An Exploration on Claims Avoidances in Contract Administration

Shajan.S[1], Sujithra.G[2]
[1]*Student, ME II-year, Department of Civil Engineering, Sivaji College of Engineering and Technology, Manivila.*
[2]*Head of the department, Department of Civil Engineering, Sivaji College of Engineering and Technology, Manivila, Kanyakumari Dist*

***Abstract*: This exploration researches into the strategies and principles that contribute to effective claim avoidance, focusing on several key areas. Clear contractual terms, including detailed specifications and defined roles, are essential to prevent mis- understandings and disputes. Effective communication, through regular updates and thorough documentation, helps address concerns early and maintains alignment among stakeholders. Change management practices, such as well-defined change orders and impact assessments, are crucial for handling scope adjustments without leading to conflicts. Risk management, encompassing risk assessments and contingency planning, prepares parties to address unforeseen events proactively. Performance monitoring and quality assurances ensure compliance with contractual obligations and standards. Training and awareness programs for stakeholders, along with robust dispute resolution mechanisms, facilitate early resolution of disagreements. Adherence to legal and regulatory requirements further reduces the risk of claims. By integrating these strategies, parties can minimize the likelihood of disputes and enhance overall project success, demonstrating that proactive management and clear communication are fundamental to effective claim avoidance in contract administration.**

I. INTRODUCTION

Claims can result from any of a number of different causes. Even unforeseeable causes, the origins of many claims can often be traced to the Contract. Any contradiction, discrepancy or ambiguity among the various documents which form the Contract is likely to result in the Department and Contractor forming different expectations as to their rights and obligations.

Types of Claims

Some of the more common claims issues put forward by Contractors are:

- Variations/Modifications to the Works
- Ambiguous Contract Documents.
- Errors Omissions in Specifications,
- Drawings, etc.
- Delved Interim Payments
- Differing Site Conditions
- Suspension of the Works
- Delayed or Interrupted Site Access
- Quantities Fluctuations
- Late Department/Engineer Approval of Contractor Submittals

II. OBJECTIVE

This study intended to provide Department Officials, Representatives and Staff, and Engineers, who are involved in the various stages of public works contracts, with a practical awareness that will help them, first, to avoid contractor claims. And second, to properly manage and resolve those claims.

Contractor claims are a reality of the construction industry. In virtually every construction project, some disputes will arise between the employer and the contractor. Disputes arise from a broad range of issues, such as extra work items or quantities, differing site conditions, errors or omissions in the contract documents and plans, delays and unforeseen and uncontrollable impacts. Most frequently, the contractor will submit a claim to the employer requesting additional money and / or an extension of time for completing the work. Occasionally, the employer may make a claim against the contractor for his failure to complete the project within the contractual timeframe or for uncorrected deficiencies in the work.

III. METHODOLOGY

This chart provides a structured approach to manage claims, facilitating a proactive and organized handling of potential disputes and helping reduce the

impact on project timelines and costs.

- Claim Avoidance Procedures
- Claim Management Process
- Claim Analysis Procedures

CLAIM AVOIDANCE PROCEDURES

Claims Avoidances must be practiced by the Engineer at every phase of the project life cycle. Its effectiveness is increased by the use of a project risk assessment to identify potential risks for claims and to develop means to avoid or minimize the risks. There are two major components of Claims Avoidances.

- Proper Project Management.
- Consistent Interpretation and Application of the Contract.

CLAIM MANAGEMENT PROCESS

The claims review and resolution presents the opportunity for the amicable settlement of Contractor Claims, usually carried out by any of the following ways:

I. Engineer Assessment & Department Review and Resolution.

II. Claims Committee / Executive Council Review and Resolution.

III. Through Arbitrations / Courts. CLAIM

ANALYSIS PROCEDURES

Usually, the construction claims analysis is divided into five parts:

- Notice.
- Acknowledgment.
- Merit Evaluation.
- Cost and Time Evaluation.
- Resolution.

IV. RESULTS AND DISCUSSIONS

By conducting case studies of disputes and claims in various projects, the factors which are responsible for claims in construction projects would be identified. Accordingly, Case studies of various projects have been performed in this Phase and reasons giving rise to claims, steps taken for merit analysis by Client, recommendations made by Client etc. have been collected and compiled.

The cases below illustrate some of the more common claims issues raised by Contractors and provide examples of how such issues are analyzed and evaluated. Note that the conclusions reached in respect of any particular case depend upon the circumstances present and the applicable contract provisions. It cannot be assumed that similar issues would result in the same conclusions if presented in the context of other projects where other circumstances and contract provisions would apply.

