

CLIENT ALERT

REA or Claim? Substance Over Form

July 31, 2019

On July 17, 2019, the Federal Circuit addressed when a request for equitable adjustment (REA) constitutes a claim for purposes of CDA jurisdiction. The contractor, Hejran Hejrat Co. (HHL), submitted to the contracting officer (CO) a document entitled “Request for Equitable Adjustment,” with a sworn statement by a director of the company, requesting compensation and that the submission be “treated as a[n] REA.” The CO denied the request through a “Government’s final determination.” The ASBCA held that it lacked jurisdiction because the self-described REA was not a “claim.” The Federal Circuit reversed, finding that “there was a request for a final decision by a [CO] and a final decision by the [CO].” The Court rejected the Government’s arguments, focusing on the substance-over-form analysis: (1) a claim does not need “magic words,” so an REA can be a claim if it satisfies all of the claim requirements, and (2) even though REA did not request a CO’s final decision, the submission was sworn and requested the CO to “provide specific amounts of compensation for each alleged ground.” Thus, the Court held that the REA had the necessary formality to constitute a claim. Contractors must remain vigilant regarding the collateral consequences of these jurisdictional decisions, such as when the contractor’s 90-day appeal deadline begins to run for appealing the CO’s denial of the “REA” (claim) to the Board (or 1-year to COFC).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Stephen J. McBrady

Partner – Washington, D.C.
Phone: +1.202.624.2547
Email: smcbrady@crowell.com

Skye Mathieson

Counsel – Washington, D.C.
Phone: +1.202.624.2606
Email: smathieson@crowell.com

Michelle D. Coleman

Counsel – Washington, D.C.
Phone: +1.202.654.6708
Email: mcoleman@crowell.com

Charles Baek

Counsel – Washington, D.C.
Phone: +1.202.624.2894
Email: cbaek@crowell.com