



Waste Treatment Plant Project



2016 Supply Chain Collaboration Event

WTP - EQUITABLE ADJUSTMENT MANAGEMENT

(Changes, REAs, Claims)

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WTP-EAM

Workshop: Ground Rules



- Collaborative and interactive
- Mutual Respect
- Everyone has a voice
- Create an Equitable Adjustment Management (EAM) timeline that embodies the *Subcontract / Purchase order (SC/PO)* terms and conditions.

EAM Purpose:

- Establish an EAM awareness through a common understanding of SC/PO Changes, REAs and Claims.

EAM Scope:

- Define the terms Change, REA, and Claim.
- Develop the unique aspects of each.
- Determine how they interrelate along the EAM time-line.

EAM Outcome:

- Timely settlement of REAs and Claims through fair and equitable SC/PO adjustments.

WTP-EAM

WTP Project Needs



Voice of the Customer	SC/PO Drivers	EAM Tools
<p>Develop change controls and awareness that improves the timely resolution of changes, both fairly and equitably.</p>	<p>GC-32/GC-5 Changes</p>	<p>Change Tracking</p> <p>Documentation of the Change Impact</p> <p>Realistic Proposals and Evaluations</p> <p>Equitable Approach</p> <p>Timely Resolution</p>
	<p>GC-16 Differing Site Conditions</p>	
	<p>GC-31/GC10 Excusable Delays</p>	
	<p>GC-38/GC-22 Suspension</p>	
	<p>SC-18/GC-6 Pricing of Adjustments</p>	
	<p>GC-43/GC34 Disputes/Dispute Resolution</p>	

WTP-EAM PRESENTATION & WORKSHOP



Presentation:

1. **(Change) Types of changes, remedies, notice, and timeline to submit REA.**
2. (REA) The submission, evaluation, and negotiation of change impact to an SC/PO and the time issues impacting equitable adjustment settlements.
3. **(Claim) Present the remedy for failure to equitably agree on the impact of changes.**

Workshop:

1. **Scenario on common issues relating to changes.**
2. Scenario on the timeline from receipt of a change to the parties achieving an equitable settlement.
3. **Scenario on failure to reach an equitable adjustment.**
4. Create a Equitable Adjustment model that establishes realistic timeline goals and expectations for effective EAM.

