



مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

معرفی دوره آموزشی

ارائه دهنده:

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مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

موضوع ادعاء در پروژه ها موضوعی پیچیده بوده که در صورت عدم مدیریت صحیح و تبدیل شدن ادعاءها به اختلافات میتواند منجر به شکست پروژه گردد. اما برای موفقیت در این فرآیند نیاز به یک برنامه همه جانبه و استراتژیک از همان فاز آغازین میباشد. فرآیندی که نه تنها به مبانی قراردادی، بلکه مبانی مدیریت پروژه و به صورت خاص بحثهای برنامه ریزی، زمانبندی، مدیریت مالی و هزینه، اسناد و مدارک، تحلیل تاخیرات را در بر گرفته و روش های حل اختلاف و دعاوی (Claims and Dispute Resolution) تنها بخشی از این فرآیند جامع میباشد. در واقع باید بدانیم که مدیریت ادعاء به هیچ عنوان از مدیریت پروژه جدا نبوده و مدیریت صحیح برای اجتناب از دعاوی و حل اختلافات، از مرحله قبل از طراحی (Pre-Design) تا مرحله پس از ساخت/اجرا (Post-Construction) و در ابعاد مختلف ادامه دارد. در این دوره جامع از انواع منابع و فرمهای قراردادی مختلف اعم از AIA و AGC و ConsensusDocs و FIDIC، پروتکل SCL، استاندارد CMAA و CII، راهنمای ASCE و الحاقیه PMBOK، در کنار نشریه ۴۳۱۱ و برخی از قراردادهای همسان استفاده شده است تا این دوره در شرایط کاملاً جامعی ارائه گردد. دوره های "فرآیند یکپارچه برنامه ریزی، زمانبندی، ارزیابی و کنترل پروژه"، "فرآیند یکپارچه مالی، حسابداری و هزینه در پروژه و سازمانهای پروژه محور"، "فرآیند جامع مدیریت اسناد و مدارک پروژه به همراه پیاده سازی در اکسل" و "فرآیند جامع آنالیز تاخیرات در پروژه" پیش نیازهای این دوره میباشد.

آنچه خواهید آموخت

در این دوره با فرآیند مدیریت ادعاء و حل اختلافات در طول چرخه حیات پروژه آشنا شده و روشهای حل اختلاف را خواهید آموخت. با یادگیری این مبانی ذهن شما مثل اجزای یک پازل بعد از دوره های برنامه ریزی پروژه، مدیریت مالی پروژه، دوره اسناد و مدارک و دوره آنالیز تاخیرات تکمیل شده و به صورت مناسبی با این رویه استاندارد آشنا میشوید تا بتوانید پروژه ای را طراحی، مدیریت و اجرا کنید که اختلافات آن شما را به بن بست نکشاند. در این دوره:

۱. نحوه طراحی و پیاده سازی فرآیند کامل مدیریت ادعاء را از مرحله قبل از طراحی تا مرحله پس از ساخت می آموزید.
۲. نحوه تدوین قرارداد مناسب را برای کاهش ادعاءها خواهید آموخت.
۳. نحوه ارزیابی ریسکها و مخاطرات قراردادی را از منظر ادعاءهای قابل طرح خواهید آموخت.
۴. نحوه تدوین لایحه ادعاء را در ساختاری استاندارد خواهید آموخت.
۵. نحوه مدیریت، کاهش و حل و فصل ادعاءها و اختلافات را در فاز ساخت/اجرا خواهید آموخت.

مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

مهم ترین سرفصلها

۱. مقدمه و مفاهیم اصلی

- ✓ تعاریف، روشهای اجرای پروژه و ارتباط آنها با مدیریت ادعاء و حل اختلاف، بررسی دلایل ایجاد ادعاء، دعاوی و اختلافات، بررسی اهمیت روشهای اجرای پروژه در جلوگیری و حل اختلافات، بررسی انواع Claims و فرآیند سیستماتیک برای جلوگیری از دعاوی و اختلافات با مروری بر استاندارد CMAA و CII و ...
- ✓ معرفی متدلوژی اصولی برای کلیم و بکارگیری روشهای حل اختلاف در آن (Dispute Resolution Methods) و ...

- ✓ بررسی نتایج مطالعات انجام شده در خاورمیانه و دنیا و پیش بینی آینده پروژه ها در زمینه Claims و Disputes و ...

۲. برنامه ریزی استراتژیک در فاز قبل از طراحی (Pre-Design Phase)

برای مدیریت ادعاء و جلوگیری از دعاوی و اختلافات در پروژه

- ✓ تدوین برنامه اجرایی و استراتژیک، توسعه طرح، برنامه ریزی مهندسی ارزش، مدیریت ریسک، تدوین ساختار خدمات و استانداردها، تدوین برنامه آموزش و ...

۳. توسعه و مدیریت برنامه در فاز طراحی (Design Phase)

برای مدیریت ادعاء و جلوگیری از دعاوی و اختلافات در پروژه

- ✓ مدیریت پروژه در طول طراحی، مدیریت تصمیم گیری، بررسی و کنترل طراحیها، ارزیابی روش اجرای پروژه، بکارگیری Third Party برای مدیریت، ارزیابی ریسکهای کمی و کیفی، ارزیابی بازار، تدوین قرارداد و ...

۴. برنامه ریزی فاز تدارکات/مناقصه (Procurement/Bidding Phase)

- ✓ برای مدیریت ادعاء و جلوگیری از دعاوی و اختلافات در پروژه
- ✓ برنامه ریزی و مدیریت جلسات، ارزیابیهای Pre-qualification، الحاقیه ها، تدارکات، اصلاحات، مستندات و ...

۵. اجرای برنامه و مدیریت ادعاء، دعاوی و اختلافات در فاز ساخت/اجرا (Construction Phase)

- ✓ مدیریت Claims با استفاده از مستندسازی پروژه، مدیریت قرارداد و مدیریت notification ها در زمینه ادعاء و اختلافات و ...
- ✓ بررسی دقیق و ساختاری انواع روش های حل اختلاف (Alternative Dispute Resolutions) همراه با مزایا و معایب و رویه اجرایی برای پیاده سازی روشهای Partnering, Engineer's Decision Clause, مذاکره (Negotiation)، میانجیگری (Mediation)، داوری (Arbitration)، هیات حل اختلاف (Dispute Review Board)، قضایی (Litigation) و ...
- ✓ بررسی انواع فرمهای قراردادی بین المللی و داخلی Claim and Dispute و نشریه ۴۳۱۱ در ارتباط با AIA، AGC، ConsensusDocs، FIDIC و ...

- ✓ درس آموخته های پروژه و نمونه های موردی از نتایج اختلافات به همراه توصیه های نهایی و ...

۶. آنالیز، ارزیابی و حل دعاوی و اختلافات در فاز پس از ساخت/اجرا (Post-Construction Phase)

Road map

ارائه گواهینامه حضور بر اساس حضور بیش از ۶۰ درصد در دوره
و گواهینامه حرفه ای بر اساس قبولی در آزمون برای هر دوره

مهارت‌های سخت (Hard Skills) - سطح کارشناسی و اجرایی

سطح ۵	سطح ۴	سطح ۳	سطح ۲	سطح ۱	دپارتمان
	استاندارد مدیریت ساخت CMAA	متدولوژی Prince2	راهنمای PMBOK		مدیریت پروژه
	تامین مالی پروژه			مدیریت مالی و هزینه پروژه ارزیابی اقتصادی پروژه	مدیریت مالی و هزینه
				برنامه ریزی و کنترل پروژه نرم افزار MSP نرم افزار Primavera	مدیریت برنامه ریزی و زمان بندی
		مدیریت کیفیت پروژه			مدیریت کیفیت
اجرای پروژه به روش CM			مدیریت ادعاء و اختلافات	آنالیز تاخیرات پروژه	مدیریت قرارداد
		مدیریت ایمنی پروژه			مدیریت ایمنی
مدیریت طرح		مدیریت چابک Agile	مدیریت پروژه به روش Lean دفتر مدیریت پروژه PMO		مدیریت طرح و برنامه
		مدیریت پایداری پروژه			مدیریت پایداری
			مدیریت ریسک پروژه		مدیریت ریسک
			نرم افزار Power BI	مدیریت اسناد و مدارک پروژه	مدیریت اطلاعات
	مدیریت BIM در پروژه		نرم افزارهای BIM		مدلسازی اطلاعات ساختمان (BIM)