CASE 1: DIFFERING SITE CONDITIONS / LATE SUPPLY OF MATERIALS

The Contractor submitted a claim seeking additional compensation for: (1) costs associated with the excavation of unexpected rock material. (2) Costs associated with the supply of suitable backfill material, and (3) delay costs resulting from the delayed supply of pipe materials by the nominated sub- contractor.

Merit Evaluation & Resolution: (1) General Conditions provisions regarding site conditions required the Contractor to take into account all site conditions, including sub-soil conditions. On this basis the Contractor's claim for additional compensation for this item was not recognized.

(2) The Contract language regarding the backfill issue was clear and unambiguous. The Specifications clearly required the Contractor to provide backfill for the subject pipe in accordance with the manufacturer's recommendations. And, the Bill of Quantities clearly stated that the price for the installation of the pipe included backfilling. Accordingly, the Contractor's claim in respect of this issue was not recognized

(3) General Conditions allowed, among other things, for the extension of time for delays resulting from the late supply of materials by any nominated sub-supplier, provided the Contractor took precautions to avoid or mitigate such delays. The Contract was silent, however, with regard to the Contractor's entitlement to financial compensation for a nominated sub-supplier's delay. In the circumstances and given that the Contractor had no control over the selection of the supplier, payment of the Contractor's claim was recommended but on a strictly discretionary basis.

CASE 2: CANCELLATION OF CONTRACT

Approximately six (6) weeks after the award but prior to the execution of the formal Contract Agreement, the Department advised the Contractor that the project had been suspended with probable future cancellation

and requested the Contractor to confirm that, if required, he would complete the project in the future at the same Contract Rates.

The Contractor reserved his right to claim for damages should the Works be canceled or performed at a later date. Approximately one month later, the Contractor submitted a breakdown of direct losses that he claimed would be incurred should the project be canceled.

Merit Evaluation & Resolution: On review, it was determined that the Contractor's tender and the Department's award fulfilled the legal requirements for the formation of a binding contract. In fact, this conclusion was supported by the language of the Letter of Acceptance, which stated that the Letter of Acceptance and the Contractor's tender together constituted a binding agreement on both parties. Thus it was concluded that, a binding contract had come into existence even though no formal Contract Agreement had been signed nor an Order to Proceed issued. As such, the Contractor's entitlement to all costs incurred up to the date of cancellation was recognized.

V. GCC ARTICLE ANALYSIS & CLAIM AVOIDANCE NOTES

The important claim factors should be identified in the construction projects as per the Articles of the General Conditions of Contract (GCC) and claim avoidance notes, as per various literature review, have been derived as per the Article requirements.

ARTICLE 1. SCOPE OF THE CONTRACT

Claims Avoidance Notes:

- Make certain that the elements of the contract are consistent.
- Review the various tender documents prior to tender to identify and correct ambiguities and unclear language.
- Make sure that the drawing and specifications are complete and convey a clear understanding of the scope of the project.
- Treat seriously and respond in writing to clarifications and other correspondence from the Contractor during the tender phase.
- Be prudent and cautious in accepting alternatives offered by contractors to the scope of work included in the Contract.
- Correct ambiguities and inconsistencies when discovered during the tender phase by issuing addenda, even if it means extending the date for submission of tenders.

ARTICLE 3, EXTENSION OF TIME FOR COMPLETION

Claims Avoidance Notes:

- Recognize delay events when they occur. Evaluate the delay- impact and grant timely extensions of time, as appropriate given procedural requirements.
- Enforce the notice requirements but recognize its limitations.
- Note that Contractor may be entitled to an extension of time for delays resulting from the Department's late supply of information which he has requested in writing. Such language is often interpreted to include the late approval of submittals, shop drawings, work drawings, etc. Many delay claims can be avoided by the Department/Engineer's prompt review and return of Submittals.
- Be mindful of constructive notice of delays.
- Enforce the requirement that the Contractor make every effort to avoid or mitigate delays.
- The Department's active involvement in review and monitoring the Contractor's construction schedule can often provide critical information which the Department can use to work with the Contractor to avoid or mitigate delays.
- Note that the burden of proof of delays rests with the Contractor. Investigate the Contractor's given reasons for delays.
- Evaluate carefully the Contractor's schedule or programme for conducting the works to ensure its reasonableness and compliance with the Contract.
- Acceptance of the Contractor's schedule by the Department entitles the Contractor to measure delays to the work against this approved schedule. Therefore, caution should be taken to ensure that the schedule is reasonable prior to its approval.
- Be mindful of concurrent Contractor-caused delays in determining the Contractor's entitlement to additional compensation for extensions of time.