CHANGES

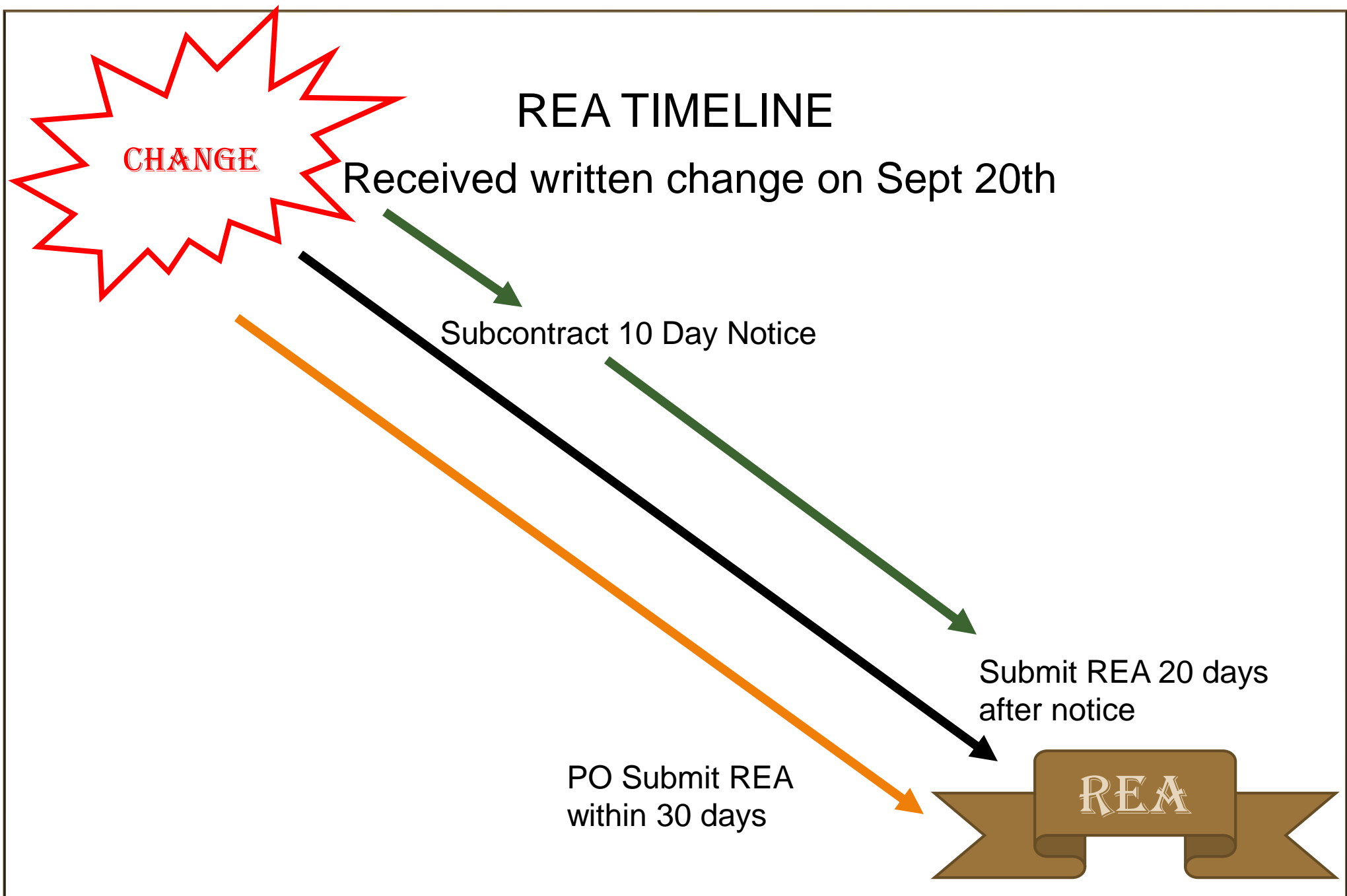
BNI Changes Clause

- BNI may direct changes at any time within the general scope of the PO GC-5 or Subcontract GC-32 clauses.
- If the change causes an increase or decrease in the cost of or the time required to perform the work, the remedy is an equitable adjustment.
- All changes must be in writing and issued by the BNI Authorized Representative.
- Any request for equitable adjustment must be submitted within 30 days from the date of receipt of the change.

CHANGES CLAUSE – REA Timeline

1. When can BNI issue a change under the changes clause _____?
2. Subcontractor/Supplier assesses the impact on cost or time to perform the work.
(GC-32 requires ___ day notice of intent to submit an REA)
3. If there is an impact, Subcontractor/Seller submits its request for equitable adjustment within _____ days after receipt of BUYER change notice.

WTP-EAM CHANGE SCENARIOS



BNI Changes Clause

Constructive Change

A change to a SC/PO resulting from conduct by BNI, or an act or failure to act by BNI that is not a directed change, but which has the effect of requiring the Subcontractor or Supplier to accomplish work to be performed differently from that presented in the SC/PO.

CHANGES CLAUSE – REA Timeline

1. Are Constructive Changes outlined in the BNI changes clause?
2. Supplier discovers a review comment by BNI that it perceives as a change. Supplier required to give ___ day notice from Seller's receipt of comment.
3. An act or omission by BNI that a Subcontractor perceives as a change requires ___ day notice of discovery. When is the REA submitted?