References Used in This Course

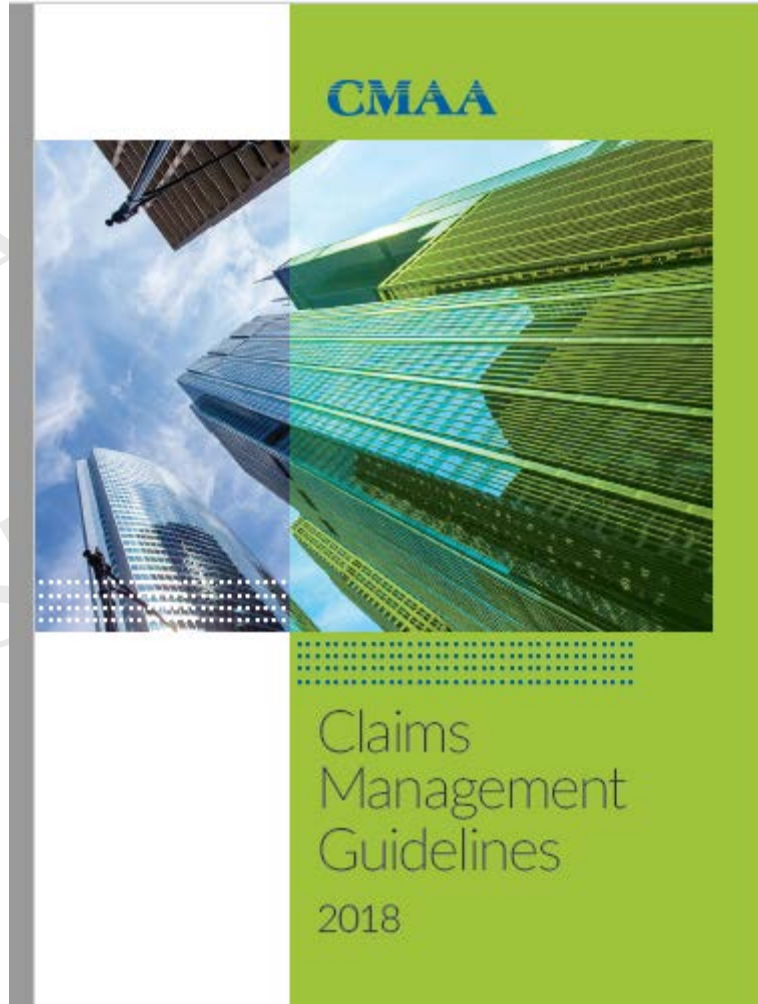
Historical perspective of construction manager (CM)

- ❑ 1972 Associate General Contractors of America (**AGC**) Guidelines
- ❑ 1973 American Institute of Architects (**AIA**) Form of Agreement
- ❑ 1974 **AGC** Form of Agreement
- ❑ 1975 American Society of Civil Engineers (**ASCE**) Committee on CM
(current **MPIC**)
 - 1976 Definition of CM Process
 - 1979 Definition of CM Tasks
 - 1979 Specs for CM Services
 - 1979 Contractors' Views on CM
 - 1980 A/E's Views on CM
- ❑ 1982 Construction Management Association of America (**CMAA**)
 - 1986 Manual of Practice
- ❑ 1983 Construction Industry Institute (**CII**)
- ❑ 1989 Engineering News Record (**ENR**) Top 100 CM Firms

Construction Management Association of America (CMAA)

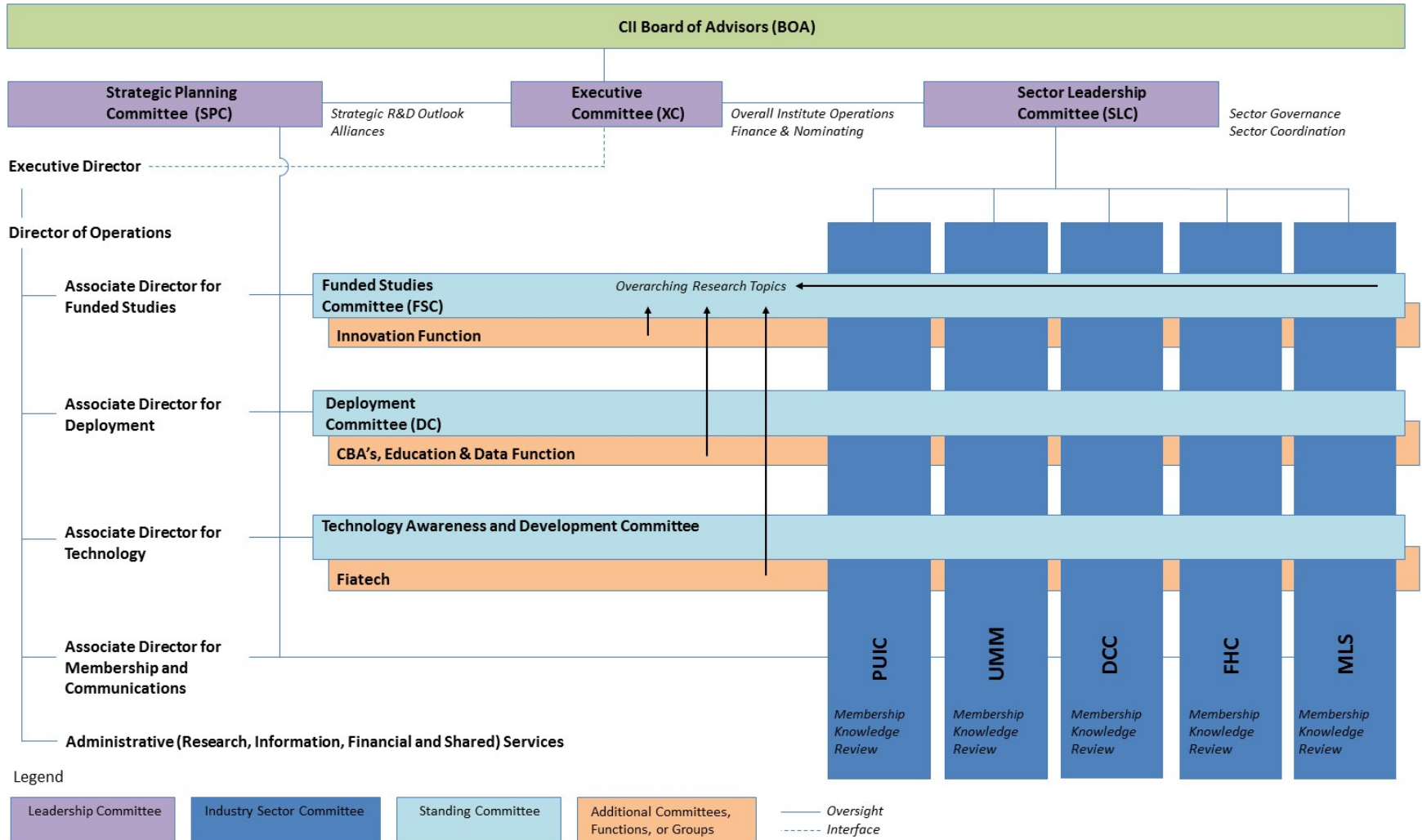
❑ CMAA was formed in 1982 to:

- ❖ Provide **standards**
- ❖ Provide **unique identity** of construction managers
- ❖ **Qualify** construction managers
- ❖ Help **owners** to use **certified construction managers** in their projects to **improve project results**



Construction Industry Institute (CII)

CII ORGANIZATION



Construction Industry Institute (CII) – Some of the members

Owners	Contractors	Service Providers
AdvanSix	AECOM	Accenture
Albemarle Corporation	Alfred Miller Contracting	Alvarez & Marsal
American Transmission Company LLC	APTIM	Atlas RFID Solutions
Anheuser-Busch InBev	Arcadis U.S., Inc	Autodesk, Inc.
Aramco Services Company	Baker Concrete Construction Inc.	AVEVA Solutions Ltd.
Architect of the Capitol	Barton Malow Company	Bentley Systems Inc.
Ascend Performance Materials	Bechtel Group, Inc.	Command Alkon Inc.
AstraZeneca	Black & Veatch	Construct-X, LLC
BHP Billiton	Brown & Root Industrial Services	Continuum Advisory Group
Cargill, Inc.	Burns & McDonnell	Dassault Systèmes SE
Chevron	Chiyoda Corporation	Deloitte
ConocoPhillips	Clough USA Inc.	Design + Construction Strategies
Consolidated Edison Company of New York	CRB	DyCat Solutions
Covestro LLC	Day & Zimmermann	ePM
DTE Energy	Digital Construction Works	Group ASI
Eastman Chemical Company	Emerson	Hexagon Process Power & Marine
Entergy Corporation	Fluor Corporation	Hilti Corporation
ExxonMobil Corporation	H+M Industrial EPC	I.M.P.A.C.T.

