



PREPARING REQUESTS FOR EQUITABLE ADJUSTMENT

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Introduction

It is often necessary for a contractor to prepare Requests for Equitable Adjustment (typically abbreviated REA). A Request for Equitable Adjustment is a contractor's formal request for one or more changes that result in either extending the project completion date, increasing project cost, or both.

To be successful, a Request for Equitable Adjustment should provide the owner with enough information and detail to facilitate the owner's review and agreement that time and/or monies are due the contractor. However, this comprehensive submission requires the contractor to have the appropriate project documentation to support its request. A contractor may consider the following recommendations when making a Request for Equitable Adjustment.

1. Did a Contract Change Occur?

The contract documents (specifications and drawings) are the initial documents that a contractor will encounter for a construction project. The contract documents establish the basis for the contractor to plan its resources, including labor, materials, equipment, and subcontractors, to perform the required work. If the contractor encounters a change in the contract documents, such as differing site conditions, direction from the owner to perform changed or added work, lack of permits, or something not contemplated in the contract documents, then the contractor may be entitled to a change order and compensation, with either a time extension and/or monetary compensation.

2. Has Written Notice of Change Been Given?

Most construction contracts include a provision that requires a contractor to provide written notice to the owner when the contractor believes that a change in the contract has occurred. If the contractor is not sure that a change has occurred, but that the potential exists that a change has occurred, it is recommended that the contractor provide notice to reserve its right to make a request for a contract change order.

Sometimes, a contractor may not recognize that a change in the contract occurred until several weeks or months after the event. If a contractor thinks that a change has occurred, but is not certain, it is suggested that the contractor submit a written notice of change. An owner's representative may also acknowledge, in an email or text message, that a contract change occurred, and may also verbally acknowledge a change in the contract during a field inspection or visit. However, this verbal acknowledgement should be memorialized by the contractor and communicated to the owner in writing.

If the notice is not written and the contractor relies on hearsay, it may be difficult for the contractor to establish that notice was given and when.

3. Are Baseline Schedule and Schedule Updates Available?

The effort that a contractor uses to prepare a baseline schedule is paramount to establishing its intended plan for constructing a project. The sooner the contractor is able to establish its baseline schedule and gain acceptance of that schedule by the owner, the easier it is for the contractor to measure progress or impacts against the plan for performing contract work.

A contractor should prepare updates to the baseline schedule on a regular basis in order to establish the progress of work at specific dates. Updating progress includes updating the start date of work activities, adjusting the percent complete of work activities, adjusting the remaining duration of work activities, and updating the completion date of work activities. The relationship logic (sequencing) between activities may also require adjustment in an updated schedule because the actual sequence of work may not be the same as originally intended. If a change is made to the schedule, the contractor should communicate the adjustment and the reason it was made.

With properly updated project schedules, the contractor will have a good basis to perform a time impact analysis to establish either delay or extended performance of work that was impacted due to changes in the work.

4. Do Project Records Support the Request?

Project documentation that is maintained contemporaneously provides an excellent resource when preparing a time impact analysis and a Request for Equitable Adjustment. The project record typically includes daily reports, meeting minutes, inspection reports, submittals and approvals, letters, emails, and other correspondence. These documents serve as a memorialization of the events and actions of the parties during the project.

If possible, any additional costs and expenses incurred as a result of a change should be segregated by establishing a separate cost code that can be easily extracted from the job cost reporting documents.

Preparing a Request for Equitable Adjustment

The preparation of a Request for Equitable Adjustment requires the ability to effectively communicate with the owner in such a way to facilitate the owner's review and approval. Recommended best practices include:

- Communicate with the owner that a change to the contract has occurred.
- Define the change to the contract, referencing contract articles and/or details.
- Explain the cause of the change.
- Explain why the owner is responsible for the change.
- Identify when and how the owner was notified of the change.
- Show if and how the change affected the project progress.
- Calculate the cost of the change, including any increase in field costs due to the project schedule being extended.

Conclusion

Contractors are often asked, or required, to perform work in a manner that differs from the originally contemplated scope. Such changes may result in extending the project duration and increasing costs to complete. If the contractor can address a change proactively with the owner, providing the owner with an opportunity to review the contractor's Request for Equitable Adjustment, then the contractor will be more likely to realize a time extension and compensation for its costs. However, if the owner challenges the contractor's request, then it may be necessary for the contractor to engage an expert to assist with its pursuit of a time extension and cost adjustment. In either case, detailed and supportive project records will aid in the preparation of a Request for Equitable Adjustment and subsequent actions.

This publication is provided for your convenience to offer general information about current construction management issues. The article does not constitute legal advice. Consult legal counsel if you have specific questions.



About the Author

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