

Appendix

F

Claims Management Process

Appendix F: Claims Management Process

Introduction

A claim is a request for compensation (either additional time and/or payment) not anticipated in the terms of the original contract.

A change order that is written, negotiated, and accepted without going outside the project is not a claim.

A *disputed* change order is a claim. Disputes can arise over performance guarantees, schedule dates or any deviation from the original contract term.

Claims can be complicated based on the size, nature and the complexity of the projects. Conflicts may arise as a result of different goals and expectations of stakeholders such as the City, Consultants, and Contractors. If the conflicts are not managed successfully, disputes may arise, which impact the successful completion of the project.

Common drivers of claims are:

- changes in scope
- change orders
- errors and omissions
- inadequate project planning
- poorly developed or executed contracts
- aggressive schedules

Claims Management is the process involving the prevention, mitigation, identification and quantification, and resolution of consultant and construction contract claims, which requires effective management during the entire lifecycle of a project.

The four components of claims management are:

1. Claim Prevention
2. Claim Mitigation
3. Claim Identification and Quantification, and
4. Claim Resolution.

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1. Claim Prevention

The process starts at the pre-tender and contract development part of a project. Contract documents, project delivery plans and scope of work should include all project requirements, as after the award of contract, the chance to prevent a claim ceases to exist.

Recommended best practice is to:

- Perform Project Management responsibilities under the contract competently, promptly and prudently.
- Provide Consultants and Contractors with quality plans and/or specifications, definitive roles and responsibilities.
- Identify and manage risk exposures early and often in project delivery.
- Be pro-active in dealing with dispute situations that arise during the project delivery that could lead to claims.
- Integrate preventative measures within contracts to minimize potential sources of claims by hiring competent consultants and contractors.
- Ensure there is a contractual basis for each claim.
- Monitor project progress closely and be aware of any slippages in schedule, which could lead to a claim.
- Ensure prompt enforcement of contract clauses when delays occur.
- Resolve conflicts and misunderstanding promptly as they occur.
- Ensure good working relationships with Consultants and Contractors and communicate with them frequently.
- Employ existing industry standards, trends, and lessons learned.

2. Claim Mitigation

The best approach is to mitigate the possibilities of claims arising, is through the progression of the contract. Emphasis should be on how to mitigate claims from arising. A well-defined scope, and clear responsibilities and proper risk allocation in the contract will help to decrease the possibility of claims occurring on a project.

Recommended best practice is to:

- Ensure the Project Delivery Plan has a clear and concise description of work, a reasonable schedule, and an appropriate project delivery method for the specific type of project.
- Ensure the contract scope and specifications are written in clear and unambiguous language.
- Ensure the schedule requirements are clearly stated and developed realistically for the successful completion of the project for all parties involved.
- Use of a Risk Management Plan mitigates claims by allocating the risk between all concerned parties on the basis of which party has the most control over the risk involved.
- Ensure the proper handling of disputes. Mishandling of disputes can lead to strained relationships, delays in work, and eventually to a claim.
- Use a clearly defined decision-making process as indecision leads to delays in work, dispute, and claims.

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- Perform Constructability Reviews to assist in avoiding changes.
- Employ Request for Information (RFI) procedures. Contracts requiring Designer or Business Owner approval of shop drawings, materials of construction, RFIs and like items need a specific time-bound clause in which to provide the answer in.
- Maintain efficient and effective communication between all contractual parties.
- Maintain proper project documentation in order to easily recognize a change and to improve communication on changes between the contractual parties. Proper project documentation also provides a good defense against claims.

3. Claim Identification and Quantification

Claim Identification is performed by analyzing both the scope of work and the provisions of the contract. The identification of a claim starts with sufficient knowledge of the scope and responsibilities written in contract terms, when some activity appears to be a change in scope or terms requiring a contract adjustment. Proper identification involves an interpretation of what the contract requires, and also a documented description of the activity viewed as extra to that stated in the contract.

Once an activity is identified as a claim it will be quantified in terms of additional compensation or a time extension to the contract completion or other milestone date. Schedule and critical path analysis should be made in order to calculate the delay of the project. In addition direct and indirect costs originated from the claimed activity should also be calculated. In some circumstances, the claimed activity has an indirect effect on other aspects of the construction project, making other work more costly, changing sequences, or delaying other activities. To the extent that these indirect effects can be justified and quantified they should be properly included as part of the total cost of the claim.

Recommended best practice is to:

- Analyze the baseline scope of work as approved in the contract.
- Analyze the provisions of the contract to identify who is responsible for work to perform, especially terms relating to changes, changed conditions, schedule preparation, submittal and notices given. In many cases, claims are invalid when not made in a timely manner.
- Detail the description of work believed to be extra to the contract, where, and when it took place. Statement of why it is not covered in the contract scope, and reference to the section of the contract that supports the contention.
- Record the extra work and time delays. Time extension claims resulted due to events such as unusual weather, strikes or other force majeure items outside the contractor's control may be valid while they may not be compensable. The contract often indicates which events are compensable.
- Reach a consensus among more than one person that the activity under questions does warrant claim status. In some circumstances, where a claim may be large, seek Legal Services' advice to further support the validity of the claim.
- Project documentation is the most important factor to support a claim. This may take the form of relevant contract sections, drawings, photographs or videos of the work in question, statements of persons involved in or related to the claimed work. Also, the time for work that was performed should be noted and logged independently in order to clearly separate the claim work from other contract work.
- Develop actual quantities of the claimed work.
- Develop activity base costing of the resources involved in the claimed work. The cost records provide the basis for the estimate or prepare the estimate using the current

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applicable rates. Overhead costs and profit are appropriate at this time as the claim at this stage is represented as a change. In case the claimed work has an effect on other project work, there may be additional cost, and this is estimated for cause and effect relationship.

- Compare the 'as planned' to the 'as built' schedule to support the time extension requested not only for the claimed activity, but also for the effect (if any) on the balance of the project work. The ultimate deciding factor is the effect on the critical path; it can become difficult to separate these because of all of the other factors that can and do affect construction schedules.
- In more complex situations, it may be of assistance to cite other contract law precedents to substantiate the claim when the contract does not clearly provide a solution. The other precedents may provide guidance as to what may or may not be included in the claim or how the claim is evaluated.

4. Claim Resolution

Claim Resolution is a step-by-step process to resolve the claim issue. The process begins with negotiation, perhaps at more than one level, before moving on to mediation, arbitration and litigation depending on the remedies afforded by the contract.

Recommended best practice is to:

- Analyze and evaluate claims utilizing a team environment approach.
- Negotiate between affected parties trying to find an equitable solution.
- Abide by provisions in the contract for dispute resolution.
- Ensure the rights and obligations of the consultant/contractor are properly considered.
- Assess each claim separately with its own costs or merits based on 'reasonableness' of arguments and costs presented.
- Resolve claims promptly by being fair, open and transparent.
- Ensure that adequate project records, videos, photographs are retained for future reference.
- Estimate the cost of carrying the dispute further if the initial attempts at negotiation fail. Mediators are costly, and some arbitration cases can approach the expense of litigation due to the amount of discovery involved. An estimate of these costs can help in deciding just how beneficial it is to pursue a claim.
- Use litigation as a last resort when all attempts have failed. Construction lawsuits are complex and often take a longer time to present, and are more expensive in terms of cost.