Construction Industry Institute (CII) – Some of the members

Petronas Wanzek Construction, Inc.

Phillips 66 Wood

Public Service Electric & Gas Company Worley

Reliance Industries Limited (RIL) Zachry Group

SABIC - Saudi Basic Industries Corporation

Shell Global Solutions US Inc.

Smithsonian Institution

Southern Company

TC Energy

Tennessee Valley Authority

The Dow Chemical Company

The Procter & Gamble Company

The Williams Companies, Inc.

U.S. Army Corps of Engineers

U.S. Department of Commerce/NIST/EL

U.S. Department of Energy

U.S. Department of State

U.S. Department of Veterans Affairs

U.S. General Services Administration



Construction Industry Institute (CII) – Best practices

❑ A **best practice** is a **process or method** that, when executed effectively, leads to enhanced project performance.

❑ CII Best Practices have been proven through extensive industry use and/or validation.

❑ CII Best Practices include the 17 topics

- Advanced Work Packaging
- Alignment
- Benchmarking & Metrics
- Change Management
- Constructability
- Disputes Prevention & Resolution
- Front End Planning
- Implementation of CII Research
- Lessons Learned
- Materials Management
- Partnering
- Planning for Modularization
- Planning for Startup
- Project Risk Assessment
- Quality Management
- Team Building
- Zero Accidents Techniques

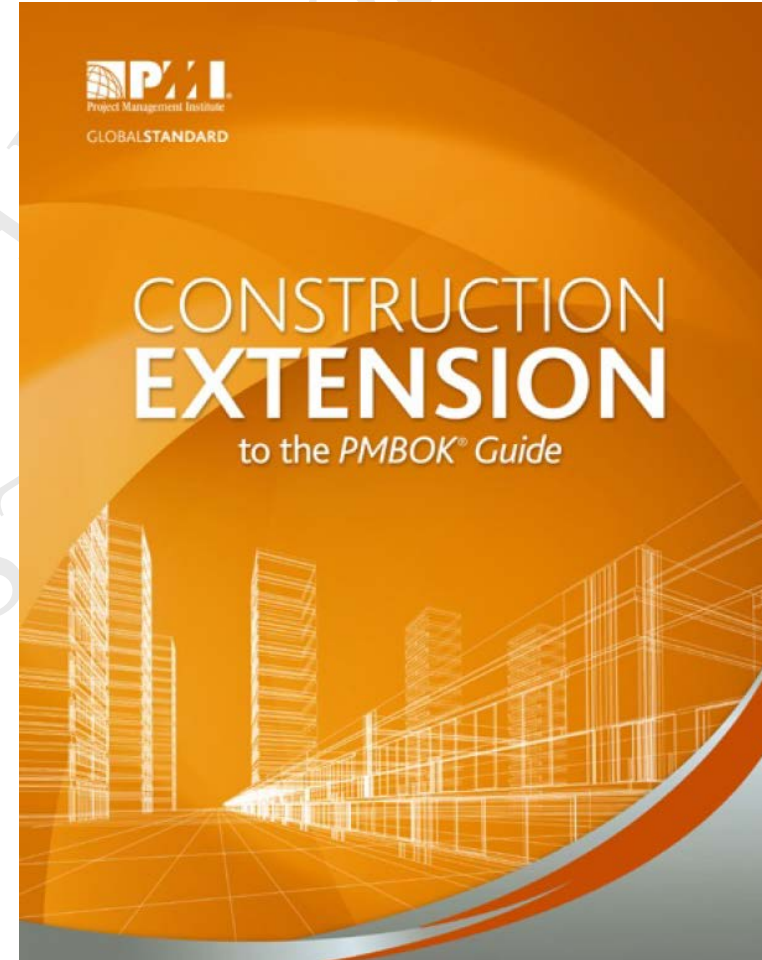


PMBOK – Construction Extension

❑ In 2002, PMI began publishing industry-specific application-area **extensions to *A Guide to the Project Management Body of Knowledge (PMBOK® Guide)***.

❖ The *Construction Extension to the PMBOK® Guide* was **first published in 2003** and has been updated with each subsequent edition of the *PMBOK® Guide*.

Construction Extension to the PMBOK® Guide (2016)





Other references

- ❑ **Construction Contract Claims, Changes, and Dispute Resolution, Third Edition, ASCE, 2016**
- ❑ **Construction Project Management, J.ROSS Publishing, 2009**
- ❑ **Urban Construction Project Management book, McGraw-Hill Companies, 2009**
- ❑ **Construction Delay Analysis Simplified: A step-by-step guide for the analysis and formulation of delay claims, Prinsloo, 2020**
- ❑ **Documents provided by Navigant Consulting Inc. 2015**
- ❑ **CMAA WEBINARS**



Other references

- ☐ **AIA Document B101-2017:** Standard form of Agreement between Owner and Architect
- ☐ **AIA Document A201-2017:** General Conditions of the Contract for Construction
- ☐ **AGC Document NO. 655-1998-Revised 2009:** Standard Form of Agreement between Contractor and Subcontractor
- ☐ **ConsensusDocs 750-2011-Revised 2014:** Standard Agreement between Constructor and Subcontractor
- ☐ **AIA A401-2017:** Standard Form of Agreement between Contractor and Subcontractor
- ☐ **FIDIC (Red Book, 2017)**

☐ نشریه ۴۳۱۱

☐ قراردادهای همسان صنعتی و غیرصنعتی

DISCLAIMER

Please note that the information presented in this course does not constitute legal advice.

Attendees should consult with an attorney before taking any action based on information contained in this course, particularly with respect to the notice provisions, time limits, jurisdictional predicates to stating a claim, and general procedures summarized in this course.



مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

بخش اول:
مقدمه و مفاهیم اصلی

ارائه دهنده:

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(PhD, PMP, CMIT)

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What we will learn?

- ❑ Claims and disputes
 - ❖ Overviews
 - ❖ Suggested terminology
 - ❖ Causes and types of construction claims
- ❑ Claims avoidance and dispute management
 - ❖ Project delivery systems
 - ❖ CM's role
 - ❖ General concepts and framework
- ❑ Global construction disputes report



Purpose of this section

□ This section:

1. **Provides** an **overview** of the **claims management objectives**
2. **Discusses** **these functions** for specific **project phases** (pre-design, design, procurement, construction, and post-construction),
with **recommended actions** and/or **techniques** to **accomplish** the **stated objectives**.



Important notes

1. **Claim Management and Project Management** are integrated back to back!
2. **Design Phase and Construction Phase** are two important phases and are our primary focuses in this course!
3. We **do not teach** project management, financial and cost management, planning and scheduling, document control, etc.
 - ❖ We see **their relations and importance** to Claims!
4. This is **not** a Contract Management Course!
5. Delay Analysis is a **prerequisite** to this course!
6. There is an advanced level of Claim Management!
 - ❖ Proposed for **Project Consultants**!

Claims and Disputes

(Overview)

Definition of a claim

- ☐ Any request for **compensation, reimbursement, time, or other relief**.
- ☐ The contractor makes a submission or a demand for money, time, or some other adjustment in the contract terms.
- ☐ A claim can exist when:
 1. A contractor **believes** a change exists, but the owner **disagrees**, or
 2. Both parties **agree** that a change exists, but **cannot agree** on the **impacts** or **costs** of the change.