WTP-EAM CHANGE SCENARIOS



CONSTRUCTIVE CHANGE TIMELINE

CHANGE

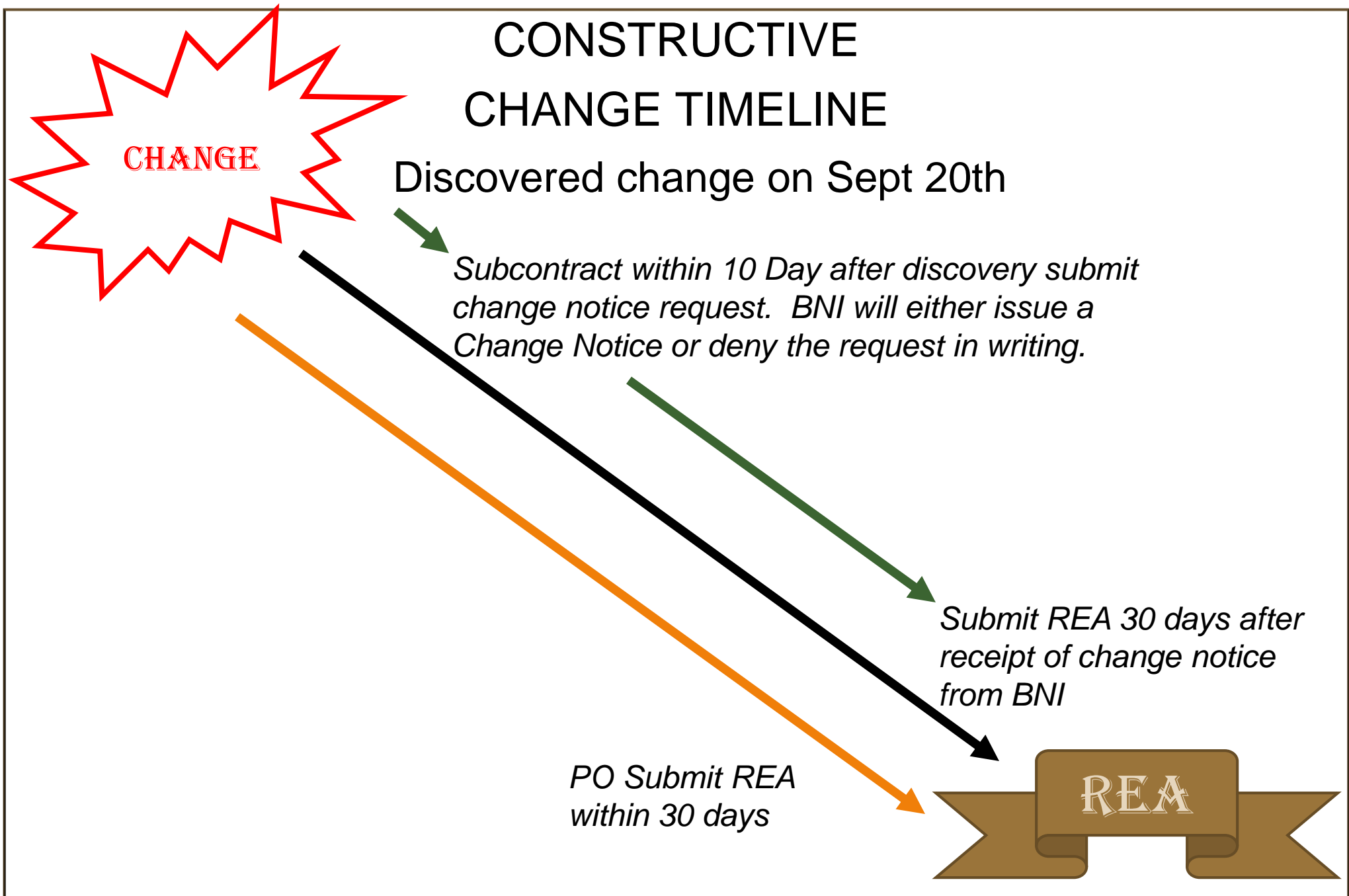
Discovered change on Sept 20th

Subcontract within 10 Day after discovery submit change notice request. BNI will either issue a Change Notice or deny the request in writing.

Submit REA 30 days after receipt of change notice from BNI

PO Submit REA within 30 days

REA



Remedy Granting Clause

A remedy granting clause is one that contains language that establishes the basis for resolving issues that occur under the clause.

Examples:

- *Changes (All contract types)*
- *Differing Site Conditions (Construction)*
- *Excusable Delays (All contract types)*
- *Suspensions (All contract types)*

Remedy

What is the remedy under Changes, Differing Site Conditions, and Suspensions?

An equitable adjustment shall be made and the subcontract modified accordingly.

Note: *Under suspensions, the equitable adjustment excludes profit.*

Remedy - Excusable Delay

- If CONTRACTOR determines that the delay was unforeseeable, beyond the control and without the fault or negligence of SUBCONTRACTOR, CONTRACTOR will determine the duration of the delay and will **extend the time of performance of this Subcontract by modifying the Special Condition titled "COMMENCEMENT, PROGRESS, AND COMPLETION OF THE WORK" accordingly.** Such extension shall be the sole remedy for the delay.

