
 NATIONAL CONTRACT MANAGEMENT ASSOCIATION
SAN DIEGO

Effective Contract/Subcontract Change Management A Tool and Opportunity

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Discussion Outline

Effective Contract/Subcontract Change Management – A Tool and Opportunity

- **Where Do You Start to effectively manage your Projects/Contracts?**
 - Fully understand ALL obligations of the contract
 - Different views & interests of Buyer and Seller
 - Expectations of both parties
- **Effective Management Communications**
- **Coverage of the Changes Clause and Variations**
- **Equitable Adjustment Concepts**
- **Avoiding Disputes & Achieving Positive Results**

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Where Do You Start on ALL Projects/Contracts?

- No contract is “perfect” or “does not change” during performance – many are 5 year contracts
- Effective Contracts/Change Management starts with clear Scope of Work/Specification/Contract
 - Starts during the proposal – contract formation stage
- Clear outcomes, deliverables, and schedules
- Performance Expectations, POCs, and relationships solidly formed from the beginning
- Are there reasonable tools and protocols established for effective management? Channels for candid discussions
- Project/Contract Performance Baselines must be established to document that “change” has occurred

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Seller/Buyer Views & Interests

- Seller & Buyer’s views may be different - but interests are often similar:
 - Buyer expects performance which meet its requirements
 - Seller wants to perform services, paid on-time, secure follow-on work, and achieve a good reference for other work
- Clarity of requirements and expectations are essential to both parties
- How do you routinely communicate and discuss project status?
 - Changes arise from differences; identified & resolved
- Neither wants surprises
- Often Seller needs to identify and pursue that a “constructive change” has occurred

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Effective Management Communications

- **Effective Communications begin with RFP/Proposal**
 - Clear Statement of Work/Requirements/Expectations
 - Seller should explain or expand on areas that are unclear
- **Solicitation process may restrict/limit discussions**
 - Kickoff Meeting immediately after award to calibrate understandings and expectations
- **Periodic meetings to discuss project status**
- **Relationships must be established via different channels, functions, and levels – candid discussions**
 - Program Mgmt, Contracts/Procurement, Engineering, Project Control, Quality Assurance

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Coverage of the Changes Clause and Variations FFP Supply Clause - FAR 52.243-1 Changes

- **FAR 52.243-1 Changes – Fixed Price provides for:**
 - CO may at ANY time by written order and without notice make “Unilateral” Changes within the “General Scope” in one or more of the following:
 - Drawings, Designs or Specifications
 - Method of shipping and packaging
 - Place of delivery
- **Contractor MUST immediately proceed with changed requirements**
- **Submit a Request for Equitable Adjustment (REA) within 30 days of change order (longer if agreed)**
- **Failure to agree on REA is subject to the Disputes clause**

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Coverage of the Changes Clause and Variations FFP Supply Clause – Alternates I through V

- Note that Alternates to clause which are included in most contracts also provides for changes in:
 - Time of performance (i.e., hours of the day, days of the week, etc.) – Alt I & II
 - Place of performance of the services - Alt I & II
 - Tonnage to be shipped – Alt IV
 - Amount of Government-furnished property - Alt IV
- Note ... clauses that are included in Subcontracts from Prime Contractors ... may not be exact flow-downs
- **READ** your clauses and alternates!

Coverage of the Changes Clause and Variations Cost Reimbursement Clause - 52.243-2 Changes

- Covered items are the same as FFP Supply, including Alternates ...
- Contractor is not obligated to continue performance or incur costs beyond
 - Limitation of Cost or Limitation of Funds clause
- Caution ... Subcontract Clauses from Prime may not be the same!

Coverage of the Changes Clause and Variations Time & Material Clause or Labor Hours - 52.243-3 Changes

- Covered items in ALL Alternates are part of the basic clause ...
- CO will make an equitable adjustment in:
 1. Ceiling Price
 2. Hourly Rates
 3. Delivery Schedule
 4. Other affected Terms
- Again ... Caution ... Subcontract Clauses from Prime may not be the same!