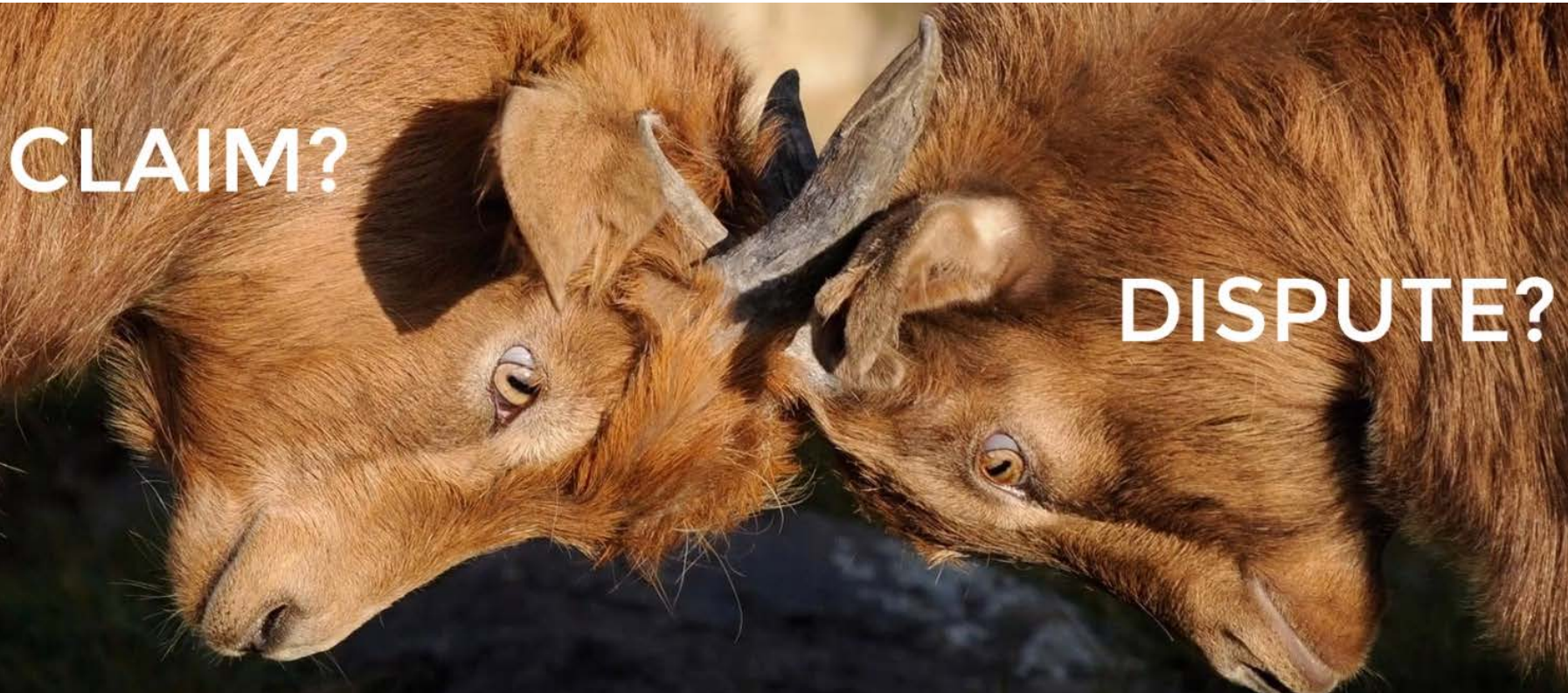
Claim is the
Scope-Time-Price Correlation



Definition of a claim

What is the difference between claim and dispute?

Dispute vs. Claim



CLAIM?

DISPUTE?

There are various perceptions as to what constitutes a “dispute” or a “claim” and the terms are often utilized interchangeably. However, many construction contracts incorporate a progressive process where an issue... may escalate from a simple disagreement to a formalized claim or even litigation.

CMAA Claims Management Guidelines 2018

Dispute vs. Claim – Sample of contract

AIA A201-2017

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract.

The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

Dispute vs. Claim – Sample of contract

CLAIMS

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.

S15.1.1 AIA A201 General Conditions of the Contract For Construction

❑ Claim is an **issue** that can be **proactively** resolved as part of the **project management process**

❑ Dispute is the **process** that flips over **more into a legal territory** and **outside** the **bounds of project management process**

DISPUTE

A Dispute is an unresolved claim that is proceeding to one or more informal or contractual dispute resolution processes.



Dispute vs. Claim – Terminology

So, what is suggested terminology?

Let's see!

Claims and Disputes

(Suggested Terminology)



Components of a claim

1. Entitlement
2. Impact
3. Damages or costs



Components of a claim

1. Entitlement

- ❖ The **contractor** must be able to **show** that there **was a change**.
- ❖ A change is the **difference** between the **contractor requirements** at the **time** of
 - ✓ **Bid**
 - ✓ **Actual requirements** imposed **during construction**



Components of a claim

2. Impacts

- ❖ The **contractor** must be able to **demonstrate** the **impacts** of the **change**.
- ❖ For example:
 - ✓ Direct costs of the work
 - ✓ Delay
 - ✓ Loss of productivity or inefficiency
 - ✓ Escalation

Components of a claim

3. Damages

❖ **Once** the contractor has **demonstrated** that

1. There was a change and his/her entitlement
2. Change impacted the work

the contractor must **prove** its damages.

❖ **For example:**

- ✓ Extended overhead costs
- ✓ Delay analysis
- ✓ Additional costs due to inefficiency or acceleration
- ✓ Measured-mile analysis
- ✓ Increased costs due to escalation



Suggested terminology by CMAA, CII, and PMI

❑ **There is little**, if any, **agreement** on the **terminology** used to describe either

1. Individuals involved
2. Stages in the process

as a **claim** grows from a **simple construction problem** to a **complex and expensive litigation**.

*It is thus **necessary** to*

1. **Define suggested terminology** and,
2. *If need be, **change old meanings** to develop a **consistent framework** in the contract*



Suggested terminology by CMAA, CII, and PMI

- ❑ Many **construction contracts** incorporate a progressive process where an **issue** typically involving a contractor and the owner may **escalate from** a simple disagreement to a formalized claim or even litigation.

Let's see the terminology proposed by **CMAA**



Suggested terminology by CMAA

❑ A **typical hierarchy** of potential disagreements may include the following:

1. *A request for change*
2. *A request for equitable adjustment*
3. *A formal claim*
4. *Litigation*

Suggested terminology by CMAA

❑ A **typical hierarchy** of potential disagreements may include the following:

1. **A request for change**

- a) **Contractor** identifies a **perceived change** in the terms of **its performance** and **notifies** the **owner** or, as the owner may appropriately **delegate responsibility**, the CM or designer.
- b) The **contractor's notice** informs the **owner**, or **owner's representative**, that a **modification** to the contract is warranted.
- c) **Project participants** discuss the **requested change** and, if agreed, **modify** the **contract administratively**.

Suggested terminology by CMAA

❑ A **typical hierarchy** of potential disagreements may include the following:

2. **A request for equitable adjustment**

❖ This is a **document** **issued by a contractor** typically **justifying** an increase in:

1. **Contract value** and/or
2. **Time of performance.**

❖ This **request** should provide:

1. **Justification of entitlement**
2. **Impacts** associated with **various proposed changes.**
3. **Detail the quantification** of the proposed adjustment

Suggested terminology by CMAA

- ❑ A **typical hierarchy** of potential disagreements may include the following:

3. **A formal claim**

- ❖ At the **claim stage**, the parties recognize that there is a **formal disagreement**.

- ✓ A **formal claim** is advanced by the **contractor** when

contract administrative remedies on the project have been exhausted without resolving the matter.

What should be done at this stage?



Suggested terminology by CMAA

- ❑ A **typical hierarchy** of potential disagreements may include the following:

3. A formal claim

What should be done at this stage?

- ❖ Often, a **contractor** needs to have **first issued a notice of intent** to **file a claim** when the matter in question **first arises**.
- ❖ **Construction contracts** typically define the **process** under which a claim will be **reviewed**, and reviewer may involve a **party not directly involved** in the **day-to-day project administration**, such as
 - ✓ Contracting officer,
 - ✓ Designer of record, or
 - ✓ Owner's senior management

Legal counsel may be involved at this stage.



