CHAPTER 7 – CONTRACT ADMINISTRATION
SECTION 17 – CONTRACTOR REQUEST FOR EQUITABLE ADJUSTMENT

7.17.1 Purpose: To incorporate standard operating procedures for handling a Contractor's Requests for Equitable Adjustment, hereinafter referred to as REA's, into the Contract Administration Plan, CEHNC-1180-3-1. Establishes policy, assigns responsibilities, and provides guidance relating to handling of Contractor's Request for Equitable Adjustment to meet the needs of the Chemical Demilitarization Directorate, Contract Administration Branch.

7.17.2 Applicability: Applies to all Resident Office and Huntsville Center personnel handling Contractor's REA's.

7.17.3 References:

a. EP 415-1-260
b. FAR 52.233-1
c. Administration of Government Contracts, by Cibinic and Nash

7.17.4 Procedures: The responsibility to resolve areas of disagreement rest with the Resident Engineer hereinafter referred to as the RE. However, the RE office should fully coordinate contract interpretation issues or alleged design defects with the HNC Chem Demil group, as the issues may have programmatic implications. The RE must make a determination to either handle the REA with his Resident Office Staff or to request the assistance of the Contract Administration, Technical Support Team in Huntsville Center. Should the RE determined the need for assistance, he should provide a written request in the form of a Memorandum for Record to the Chief, Contract Administration Branch describing exactly the assistance being requested. If assistance is requested, by the RE, then the input of the Resident Office personnel will be necessary since they have first hand knowledge of the issues involved.

When a contractor submits a **request** it is important for the RE to properly identify the request as **an** REA, Dispute, or a Claim. The RE is responsible for properly identifying correspondence and reports according to the definition of REA, Dispute, or a Claim as noted below. Do not improperly label a "contractor request", i.e. **an** REA, as a Dispute or Claim. Each will require a different approach to handling as noted below. Once the issue has been identified as an REA, the RE must then analyze and examine the REA, meet with the Contractor as necessary to discuss merit and attempt to reach a resolution. After meeting with the contractor the RE will make a determination if the issue has merit. The RE's analysis of the REA is important since it is used to determine further action on the REA. A written analysis of the Contractor's REA must then be developed and will contain a complete systematic revisit of the issues raised by the contractor with the Government's position on the issues. The complete written analysis,

with the RE's recommendations, must be supported with copies of all documents referenced in the Contractor's REA attached to the analysis. A sample format for developing the REA Analysis is provided at Exhibit 7-16*1, Fact Sheet Analysis. Once the RE makes a determination on the merits of the REA, the RE shall submit the written analysis to the HNC Administrative Contracting Officer, through Contract Administration and Office of Counsel, for **concurrence** prior to sending to the Contractor. **Then the RE will send the written reply** to the contractor with complete justification of the RE's position based on the analysis, the contract plans and specifications, and meetings with the Contractor. The reply will provide the contractor with the RE's justification of his findings of merit or no merit. If complete merit is determined, the contractor is advised, in writing, that a modification will be processed upon successful negotiations of the issues. If partial or no merit is determined, then the contractor will either drop the issue or respond in writing that he is not in agreement with the RE's findings.

At this point the matter becomes a **dispute** since both parties have not reached an agreement. See also, Chapter 7, paragraphs 7.16.6, Prompt Resolution of Disputes, and 7.16.7, Review and Analysis of Disputes, for additional information on handling disputes. As soon as an issue becomes a dispute the RE must continue recording all facts, keep accurate records, and take photos as necessary to document the matter. Further attempts must be made to reconcile the issue by conducting meetings with the contractor. If the issue cannot be resolved through additional meetings then a letter should be provided to the contractor summarizing the basis of the RE's position, and indicate the efforts made to date at attempting to reach a resolution. The RE letter should indicate that if the Contractor still disagrees with the Governments position the Contractor may meet with the Huntsville ACO to further discuss the issues. If the contractor wishes to pursue the issue, the RE will coordinate with Huntsville Contract Administration, Office of Counsel, and the Huntsville Administration Contracting Officer to arrange a meeting and to provide a complete copy of the file to HNC. As an alternative to a meeting, the RE may request HNC review of the contractor's and the ACO's positions. If the issues cannot be resolved at the informal HNC ACO level, the HNC ACO will decide to either directly write the contractor or to have the RE send a letter to the contractor with the Governments position, as in the earlier letter. The contractor should then respond in writing stating his position to either drop the issue or to request a Contracting Officer Decision, hereinafter referred to as a COD.

Once the contractor responds with a request for a COD the issue then becomes a **claim**. This Claim letter is forwarded to the HNC Administrative Contracting Officer through the Chemical Demilitarization Directorate with a copy of the RE's written analysis and the RE's recommendations. Follow the procedures for forwarding Claims to the Huntsville Center as detailed in Chapter 7, paragraph 7.16.9, Forwarding Claims to Huntsville Center. The HNC Administrative Contracting Officer must then render a decision within 60 days of the date the Government receives a properly endorsed contractor's request for a COD. If the Administrative Contracting Officer determines the claim has merit, the claim is subject to negotiation and is processed as a contract

modification upon successful negotiations. If no merit is found the contractor is advised in writing and informed of his appeal rights.