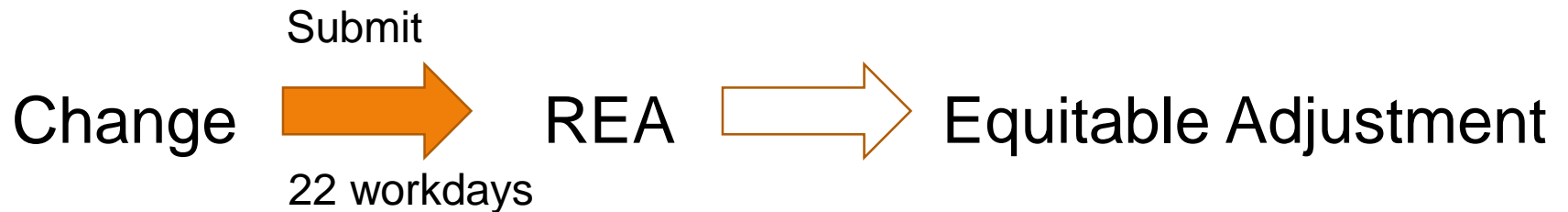
Proper Notice

Proper notification includes:

- The written notice requirement within each clause and
- Adherence to the clause entitled “Notices” at GC-27 for POs and GC-3 for Subcontracts.

TIMELINE

Upon receipt of BNI's change notice or upon discovery of a constructive change, the time for submitting an REA is 22 workdays.



= 22 workdays (or 30 calendar days)

REQUEST FOR EQUITABLE ADJUSTMENT (REA)



WHAT IS AN EQUITABLE ADJUSTMENT

Equitable – *In contract law means just or fair. Dealing fairly and equally with everyone.*

Adjustment - *An alteration to the price and/or performance period resulting from a change, a differing site condition, a suspension, an excusable delay (for time only), or the like, which compensates the subcontractor for reasonable costs, plus overhead and profit, and any impacts to the performance period.*

REA

An REA is rooted in remedy granting clauses, which means the parties are bound by the language in the clause and by other related clauses that impact the basis for an equitable adjustment.

Case in Point:

Pricing of Adjustments is found in Subcontracts at Special Condition (SC)-18 and in POs at GC-6.

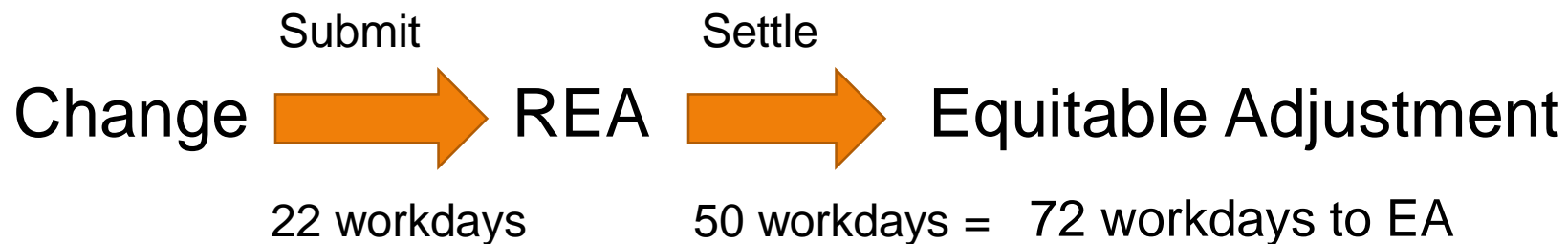
Disputes found in Subcontracts at GC-43 and Dispute Resolution in POs at GC-34.

BNI Timeline After REA Receipt

- BNI ensures REA complies with the Pricing Adjustments clause. (5 workdays)
 - Given to Technical Representative for evaluation. Report issued. (10 workdays)
 - Perform a cost and/or price analysis. Report prepared by analyst. (10 workdays)
 - Prepare a Negotiation Plan. (5 workdays)
 - Achieve an equitable agreement on price and time for performance, where applicable. (20 workdays)
- = 50 Workdays (or 63 calendar days)