Suggested terminology by CMAA

- ❑ A **typical hierarchy** of **potential disagreements** may include the following:

4. **Litigation**

- ❖ **Matters** that are **not resolved** through the **claims review process**, however defined, may **ultimately** be resolved **through litigation**.
- ❖ At this stage, the parties involved in the **dispute** are represented by **legal counsel**.



Suggested terminology by CII

If the **owner admits** the claim of contractor and **grants him extension of time or reimbursement of additional cost**, or both,

the issue is sorted out.

However, if the **owner does not agree** to the claim put out by contractor and there are **differences in the interpretations**,

the issue takes the form of a dispute

Dispute

It is “**any contract question or controversy** that must be settled **beyond** the jobsite management”

Individuals Involved	Stages in the Claims Process				
	Problem	Disagreement	Dispute	Conflict	Litigation
Litigators					Formal court documentation and proceedings
Consultants & Neutrals				Assist with quantification and entitlement on an issue-by-issue basis	
Sponsors, Standing Advisors & Standing Neutrals			Attempts at resolution removed from day-to-day management		
Project Managers	Routine discussions & negotiations	Substantial honest negotiation on defined problem			
Level of Resolution	← On the Project →			← Removed from the Project →	

Suggested terminology by CII

سطوح فرایند ادعاء					افراد درگیر
مشکل	اختلاف نظر	اختلاف	تعارض	دعوی قضایی	
				رویه قضایی و ارسال لایحه شکواییه	قاضی و دادستان
			کمک به کمی سازی و بررسی استحقاق به صورت مورد به مورد		داوران، مشاوران و هیئت های حل اختلاف
		تلاش برای حل مسئله در فضای دورتر از افراد دخیل			حامیان، مشاوران و میانجیان
مکالمات و مذاکرات معمول	مذاکره مفصل حول مسئله طرح شده				مدیران پروژه
داخل پروژه		خارج از پروژه			سطح تصمیم گیری

Suggested terminology by CII – Individuals involved

1. Project Managers

- ☐ The **individuals**, employed by the owner, the engineer, the architect or the contractor
- ☐ They are **directly involved** with the project at the **project level**
- ☐ They are responsible for the **day-to-day decisions** needed to **perform the work** within the scope of their contract

2. Project Sponsors

- ☐ The **individuals**, employed by the owner, the engineer, the architect or the contractor
- ☐ They are responsible for the **overall success** of the project at a **home office or corporate level**
- ☐ Their responsibility include **long-term business** and **customer satisfaction objectives**



Suggested terminology by CII – Individuals involved

3. Standing Advisors

- ☐ The **expert consultants and legal advisors** retained by the owner, engineer, architect or contractor
- ☐ Hired to **assist** with the **resolution of technical problems** and **disputes** on an **ongoing basis** throughout the **duration of the project**.

4. Standing Neutrals

- ☐ The **individuals** selected and appointed by owner, engineer, architect or contractor
- ☐ They should provide **ongoing assistance** with **dispute resolution throughout** and in **parallel** with the **performance of the project**.

Suggested terminology by CII – Individuals involved

5. Consultants

- ❑ The consultants, legal advisors and other experts retained by owner, engineer, architect or contractor
- ❑ They provide advice on specific identified technical or contractual issues.

6. Neutrals

- ❑ The individuals selected and appointed by owner, engineer, architect or contractor
- ❑ They assist with the resolution of identified technical or contractual problems on an issue-by-issue basis.



Suggested terminology by CII – Individuals involved

7. Litigators

- ❑ The lawyers, arbitrators and judges involved in reaching a final binding resolution on specific matters referred to them.

Suggested terminology by CII – Stages in the claims process

سطوح فرایند ادعاء

1. A Problem

دعوی قضایی

litigation

تعارض

conflict

اختلاف

dispute

اختلاف نظر

disagreement

مشکل

problem

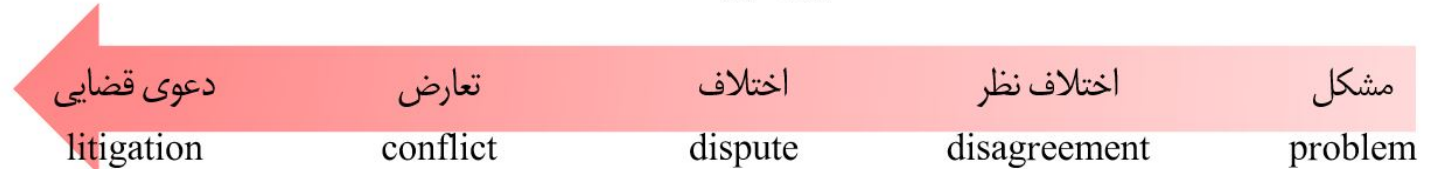
- ❑ Problems arise from **project uncertainty**, process problems or people issues and are a **normal part of construction**.
- ❑ Most are resolved when the project participants **agree** on the resolution of the problem as part of their **normal day-to-day management** of the project.

2. A Disagreement

- ❑ Disagreements arise when the project participants **cannot resolve a problem without** recourse to **substantial honest negotiation**.
- ❑ Each party will **notify the other**, in accordance with the **contract documents**, of its **position in writing** and the project participants will use this as the basis to seek a **negotiated agreement** at the **project level**.

Suggested terminology by CII – Stages in the claims process

سطوح فرایند ادعاء



3. A Dispute

- ❑ Disputes arise when the **project participants** are unable to resolve a disagreement in a **timely manner**.
- ❑ Project sponsors, standing advisors or standing neutrals will become involved in an attempt to resolve the dispute and reach agreement at the project level.

4. A Conflict

- ❑ Conflicts arise when project sponsors, standing advisors or standing neutrals cannot resolve a **dispute** at the project level.
- ❑ Internal or specialized consultants will be required to quantify the **disputed issue** and address unresolved questions of entitlement and quantification.

