOCABLE

- **Allowable**: requires a cost be reasonable, allocable, and not disallowed by FAR 31.

- **Reasonable**: What a prudent person in a competitive market would be willing to pay. Compares favorably to market costs under similar conditions.

- **Allocable**: Chargeable to cost objective (claim) and to the contract & there is a benefit to contract.
WHAT TO INCLUDE IN SUBMISSION

• Supporting documents and records:
  - Plans, specs, clause references; Excerpts as needed.
  - Time-Impact Delay Schedule.
  - Pricing estimate (Certified Cost or Pricing Data, factual/judgmental info.) Actual cost info if appl.
  - Records and communications that pertain.
  - Appropriate certification statement.
SUMMARY

• Some of basics have been provided. There is more; such as, contract interpretation, negotiation, litigation, use of FOIA, pricing details, delay analysis, and case strategy.

• The points outlined above are important for both owner and contractor awareness for use in defending or offending in a claim forum.
QUESTIONS AND ANSWERS

• Thanks for your time and interest.