



Claim & Counter-Claim Management



1 - 19 September 2024



Kuwait

# Claim & Counter-Claim Management

course code: P9063 From: 1 - 19 September 2024 Venue: Kuwait - course Fees: 3750 Euro

## Program Overview

In this program you will learn about...

Claims are common on Construction, Service and Maintenance Projects. 99.99% of these get sorted out through negotiations. The negotiated settlements depend on the effectiveness of the negotiation preparation process in your organization. Preparation for negotiations must essentially follow the same methodology as for resolving the dispute in a court of law or arbitration.

Simplistic view of claims is dangerous - it often leads to insufficient protection of your organization's interests.

This Program Can Save Your Organization Substantial Sums which would have been paid as Claims, Delays and Consultant Fees. Claims are Changes in Contract Works whose Liability, Cause or Impact have not been agreed between the Owner and the Contractor. The Claimant has the burden of proving the Liability, the Impact of this Liability Action and the Additional Costs suffered as a consequence. Calculating time impact and additional allowable costs is an important area covered in this program. The Claimant and the party analyzing the claim lose large sums due to default caused by not understanding the calculation methods available and their legal acceptability as a reasonable proof. Also covered are the Concurrent events mitigation responsibilities because of their impact on Allowable Additional Costs.

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## Program Content

- What are Claims?
- What are Counter-Claims?
- Disputed Variation Orders
- Constructive Changes: Increased Performance Requirements:-
- Delays, Acceleration, Deceleration, Interruptions, Unit Price Manipulations, Quantity Revisions, Value Engineering Clause Changes, Premium Time, Owner Furnished Materials and Equipment, Access to Site, Working Conditions, Quality of Workmanship, Defective Work, Weather Water, Loss of Efficiency, Discrepancies in Plans Specifications, Drawing Errors, Wasted Effort, Escalation, Emergency Work, Out of Scope Changes, Suspension of Work, Termination for Breach, Termination for Convenience, Denial of Early Completion, Improper Rejection, Denial of Time Extension, Out of Sequence Work, Defective Specifications, Ambiguities, Idle Resources (men and equipment), Failure to Approve Timely, Failure to Approve, Wrongful Rejection, Moving Resources, Design Errors, Revised Owner Requirements, Engineering Cost, Reengineering Costs, Failure to Pay, Improper Rejection, Out of Season Work.
- Fundamental Principles Involved in Claims:
  - Proving Liability : Legal Basis of Right - Contractual Clause or Implied, Proving Breach has Occurred, Notices, Form for Proving Liability in Preparation and Evaluation Claim Document.
  - Proving Causation : Connection Between Change and Cost Increase. Tools and

Techniques Available. Form for Proving Causation in Preparing and Evaluating Claim Document.

- Proving Damages and Injury Caused (Quantified): Methods for Quantification of Damages and Injury.
- Standard of Proof Required: Preponderance Standard.
- Causation. Checking Causation Evidence to Enable a Rebuttal of Contractor's Claim. Causation is Linking "Liability" to Disruptive Occurrence. Proof of Causation requires proof of the connection between the "change" and the "delay in completion and/or cost increase".
- Tools and Methods for Showing and/or Checking for Satisfactory "Causation" Proof : Schedules, Critical Path Method (CPM), As-built Schedules, Expert Witness. How to Prove Linkage between "Liability" and Resultant "Injury or Damages" that May be Caused including Delay, Disruption of Work, Interference, Inefficiency, Acceleration, Constructive Acceleration, Productivity Loss, Mobilization, Re-mobilization, Concurrent Working, Idle Resources, Additional Storage, Price and Labor Escalation, Unavailability of Skilled Manpower, Ripple Effect, Overtime Working, Procurement Costs, Inefficient Use of Resources, Injury to Workmen. etc..
- Recovery of Claim Damages/Loss : A Claim Settlement is proper when it leaves the contractor and the owner in the same relative cost and profit (or loss) positions they would have occupied had there been no change. Profit on the unchanged work remains intact. The party liable for the change keeps the other party whole.
- Quantification Methods for Claims: Lowest Possible Price, Lowest Reasonable Price, Reasonable Price, Estimated Price, Actual Cost, Fair Market Value, Contractor's Current Cost or Pricing Data, Contractor's Tender Breakdown, Formula Pricing vs Total Pricing, Work Methods Used. Dealing with : Honest Mistakes and Errors, Exercise of Discretion, Deleted Work, Contractor's Low Cost Innovations, B.O.Q., Unbalanced Bid Items, Overhead, Profit, Subcontractor's Works, Specific Contractual Limitations on Recovery, Special Damages, Defective Performance, Commercial Waste, Claim Presentation Expenses, Total Cost Approach, Total Productivity Loss Approach, Expert Witness Method.
- Preparing Analyzing the Claim Document: Skills in Putting the Claim Document Together as well as Pulling It Apart. Effective Presentation, Checklists, Getting Ideas.
- Steps in the Claim Preparation Process. Preparation and Analyzing: Quality Assurance in Preparation and Analyzing Plans.
- Effective Presentation of Claims and Counter Claims. Arbitration : Provisions and Procedures. Benefits and Economics of Negotiated Settlements, Win-Win Philosophy.
- Negotiated Settlement of the Claim: Each party has "expectations" linked directly to its own perception of one's and other's strong and weak points. You have the job to change the "expectations" of the other party - How Expectations can be Changed?
- Pre-Negotiation Planning : Detail requirements and analysis of the contractor's estimate. Contractor's cost and price data. Audit of Contractor's cost data. Preparing independent estimates. Sources for independent estimates. Establishing flexible negotiation strategies.
- Conducting Negotiations. Some Effective Negotiation Tactics and Tricks People Use : Consider using them, Countering them.
- Workshop : Hands on Claims Preparation & Analysis

