Construction Claims Avoidance

BY
Ahmed K. Al-Mulhim (956140)

TO
Dr. ABDUL AZIZ BU-BUSHAIT

May 23th, 2004
Outline

- Introduction.
- Objective.
- Methodology.
- Can Construction Claims be Avoided?
- Owners Protection Against Claims.
- Contractors Protection Against Claims.
- Integrated Approach for Avoiding Delay Claims.
- Summary & Conclusion.
Introduction

- A claim is a tool used by contractors to request more time and/or money.
- Construction contracts are seldom written in such a way not to leave a room for different interpretation.
Objective

- Objective of this term paper is to discuss avoidance procedures for claims in construction industry.
- Procedures will include owners, contractors and design offices – thus, all parties.
- A conflict of interest is existed between those parties. Hence, each procedure will be discussed individually.
Methodology

- Construction Claims Avoidance published papers and articles were searched.
- A literature review was done and the suitable ones were selected.
- However, there are many other methods not included in this term paper.
- The ones will be discussed can not stand alone and eliminate claims but it can reduce them.
Can Construction Claims be Avoided?

- Only a small percentage of the construction claims can not be avoided.
- As shown in the term paper, 145 projects out of 175 had suffered from delays and claims.
- Average delay was 5.69 months.
- Owners who spend 4-5 months in investigating planning and designing more than what they actually did saved at least 20% of the actual cost.
Owners Protection Against Claims

- Accountants and auditors are rarely invited to join contract award/negotiation team.
- 2 categories of cost are existed: direct and indirect.
- The owner need a strategy put by accountants to distinguish between both costs.
- Contractor should define each category of cost as direct or indirect.
- THE X-CHART: Accountants should analyze the contractors X-chart and look into the contractors accounting system at the pre-award audit.
- When claims arises, we can audit it with high accuracy.
- CONTRACTORS INTERNAL CONTROL: must be checked over accounting systems.
- DOCUMENT FORMAT: Owner should tell contractors in what format he expect them to submit the billing for work performed.
Contractors Protection Against Claims

- Contractors frequently fail to protect their contractual position.
- DESIGN CHANGES IMPACTS: Contractor should include a notation to preserve the right to claim for impact costs when they can be accurately determined.
- RECORD KEEPING: Contractors should maintain a record keeping system that accurately tracks and monitors project activities.
- NOTICE PROVISIONS: Contractors are advised to make a checklist of all requirements of notice provisions as in this Figure.
<table>
<thead>
<tr>
<th>Type</th>
<th>Clauses in Contract Agreement</th>
<th>Clauses in General Conditions</th>
<th>Clauses in Supplementary Conditions</th>
<th>Number of Days for Notification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Delay/Time Extension</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Changes/Extras</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Acceleration</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Differing Soil/Site Conditions</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Disputes</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Figure 1—Notice Requirement Checklist
Contractors Protection Against Claims

- Contractors frequently fail to protect their contractual position.
- DESIGN CHANGES IMPACTS: Contractor should include a notation to preserve the right to claim for impact costs when they can be accurately determined.
- RECORD KEEPING: Contractors should maintain a record keeping system that accurately tracks and monitors project activities.
- NOTICE PROVISIONS: Contractors are advised to make a checklist of all requirements of notice provisions as in this Figure.
- DISCLAIMER CLAUSES: owners may disclaim liabilities for many of the unforeseen risks like:
  - No Damage for Delay
  - Examination of the Work Site
- PRODUCTIVITY CONTROL SYSTEM: Labor activity control, accurate reporting and management attention in early stages are some advise to efficient Control System.
- UTILIZATION OF CPM: contractor is strongly advised to use it.
Integrated Approach for Avoiding Delay Claims.

- **PARTNERING:** It promote harmony and cooperation on a project.
- **CONTEMPORANEOUS PERIOD ANALYSIS:** Is designed to ensure that project delays are analyzed within the context of the schedule existing at the time when the delay occurred.
- **USE A PROJECT NEUTRAL:** An independent construction industry expert who is used to facilitate the resolution of dispute.
- **MEET AND AGREE OFTEN:** At least monthly to review CPM schedule update in details.
- **OBTAINING ALL PROJECT TEAM MEMBERS APPROVAL.**
- **FRAGNENT SCHEDULE:** It provides the team with great flexibility and ability to prepare recovery schedules for the project.
Summary & Conclusion

- Claims may be prevented or avoided but cannot be eliminated.
- Owners have to audit and have the advise of accountant in the pre/award stage using the X-charts and Contractors Internal Controls.
- Owners should inform the Contractor of the Documenting Format.
- Record keeping and CPM are very important for all parties.
- Partnering between parties can resolve a lot of claims.
- Project neutral is very important in case of dispute.