ARTICLE 6. PAYMENT CERTIFICATES

Claims Avoidance Notes:

- Require Engineer to process Contractor's applications for payment and issue Payment Certificate, within a reasonable time frame.
- Establish effective system within Department for processing Payment Certificates in a timely fashion
- Limit time available for review and approval by each section within the Department (i.e., Q.S., accounts, etc.).

Remember that the 45 days specified in Article 6 includes time required by the Finance Department to check the certificate and process payment.

ARTICLE 17, PROGRAMME OF WORKS

Claims Avoidance Notes:

- Note and enforce the two (2) week requirement for the Contractor's submission of its detailed schedule.
- Review the detailed schedule submission diligently, judiciously and professionally.
- Retain an expert in critical path method scheduling if necessary to review and analyze the schedule to ensure the Department understands the schedule and believes the schedule reasonable and compliant with the Contract.
- Time and effort spent on performing a critical review of the Contractor's schedule will return itself in savings on claims for delay and time extension by uncovering areas in the schedule where the Contractor can employ "work arounds" to mitigate or avoid potential Department-caused delays, and in turn allow the Department to work with the Contractor to effect this mitigation.
- Amend and update the schedule on a regular and timely basis to reflect approved changes in the Work and progress.
- Recognize the practical limitation of Department-directed changes the Contractor's schedule as provided for under to Paragraph 2. Notwithstanding the Contract language, the Contractor may assert a claim if the Department's amendments are proven to result in significant financial damage to the Contractor which could not have been reasonably foreseen at the time of tender.
- Where appropriate, seek to have Contractors utilize computer-based CPM schedules for significant and complex projects and develop guidelines and specifications for these schedules to obtain the types of information the Department can best utilize to monitor construction.
- Study the schedule requirements of the contract and recognize the schedule's benefit to the Department in monitoring the progress of the work, anticipating problems, avoiding and mitigating delays and defending claims.

VI. CONCLUSION

Effective claims avoidance in contract administration is essential for minimizing disputes, reducing project delays, and ensuring successful project completion. Key strategies include clear and well-drafted contract documents, thorough risk assessment, proactive communication, diligent documentation, and adherence to best practices in project management. By fostering collaboration among stakeholders, maintaining transparency, and resolving issues proactively, contract administrators can significantly reduce the likelihood of claims. Implementing dispute resolution mechanisms, such as mediation or arbitration, further strengthens claims management. Ultimately, a well-structured contract administration process enhances project efficiency, minimizes financial risks, and promotes positive relationships among contracting parties.

REFERENCES

[1] Megha Desai, Rajiv Bhatt - Critical Causes of Claims in the Residential Construction Projects: Case Study of Central Gujarat Region of India.

[2] Mohamed.M. Marzouk, Tarek. I. El Rasaa - Analyzing delay claims in egyptian construction project.

[3] MuhammedMufazzalHossen, Sunkoo Kang, Jonghyun Kim Construction claim assessment by using combined AHP -RII methodology for an international npp project Volume 4, Issue 1, January 2014.

[4] Ramanathan Chidambaram and NarayanaSambu potty – Analysis of claims in multiple design and build projects.

[5] Ravisankar.K.L, Dr. Ananda Kumar. S, M.E., Ph.D., Krishna Moorthy. V - Study on the Quantification of Claim Factors in Construction Industry ((ISSN 2250- 2459, ISO 9001:2008).

[6] RemonFayek Aziz-. Ranking of claim factors in construction project after Egyptian revolution.

[7] Shanmugapriya.s, Dr.Subramanian.k- Investigation of significance factors influencing

claim avoidances in Indian construction projects Procedia Engineering 2014.

[8] Shujaa Safdar Gardezia.S, Irfan Anjum Manarvia, Jamal Safdar Gardezib. S - Claims in Construction industry of Pakistan (Procedia Engineering 77 (2014).

[9] Towhid Pourrostam and Amiruddin Ismail - Causes and Effects of Claims in Iranian Construction Projects.

[10] Trefor.P. Williams, Jie Gong -Predicting construction claims using text mining, numerical data and ensamble classifiers (Automation in Construction 43 (2014).

[11] UbaniE.C, Okorocha K.A, EmeribeA.C -Analysis of factors influencing time and cost overuns in construction projects in south eastern Nigeria.