Suggested terminology by CII – Stages in the claims process



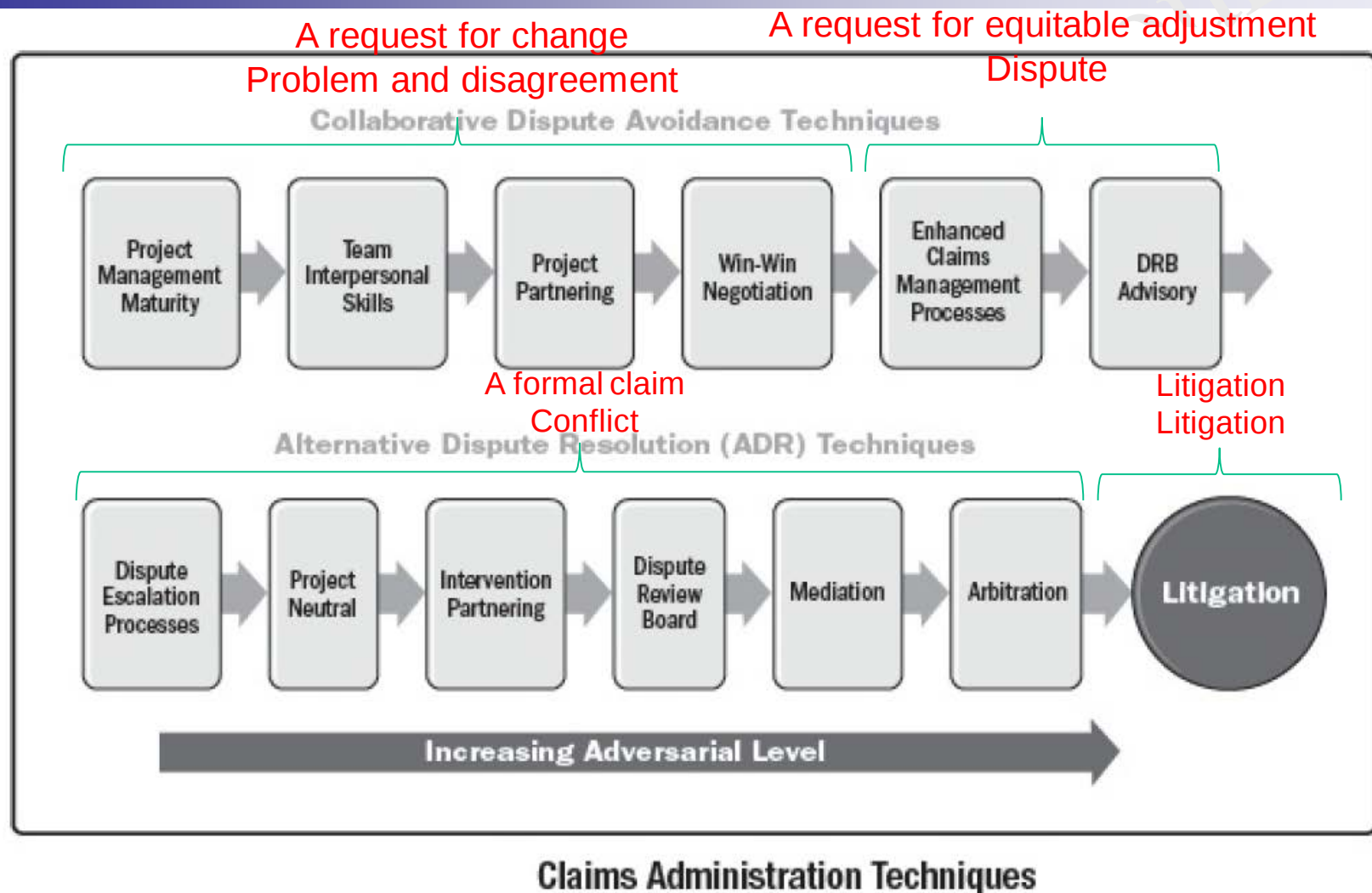
5. Litigation

❑ Litigation occurs when

- ❖ Internal and specialized consultants are **unable** to reach **agreement** on **quantification** and **entitlement** despite their best efforts
- ❖ **Parties** involved have **considered** the implications of **prolonged arbitration** or **court proceedings**

❑ Under these conditions **final resolution** is sought through **binding arbitration**, the courts or other legal forums.

Suggested terminology by PMI



Claims and Disputes

(Causes and Types of Claims)

❖ **While** there are **many common opinions** among these sources,
each individual or party also has a slightly **different perspective**.





Causes of construction claims

❑ Some of the most commonly cited causes of claims among the many studies and publications are:

1. Errors and omissions in design / scope change
2. Differing site conditions
3. Failure to properly administer the construction contract
4. Directed suspension of work
5. Directed acceleration
6. Ambiguous specifications



Causes of construction claims

☐ Some of the other causes of claims:

1. The owner's staff is not adequate to meet project needs.
2. A scope of services or work is not clearly defined.
3. An inappropriate project delivery method has been selected.
4. The design is not sufficiently complete.
5. Contract documents are deficient.
6. Estimates are not accurate.
7. Bids are too low.
8. Project management is not effective.
9. Unanticipated site conditions are discovered.
10. Unexpected environmental issues arise.
11. Uncontrollable events interfere (force majeure).
12. The CM, designer or contractor has performance problems.
13. Owner initiates numerous changes.
14. Inadequate insurance coverage exists.
15. Contractor's (and owner's) claims are not properly managed and controlled.
16. Inappropriate dispute resolution procedures exist.



Causes of construction claims

☐ Some of the other causes of claims:

17. Work out of sequence
18. Defective specifications
19. Delays from the owner's acts or failure to act
20. Strikes
21. Unwarranted (pointless) work rejection
22. Additional work not specified in the contract documents
23. Accelerated performance in any way, to regain schedule, to add workers or materials, or to work overtime or extra shifts
24. Any new, different, or shorter schedule
25. Relocation of existing work because of lack of coordination, information, or other factors
26. Increased inspection requirements, tests, or quality control program
27. Work resulting from contract drawings or specifications that have been changed, amended, revised, amplified, or clarified.
28. Unanticipated work that results from insufficient details in the plans and specifications.

Causes of construction claims

The impacts of changed site conditions are probably the **least avoidable**, though **much** can be done to **minimize the consequences** through capable **engineering and project planning**.

The **remaining circumstances** arise out of the **planning and administrative process**.

Problems can be **avoided**, or at least **substantially diminished**, by

1. Careful **advance planning structuring** of the **contract documents** and
2. **Defining** the relationships established by those documents.

Let's see some of these items!

Causes of construction claims

1. Errors and omissions in design / scope change

a) Errors:

- ❖ Instructions (or lack) in the **plans** and **specifications** that, if followed by the contractor, will require
 - ✓ Replacement or correction at a cost
 - or
 - ✓ Cause construction failure.

Example:

Designer specifies HVAC equipment that does not fit into the newly constructed ceiling.



Causes of construction claims

1. Errors and omissions in design / scope change

b) Omissions:

- ❖ Something required to complete the building or comply with the building codes is not shown on the plans and/or in the specifications

Example:

Designer does not include provisions for American disabilities accessible sink

Causes of construction claims

1. Errors and omissions in design / scope change

☐ Most common

☐ Owner

1. Adds or subtracts work

2. Issues a change order

❖ Change may be to

a) Increase scope

b) Correct for mistake

c) Adjust for conditions



Causes of construction claims

1. Errors and omissions in design / scope change

- ❑ Today, **designers** have infinitely **more powerful software** to develop a design that is clear, complete and without conflicts.
 - ❖ Yet, there are **more claims today** based on **alleged defective designs**, notwithstanding the **advances in design tools**.

Causes of construction claims

1. Errors and omissions in design / scope change

How PMIS data can help?

- ❑ **Cannot help much** on this type but
can **identify contract documents** that should be
modified for the next project.

Constructability analysis needed here!



Causes of construction claims

2. Differing site conditions

- ☐ Unanticipated or hidden physical conditions
- ☐ Above or below ground level
- ☐ Natural or man-made
- ☐ Reasonably relied upon the contract documents
- ☐ There are basically two types.



Causes of construction claims

2. Differing site conditions

❑ There are basically two types.

1. Erroneous indications in the contract documents:

❑ **Subsurface or latent (hidden) physical conditions** at the site **differing** materially **from** those indicated in the contract documents.

Examples:

- i. Plans indicate that site contains suitable soil. Upon excavation, unsuitable soil is encountered.
- ii. Rock where none is shown
- iii. Subsurface water where none is indicated
- iv. Buried pipes or utilities where none are depicted



Causes of construction claims

2. Differing site conditions

❑ There are basically two types.

2. Unknown site conditions of an unusual nature

❑ **Unknown physical conditions at the site**, of an unusual nature, **differing** materially from those **ordinarily encountered in work** of the contractor provided for in the contract.

❖ Keywords here are **“unknown,”** **“unusual,”** and **“differing materially.”**

- i. Contractor discovers rock in an area where rock is not normally encountered
- ii. Subsurface hazardous or toxic waste materials in an apparently undisturbed area
- iii. Soft ground beneath previously undisturbed dry soils

Causes of construction claims

2. Differing site conditions

To substantiate a **Type Two differing site condition**, the contractor must demonstrate that he or she **could not reasonably anticipate** the **conditions encountered** at the **time of bid**.

In the **absence of a specific clause** contemplating differing site conditions, the problems **described subsequently** would typically be processed as **claims** through the **traditional changes clause**.

We will see some of these clauses later!

Is **force majeure** like **earthquake** similar to **differing site conditions**?

Causes of construction claims

2. Differing site conditions

- ❑ **Forces of nature**—situations included in a **force majeure provision** in a contract, also called “acts of God”—

generally do **not qualify** as **differing site conditions**

*because they constitute **physical changes after contract award.***

Other forms of force majeure conditions include **oil spills** and **labor strikes**.



Causes of construction claims

2. Differing site conditions

- ❑ Similarly, the ability to **ascertain and characterize subsurface conditions** is **far better today** than the means available only a few years ago.
- ❑ The **accuracy of geotechnical information** has **improved**,
 - ❖ **Yet** the incidence of **claims** regarding **differing site conditions** has also **increased despite these advancements.**

Causes of construction claims

2. Differing site conditions

How PMIS data can help?