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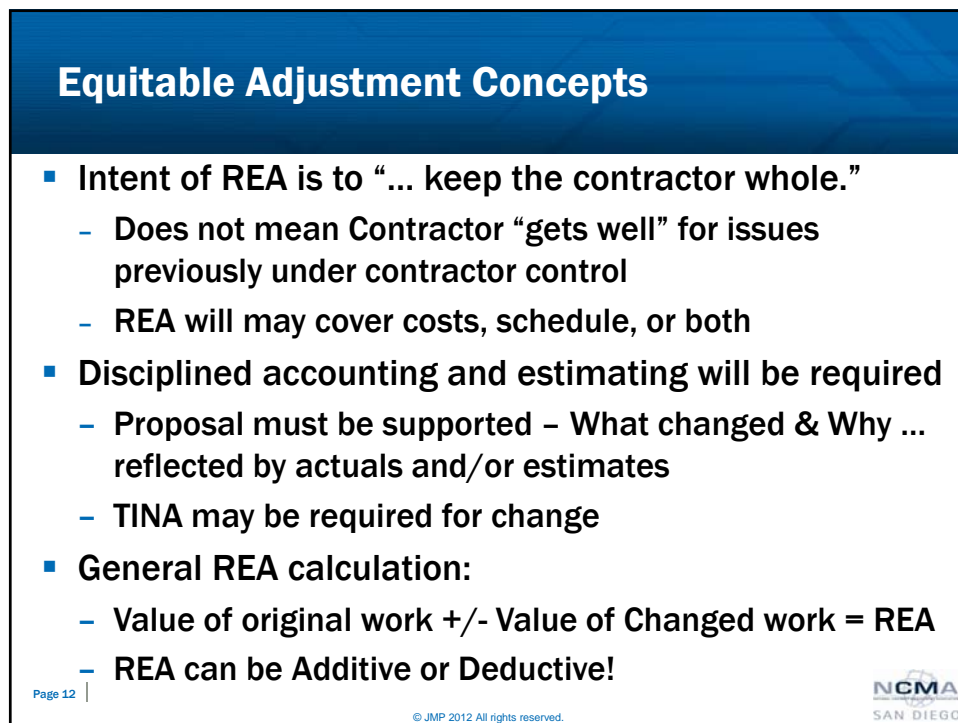
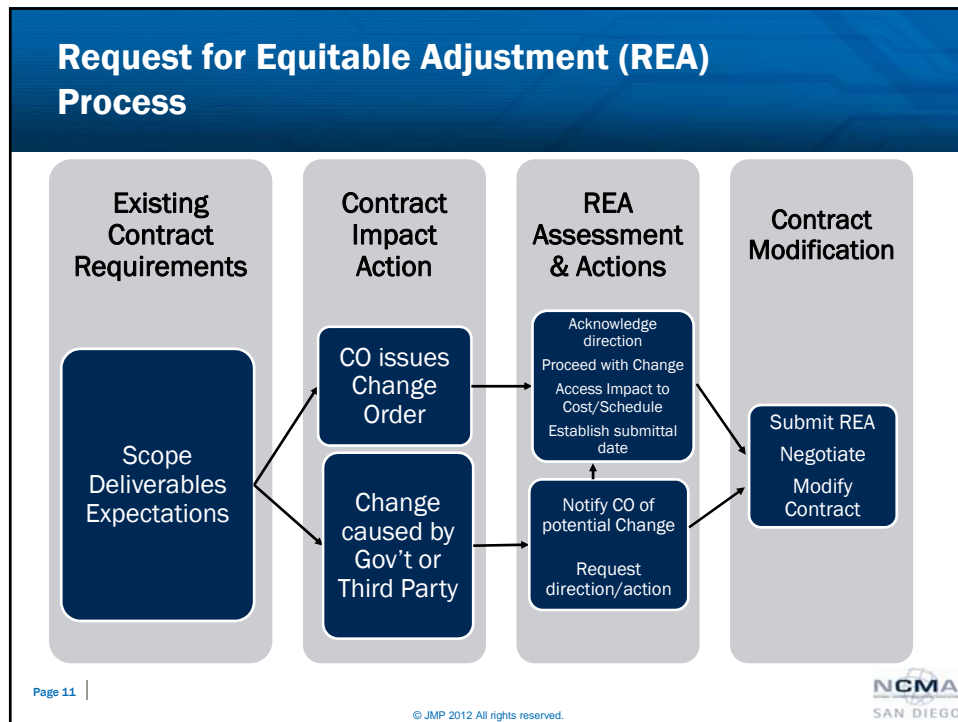
Coverage of the Changes Clause and Variations What is NOT Covered & Other Key Considerations

- Quantity (except note time of performance relates to hours)
 - Not required to proceed with performance UNTIL definitive modification is negotiated/awarded
- “Requirements” or “Ordering” contracts may have specific terms for adding quantities as needed
- READ & UNDERSTAND your specific contract clause
 - Time periods for REA may be different
 - Covered items may be different (Prime Subcontracts)
- Commercial contracts MAY NOT have “Changes Clause” – Bilateral Modifications for ANY Changes
 - No obligation to immediately proceed

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Avoiding Disputes & Achieving Positive Results

- Establish a Project/Contract Baseline
- Routine Communication of Status
- Timely Disclosure of “Potential” Changes
 - Confirmation of changed requirements/expectations
- Candid discussion of potential impacts
 - Reasonable REAs (not trying to get well on prior issues)
- Reasonably supported and accurate REAs
- Complete Understanding of “Changed” requirements
 - Similar to project/contract initiation
- Supportive of Customer’s changed needs/expectations

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Closing Thoughts - Questions

- “Unilateral” changes are easily identified/implemented
- Establish a Contract Baseline and manage to it closely to support basis for “constructive” changes
- Communicate continuously
- Proactively pursue “constructive” Changes
 - Notify Customer early of your view of “potential” change
 - Don’t implement in advance of agreement unless unilateral
- Submit timely REAs

Discussions - Questions ?

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