

Construction Claim Resolutions for 2015: 10 Tips to Improve Your Chance of Success

By Chandra Lantz

It is easy for contractors to fall into the mindset of building the project, and then putting in claims or requests for adjustments after the pressure to reach substantial completion has been met. Even for contracts that allow submission of claims late in the project, there are many steps that contractors proactively can be taking before and during the project to maximize their chances of recovery on claims.

Here are 10 ideas to implement in 2015 that could improve your claim submissions:

Begin with the End in Mind

A surefire way to improve claim success and streamline preparation is to begin the project with a clear understanding of your contract's change order and claim requirements. Contracts may have strict limitations on how and when a claim or change order must be submitted for consideration by another contractor or the owner. The project team should understand these requirements from the moment the project is awarded.

As a general rule, a contractor should never give notice too early, too often, or with too much information. Doing so may give rise to difficult discussions and dynamics on the job site. Following the change order and claim submission process is the only surefire way to preserve recovery rights.

Understand the Project's Risk Allocation

Closely related to the first goal is that of getting your project team to understand – at the outset – how risks on the project have been allocated among the owner, prime contractors, subcontractors, suppliers, design professionals, and other participants. As project risk allocation becomes more complex, many so-called “traditional” risk allocations are being undone. No contractor, for example, should just assume that an owner bears the risk for the discovery of rock, that the designer is responsible for the nonperformance of specified systems or that extreme weather delays will justify a time extension or added compensation. Such assumptions can lead to the frustrating discovery, long after time and money have been spent to address the problem that no claim or change order will be allowed.

Create a Claim File

Contractors can spend a lot of time after the fact looking for the directives, notices, accountings, invoices, and other pa-

perwork that tell the story of their claims. Avoid this trouble by training the project team to set aside a copies of all claim-related paperwork and emails in a separate file or archive. Claims can live or die by the quality of the documentation created and kept by the project team. Without the documents that tell the story, there will be no entitlement to recovery.

Track Claim Costs Separately

To the extent possible, create new cost codes during the project when a claim issue arises to track the costs being incurred specific to that claim. Ideally, these codes also will match the categories of costs for which the contract will allow recovery.

Often, the biggest component of a claim is the labor costs. Because labor costs vary from laborer-to-laborer and day-to-day, tracking these costs can require careful attention to detail.

The contractor also needs to be prepared to determine and substantiate any labor burden costs it also seeks to recover. Putting in place a system for tracking these costs before or as soon as a claim arises can save a lot of hassle in trying to capture or justify these costs as part of the claims process.

Get Your Schedule Documentation in Order

When a delay, time or productivity issue is involved, it is important to have reliable and accurate project schedule information. Often, critical path schedule information is required. Even where it is not, claim success can be improved when the project documentation shows what happened and when. Activities – whether on a CPM schedule or daily report – should be sufficiently broken out to allow an understanding of the progress of work as it relates to the claim issues. It is difficult, for instance, to claim that framing on the fourth floor was delayed by 43 days if the project records do not track fourth floor framing progress.

Lack of accurate and sufficient detail often can derail the ability to prove a schedule-related claim.

Understand Your Claim

There are many varieties of claims: defective design; delay; differing site conditions; directed changes; acceleration; lost productivity; constructive changes; shortages; termination; suspension; impossibility; interference; disruption; weather; etc. The condition that seemed most maddening on site, however, may

not be the issue that drove up costs or caused schedule problems.

It is good practice to review the schedules and cost reports to see where the real impacts were before proceeding with claim development.

Verify Your Entitlement to Recover

As soon as a problem develops on a project, check your contract to see what your right to relief may be. Many contracts contain no damages for delay clauses or limited time extension rights. Other contracts dramatically limit the type of costs that can be recovered. Knowing this before you address and resolve an issue can help mitigate the impact to the bottom line.

This process also allows you to track recoverable costs or schedule impacts during the project in a manner that will be consistent with any claim submission requirements that apply (for instance, tracking equipment rental or labor in the format in which those costs are recoverable under the contract).

Follow Accepted Accounting Processes

Many claims involve recovery of expenses beyond only direct project build costs, including general conditions, unabsorbed home office overhead and extended or idle equipment costs. While contractors may be comfortable tracking these costs informally – or not at all – for their own internal purposes, recovery of these costs as part of a claim requires adherence to a recognized accounting protocol.

Support Your Field Personnel

In some cases, field supervisory personnel can play an outside role in the potential success of a claim. They often are the front line of recognizing, responding to and documenting a claim issue. Just as they can add immense value by handling these issues well, weak management can sink a claim's viability. Leaving a weak superintendent or manager in place also can strengthen the other party's defenses to any claim.

Contractors should support their field superintendents and foreman by providing resources to complete paperwork like daily reports, assistance with contract requirement, taking time to explain why certain actions are needed and recognizing their efforts to catch and document claim issues. Field personnel can be the bridge to a successful claim.

Be Prepared to Walk Away

Contractors can be passionate about



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their projects – and even more passionate about the problems they encounter on a project. Sometimes, however, directing time, energy, and dollars into chasing a claim may not provide a meaningful return. An early and candid risk analysis should be done of the many factors that play into making a claim: recovery rights under the contract; documentation available to tell the claim story; the state of the accounting records; any fault the contractor may carry; the risk of back charges or claims back against the contractors; the potential low and high values for the claim; the ability of the other party to pay a successful claim; and the cost to pursue the claim. Sometimes, when that initial analysis is done, it quickly becomes apparent that the contractor may be better served to focus on the next job, rather than reliving the last one by pursuing an iffy claim to the end of the process. 🏠