TIMELINE

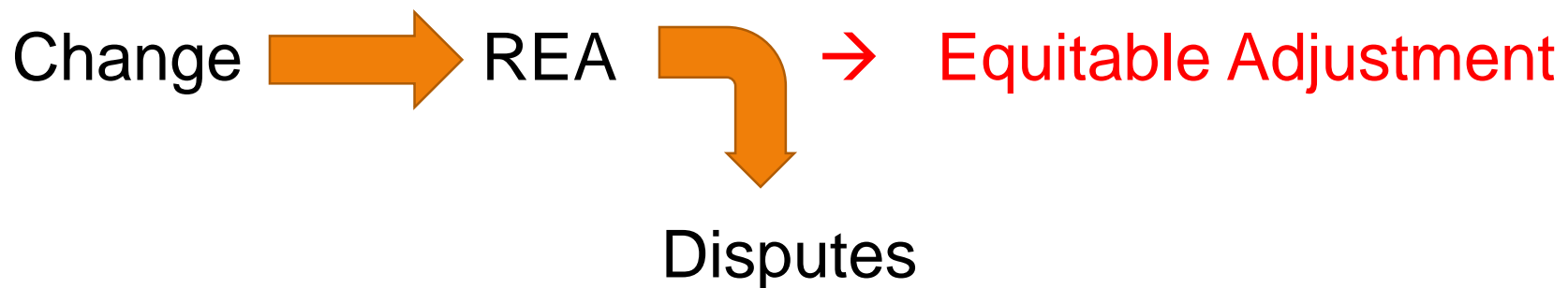
Upon receipt of BNI's change notice or upon discovery of a constructive change, the time for submitting an REA is 22 workdays.



The time for BNI to evaluate, prepare for negotiations, negotiate and reach an agreement is 50 workdays. The combined periods represent 72 workdays or 93 calendar days.

FAILURE TO AGREE

When an equitable agreement for an adjustment under the REA cannot be achieved through negotiations, it was agreed by both parties that their differences would be resolved through the disputes (resolution) clause.

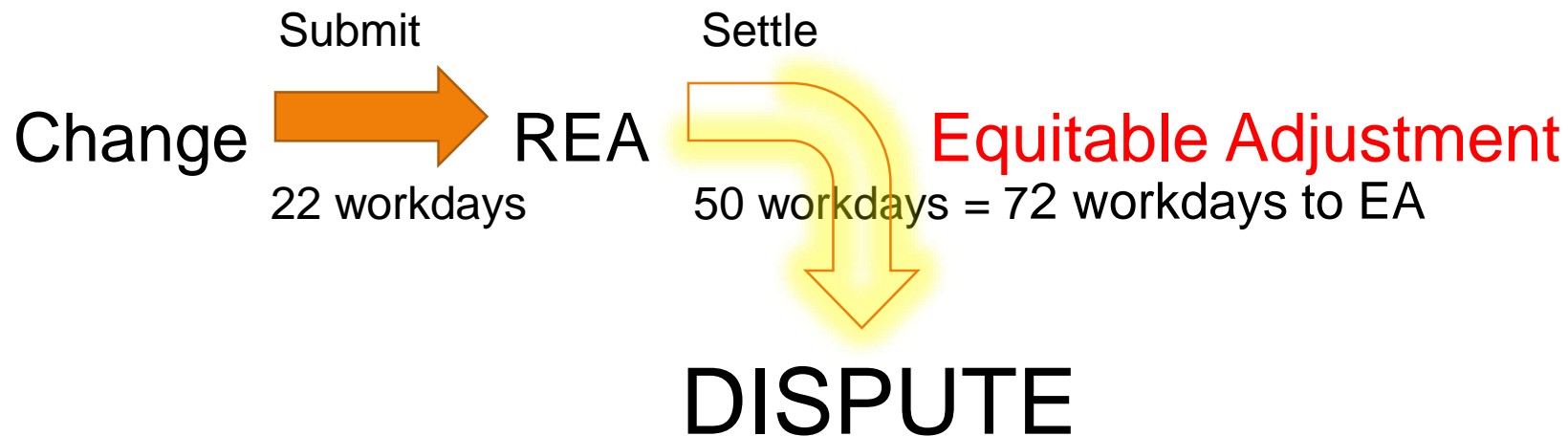


DISPUTES



FAILURE TO AGREE

When the parties cannot reach an equitable agreement for an adjustment under an REA, within a reasonable period of time, they agreed by signing the subcontract or PO to resolve their differences through the disputes clause.



DISPUTES CLAUSE

Claims exist where there is dispute between the parties.

The disputes clause says:

A voucher, invoice, other routine request for payment or request for equitable adjustment under a remedy granting clause that is not in dispute when submitted is not a claim under this clause.

The question is, when is BNI and its subcontractor or supplier in dispute?

The remaining time will be spent trying to assign a realistic timeline to disputes.