- ☐ Can **only** help to **prevent** these when used during planning and design phases
- ☐ During construction helps to **quickly resolve** and **mitigate impact**

We will see this in the construction phase

Causes of construction claims

2. Differing site conditions

How BIM can help?

- ❑ BIM, laser, or any other new technology used in the construction industry **cannot yet solve** the unknown problems on a construction site, particularly those **underground**, such as unexpected soils and water issues.

*Thus, **differing site conditions** continue to be a **major cause of claims activity** in the construction industry.*

- ❑ Those claims encompass:
 1. Excess cost needed to deal with a newly discovered site condition
 2. Delay and/or acceleration claims

Causes of construction claims

3. Failure to properly administer the construction contract

❑ The **emergence** of **disputes and claims avoidance processes** such as “partnering” on projects is intended to remind **mutual benefits** of working **cooperatively together**.

❖ **Owners** have begun to **shift from** the use of **traditional design-bid-build** to alternative project delivery methods such as **CM at-risk and design-build**, in **hopes of avoiding** disputes using **alternate risk allocation strategies**.

BUT

Does it help to avoid claims and disputes?

Causes of construction claims

3. Failure to properly administer the construction contract

Does it help to avoid claims and disputes?

BUT

This change in risk allocation has often been driven by a **desire to shift potential liabilities to others,**

rather than

to **allocate the risk** in accordance with the **party best able to manage and control that risk.**

Causes of construction claims

3. Failure to properly administer the construction contract

How PMIS data can help?

- ☐ PMIS data can **provide** substantial benefits in **complying** with **contractual obligations**
- ☐ PMIS data and application itself can provide a lot of benefits here especially in terms of **notifications** around contractual dates

We will see this in the construction phase



Causes of construction claims

4. Directed suspension of work

- ☐ Allows the **employer** to **order all or part** of the work **stopped** during the project
- ☐ Allows the **contractor** to **recover time** and **associated costs**
- ☐ Suspension clauses preclude the recover of **profit** on the suspension costs

Remember that Eichleay formula only considers HOOH?

We will see these clauses later!



Causes of construction claims

5. Directed acceleration

- ☐ Actions taken by the **contractor** to **complete** the **work earlier** than planned
- ☐ Required by the **employer** despite an acknowledged delay
- ☐ Speed-up work and **shorten** the **time** of performance
- ☐ Overcome **employer-caused delays** already experience
- ☐ Usually issued in the **form of a variation**
- ☐ Contractor's costs incurred in complying with this directive

We will see these clauses later!

Causes of construction claims

6. Ambiguous specifications

- ❑ When **specifications** are **not clearly written** or detailed enough, and leave statements to **interpretation**.

Example:

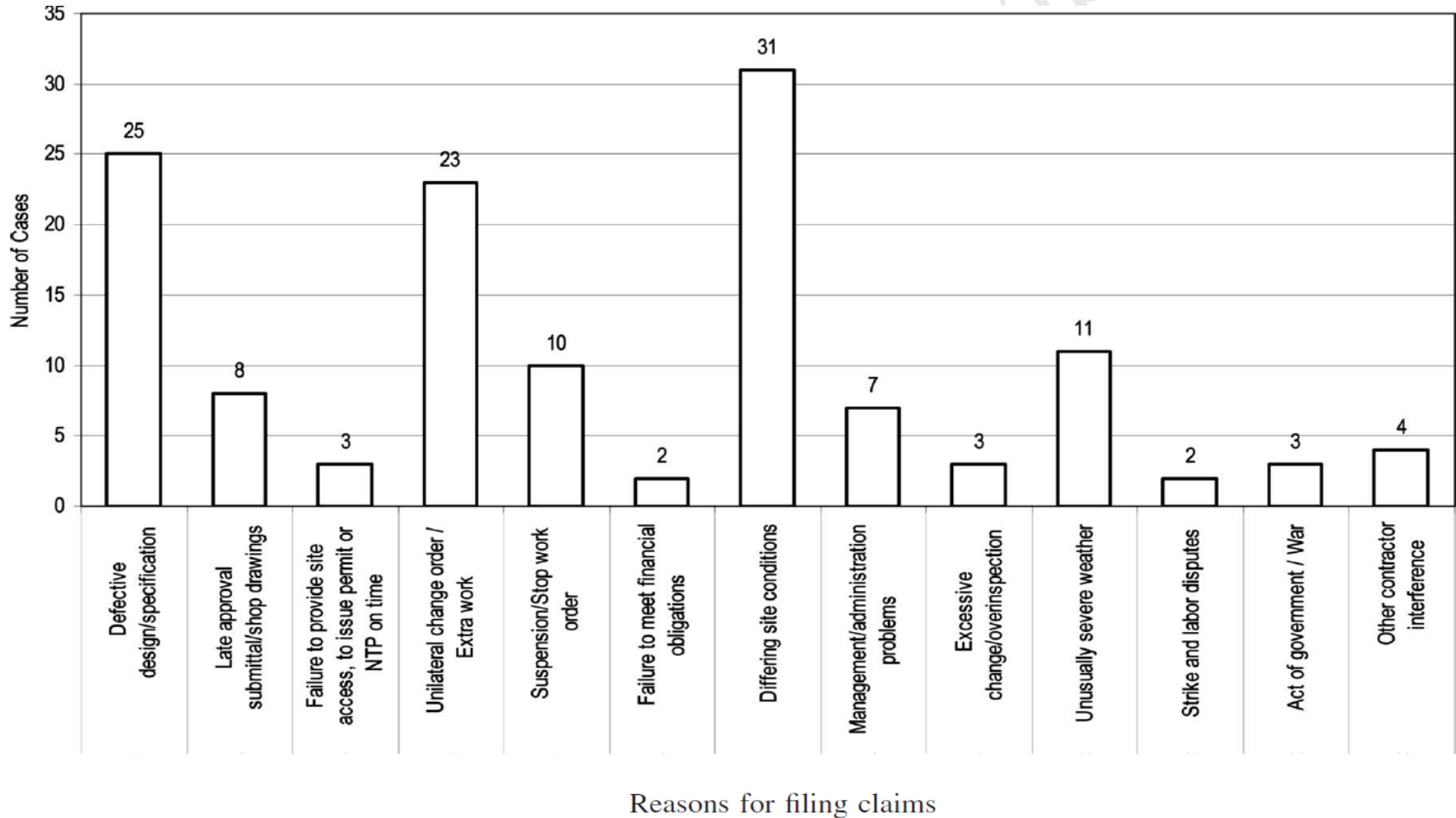
Specifications include a list of a recommendations that state material “should be excavated from a certain elevation.”

What is the problem with this clause?

You will have some HWs to analyze these clauses!

Causes of construction claims

□ Research done by Arditi and Pattanakitchamroon, Analysis Methods in Time-Based Claims, 2008





Causes of construction claims

Based on PMBOK Construction Extension

❑ Many claims are the result of

1. **Unresolved request** for a **change order**,
2. **Conflicting contract** document **interpretation**,
3. Changed or **unknown conditions**
4. Contract that is **not administered in a timely manner** causes time and cost impacts on the project.
5. **Project performance** due to either
 - i. **Quality of work** performed or
 - ii. **Progress** of the work

not being obtained to meet the **contract completion date**.



Causes of construction claims

Projects today are **more complicated** and involve **complex components** and systems.

Not surprisingly, the professionals and trades needed to perform this work have correspondingly **specialized skills** and **narrowed service offerings** to focus on specialized components and systems.

This has caused a proliferation of participants on projects which has **increased** the number of interfaces between **consultants** and **contractors**.

This has in turn **increased** the importance of **close coordination** by the designer and general contractor.

When the necessary coordination is not properly performed, the **potential for conflicts** in design and construction increases, which then may also lead to disputes and claims.

Types of claims

- ❑ This is **different** from the cause of claims question.
- ❑ In the construction industry, the **dispute or claim by a contractor** against an owner is often based on **one or more of the following types of claims**:
 1. *Claims for variations (Extra work or change orders)*
 2. *Claims for extensions of time (Delay or EOT)*
 3. *Claims for additional payment due to prolongation (Compensation)*
 4. *Acceleration and Disruption claims*
 5. *Claims for damages under law*
 6. *Interim and final claims*

If a dispute or claim arises, the demand for **additional compensation**

1. Should be presented in a manner required by the contract and
2. Should be an **accurate and proper measure** of the damages claimed.