7.17.5 Definitions:

a. **Contractor request, or Request for Equitable Adjustment, i.e. REA** – any written request for time, money, or other relief for which a contracting officer's decision has not been requested. **An REA** does not become a dispute until no merit is found and the Contractor does not agree with the Governments position on the issue. If merit is found then the issue becomes subject to negotiations as a modification.

b. **Dispute -** a disagreement between the Contractor and the Contracting Officer, or his Authorized Representative, or a finding of no merit on an REA where the Contractor disagrees with the RE's findings. A dispute does not become a claim unless the Contractor requests a contracting officer's decision.

c. **Claim –** a written demand by one of the contracting parties for the payment of money or other relief that meets the requirements of the Contract Disputes Act of 1978. The claim can be the result of an REA that has progressed through the stages noted above, or a claim could be submitted initially. Either must be submitted in writing to the Contracting Officer for a Contracting Officer's Decision, COD. The CO must document the contract file with evidence of the date of receipt of any submission deemed to be a claim. However, a written demand or written assertion by the contractor seeking the payment of money exceeding $100,000 is not claim under the Contracts Disputes Act of 1978 until certified as required by the "Disputes" clause of the contract, (FAR 52.233-1, Disputes). A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act.

7.17.6 Review and Analysis of REA – prompt review by the Resident Engineer and taking timely action is required by obtaining all pertinent and relevant facts for an objective review and analysis of the merits of the REA. A determination must be made on the adequacy of the information submitted by the contractor. If additional information is needed the contractor should be given a deadline in writing of approximately 10 days to submit further information as requested by the Resident Engineer. Coordinate with all Resident Office personnel who might have been involved with the REA issues. Also, the Resident Office should review and collect all relevant shop drawings and letters associated or referenced in the REA. Once all the pertinent and relevant data and facts have been assembled, the Resident Engineer and his staff can objectively analyze the issues, develop the written analysis, and determine a course of action. The course of action will either be to recognize merit or a finding of no merit after meetings with the Contractor to discuss the merits of the issues. If merit is found then the contractor is informed a modification will be issued subject to successful negotiations. If no merit is found then the contractor is informed in writing and the issue becomes a dispute as noted above. If the contractor requests a COD then follow the procedures already identified in

Chapter 7, Section 16.9 of the Contract Administration Plan entitled Forwarding Claims to Huntsville Center.

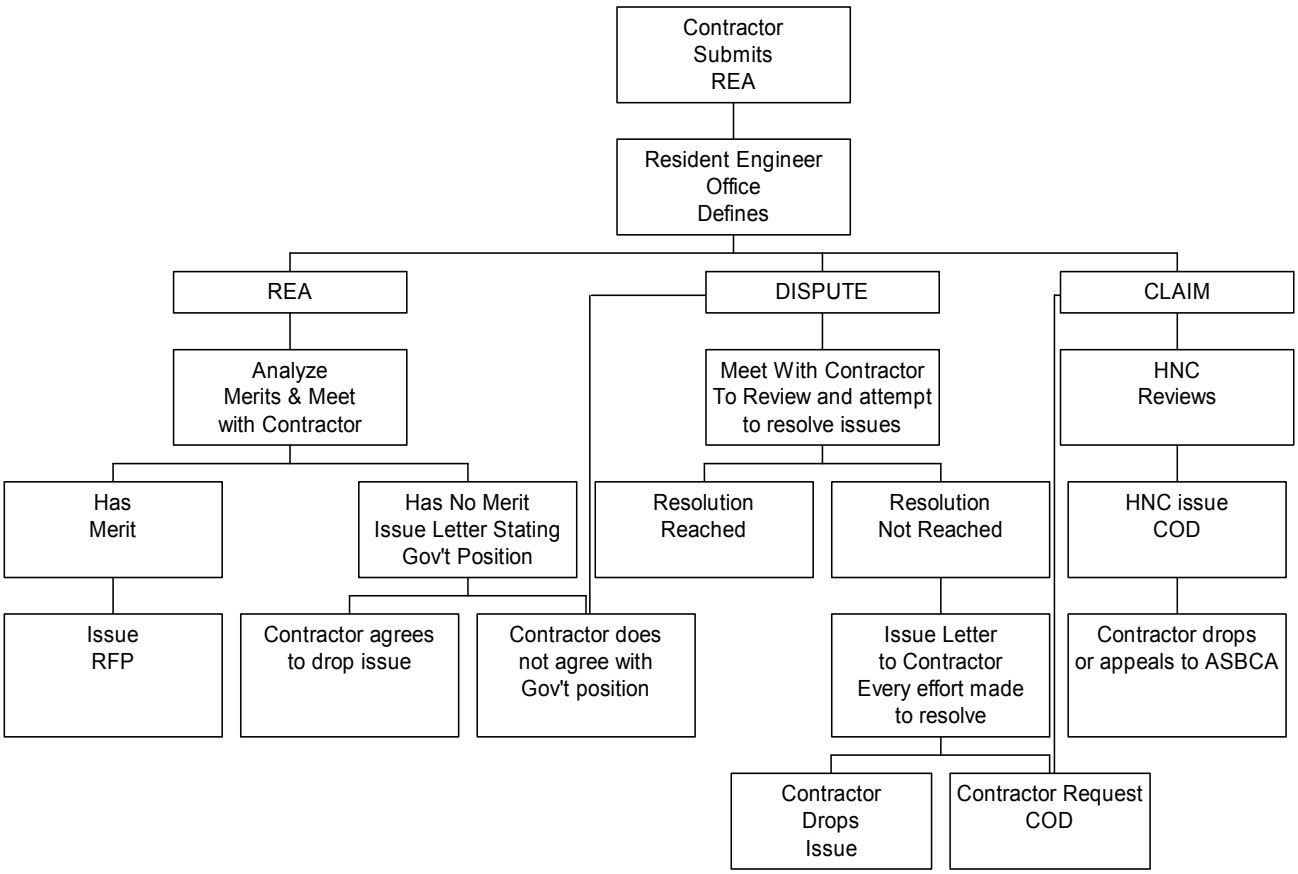

Exhibit 7-17*1 REA Flow Chart