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Instructions for the Solicitation Notice Regarding Definitization of Requests for Equitable Adjustment Related to Change Orders Under Construction Contracts

A Mandatory Reference for ADS Chapter 302

New Edition Date: 01/31/2024
Responsible Office: M/OAA/P
File Name: 302mbq_013124

I. OVERVIEW

This mandatory reference must be used for awards issued in accordance with Federal Acquisition Regulation (FAR) part 19. This document provides instructions to Contracting Officers (COs) for obtaining data on definitization of requests for equitable adjustment (REA) under construction change orders, as required by FAR 36.211(b), to include in the required solicitation notice for construction contracts expected to be awarded to a small business pursuant to FAR Part 19. For awards performed overseas, this means that the notice must be included if the CO decides to apply FAR part 19.

II. BACKGROUND

On October 28, 2022, [FAC 2022-08, FAR Case 2018-020](#) revised FAR parts 5, 12, 19, 36, and 42 to implement section 855 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115—232), codified at [15 U.S.C. 644\(w\)](#) in the Small Business Act. These FAR updates require that federal agencies provide a notice to prospective offerors in solicitations for construction contracts anticipated to be awarded to a small business pursuant to FAR part 19 (see [FAR 36.211](#)). This solicitation notice must include information about the agency's policies or practices in complying with FAR requirements related to the timely definitization of REAs on construction contracts. The notice must also include data regarding the time it took the agency to definitize REAs on construction contracts for the three-year period preceding the issuance of the notice.

Collection of construction REA definitization data was added to the Global Acquisition and Assistance System (GLAAS) and announced in a [GLAAS notice](#) issued on October 28, 2022. Specifically, whenever a modification is made to a contract, delivery/task order, blanket purchase agreement (BPA) call, or purchase order, the CO is prompted to complete two fields asking if the modification involves a construction REA and requiring entry of the timeframe for definitization of the REA, if applicable. An "Active Construction Awards Report" was created on the [USAID Enterprise Reporting Portal](#) to compile and display this data so that COs can include the required construction REA timeliness information in Section L of applicable solicitations.

III. GUIDANCE

Required Action:

COs must include the notice required by FAR 36.211 in Section L. This notice is provided in the GLAAS clause entitled "Definitization of REA for Construction Contracts." To include the clause in solicitations, the CO or contract specialist must:

- Select the clause in GLAAS entitled "Definitization of REA for Construction Contracts;"
- Complete the fill-in fields as described in the Instructions below; and

- Insert the completed GLAAS clause in applicable solicitations

An example of the completed GLAAS clause is shown below, for illustrative purposes only:

Table 1:

ACQ - 302 MBR - Definitization of REA for Construction Contracts
<p>Definitization of REA for Construction Contracts</p> <p>Notice Regarding Timely Definitization of Equitable Adjustments for Change Orders Under Construction Contracts (FAR 36.211)</p> <p>USAID definitizes requests for equitable adjustments for change orders under construction contracts in accordance with FAR 43.204. No agency-specific additional policies and procedures exist. USAID records and maintains data regarding the time required to definitize equitable adjustments associated with change orders for construction. This data is collected via the agency's Global Acquisition and Assistance System (GLAAS) and stored in the agency's internal Enterprise Reporting Portal.</p> <p>Data on the agency's past performance for the prior 3 fiscal years:</p> <p>Time to definitize after receipt of an adequate change order definitization proposal under construction contracts</p> <p>Number of change order proposals definitized under construction contracts</p> <p>30 days or less 0</p> <p>31 to 60 days 0</p> <p>61 to 90 days 1</p> <p>91 to 180 days 0</p> <p>181 to 365 days 0</p> <p>366 or more days 1</p> <p>After completion of contract performance via a contract modification addressing all undefinitized equitable adjustments received during contract performance</p> <p>Prescription</p> <p>The applicability for the required-as-applicable provision is the special situation at FAR 5.205(h) as follows:</p> <p>h) Notice regarding timely definitization of equitable adjustments for change orders under construction contracts. When the contracting officer anticipates award of a contract to a small business pursuant to a solicitation for construction, the contracting officer must transmit in the solicitation notice on the GPE information regarding definitization of equitable adjustments for change orders under construction contracts (see 36.211).</p> <p style="text-align: center;"><input type="button" value="Close"/></p>

Instructions:

- FAR 36.211(b)(1) requires COs to provide “a description of agency policies or procedures, in addition to those outlined in FAR 43.204, that apply to definitization of equitable adjustments for change orders under construction contracts.” This requirement is satisfied by the following initial text in the GLAAS clause:

“Notice Regarding Timely Definitization of Equitable Adjustments for Change Orders Under Construction Contracts (FAR 36.211)

USAID definitizes requests for equitable adjustments for change orders under construction contracts in accordance with FAR 43.204. No agency-specific additional policies and procedures exist. USAID records and maintains data regarding the time required to definitize equitable adjustments associated with change orders for construction. This data is collected via the agency’s Global Acquisition and Assistance System (GLAAS) and stored in the agency’s internal Enterprise Reporting Portal.”

Instructions for filling in the second, fillable portion of the GLAAS clause are provided below.

- FAR 36.211(b)(2) requires COs to provide “data on the agency’s past performance, for the prior three FYs, regarding the time required to definitize equitable adjustments for change orders under construction contracts. If fewer than three FYs of data are available, agencies shall provide data for the number of FYs that are available.” As USAID began collecting this information in FY 2023, fewer than three years of data is available through the three-year period ending FY 2026. COs should provide the data available in the Active Construction Awards Report on the Enterprise Reporting Portal. To access this data:
 - The CO must be logged into USAID’s intranet via VDN or GlobalProtect.
 - Access the Enterprise Reporting Portal: <https://enterprise-reporting.usaid.gov/reports/>.
 - Click “ENTER.”
 - Search for the “Active Construction Awards Report” and click on “WORKSHEET” under that report.
 - Once the worksheet downloads, open it, click on tab “latest mod,” and navigate to cell N13, entitled “Construction Equitable Adjustment.”

- Click on the drop-down arrow in the lower right portion of the cell to expand the sorting function.
- Under “Value Filters” first click on the box next to “Select All” to clear all selections, then select only the value “Y” and click on the “OK” box. This will filter down to only those construction modifications that involve a construction REA. The CO must then use this data to add the information required by FAR 36.211(b)(2).
- For each instance of a construction modification that involves a construction REA, the CO must click the “Edit” button in the GLAAS window next to the appropriate time range and add the number of actions for each timeframe:
 - 30 days or less,
 - 31 to 60 days,
 - 61 to 90 days,
 - 91 to 180 days,
 - 181 to 365 days, and/or
 - 366 days or more.

If, for example, the Active Construction Awards report shows one action involving a construction REA that took 61 to 90 days to definitize and one that took 366 days or more, the CO must enter “1” for each of those timeframes. A finalized GLAAS clause would then appear in Section L as shown above in Table 1.

302mbq_013124