

REA or Claim: Top 3 Considerations

Contractors often ask whether they should file a Request for Equitable Adjustment (REA) or Claim against the government. The answer, of course, is “it depends.” We offer contractors our top three factors for deciding whether to file an REA or Claim.

1. Speed

Oftentimes, the most important consideration in deciding whether to file a Claim is speed. Think of filing a Claim as putting the government “on the clock.” For Claims under \$100,000, the government must issue a final decision on your claim within 60 days. For Claims over \$100,000, the government must provide a reasonable date by which it will render a final decision within 60 days.

REAs, on the other hand, do not put the government on the clock. The government has no deadline to respond to your REA. In fact, it is not unusual for the government to never respond to an REA.

Claims and appeals processes are surprisingly lengthy. The earlier you put the government on the clock, the faster you can expect a favorable resolution.

2. Relationship with the Contracting Officer

Your relationship with the Contracting Officer (CO) is a very important consideration when deciding between an REA or Claim approach. An REA is meant to short circuit a contentious Claims process. If you have a good relationship with your CO and believe a settlement is likely, an REA may be the best option.

On the other hand, if you believe the CO or Contracting Officer Representative (COR) is unreasonable or uninterested in a settlement, it often helps to file a Claim. Filing a Claim (or if the Claim is unsuccessful, an Appeal with the Boards of Contract Appeals) will trigger agency

counsel involvement. Agency counsel help increase the likelihood of settlement because the CO now has guidance from an unbiased (or at least a less biased) advisor.

3. Legal Fees v. Contract Disputes Act Interest

One of the primary benefits of filing an REA is that contractors can recover legal and consulting fees incurred for preparing the REA. Professional fees are expressly unallowable once the process of preparing a claim begins. It is important, however, not to place too much emphasis on this factor. Agencies try to avoid paying these attorney or consulting fees as part of a settlement. Oftentimes, the only way a contractor will truly recover attorneys' fees is from a favorable judgement following an unsettled claim.

Assessing Contract Disputes Act (CDA) interest should also inform decisions. A contractor is entitled to interest on its claim from the date it is filed. Interest does not run while an REA is pending. Though the CDA interest rates are typically low – the current rate is 2.652% – these charges can add up quickly on large claims. As with attorneys' fees, agencies try to avoid paying interest on Claims as part of a settlement. Favorable judgements are usually the only ways to recover interest.

There is no one size fits all answer regarding whether to file an REA or Claim. It is a decision that needs to be made based on the circumstances of the particular contractor, contracting officer and project.