This will be discussed in more detail in Construction Phase

Dispute vs. Claim

Contractor is the only party who claims...

Is it true? Let's see...



Owner claims

- ☐ Failure to perform / correct work
- ☐ Third-party claims
- ☐ Withholding payment (Retainage)
- ☐ Invalidating prior applications for payment
- ☐ Liquidated damages
- ☐ Consequential delay damages

The risk is there and can be a **silent killer**.
You should know, understand and evaluate this **risk on every project.**

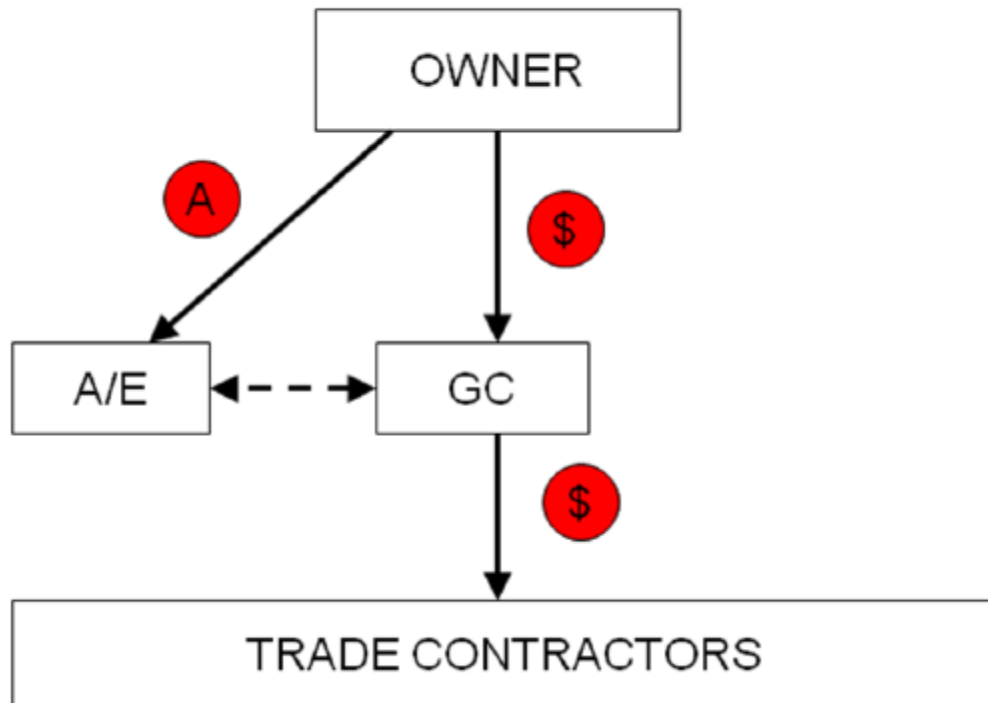
Claims Avoidance and Dispute Management

(Project Delivery Systems)

Project delivery system

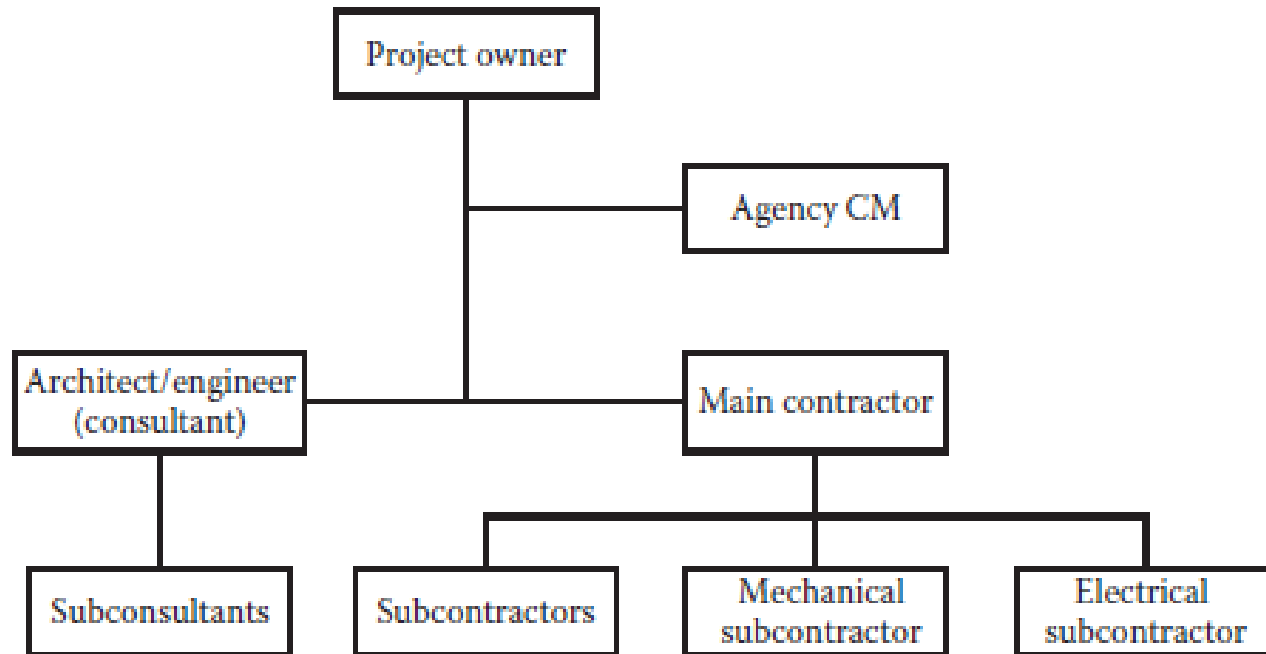
Traditional DESIGN-BID-BUILD (DBB)

TRADITIONAL PROJECT DELIVERY SYSTEM



Project delivery system

Traditional DESIGN-BID-BUILD (DBB) with Agency CM



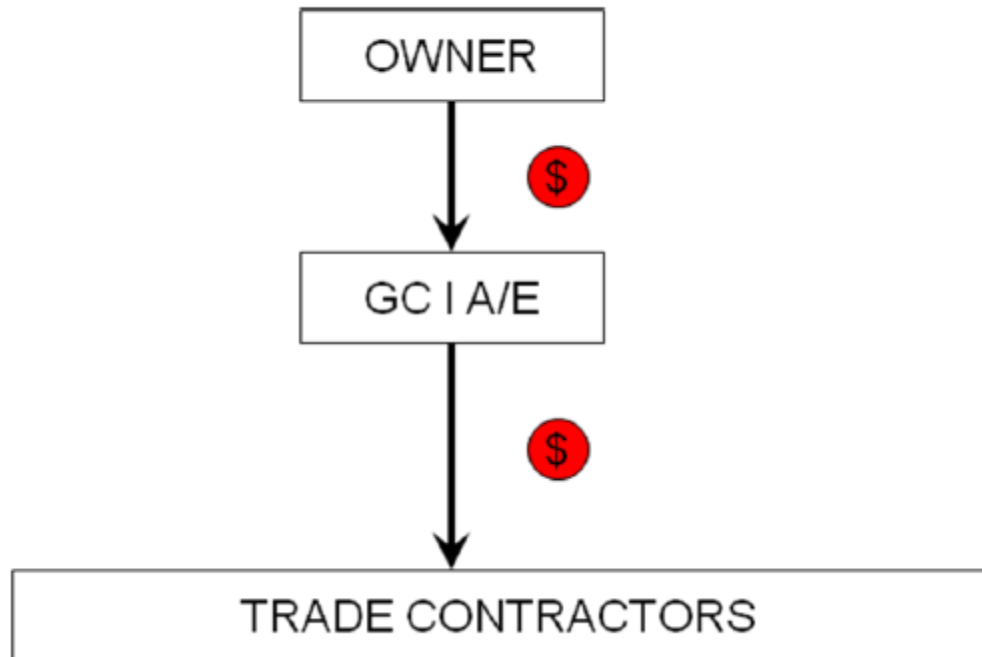
Design-bid-build with agency CM.



Project delivery system

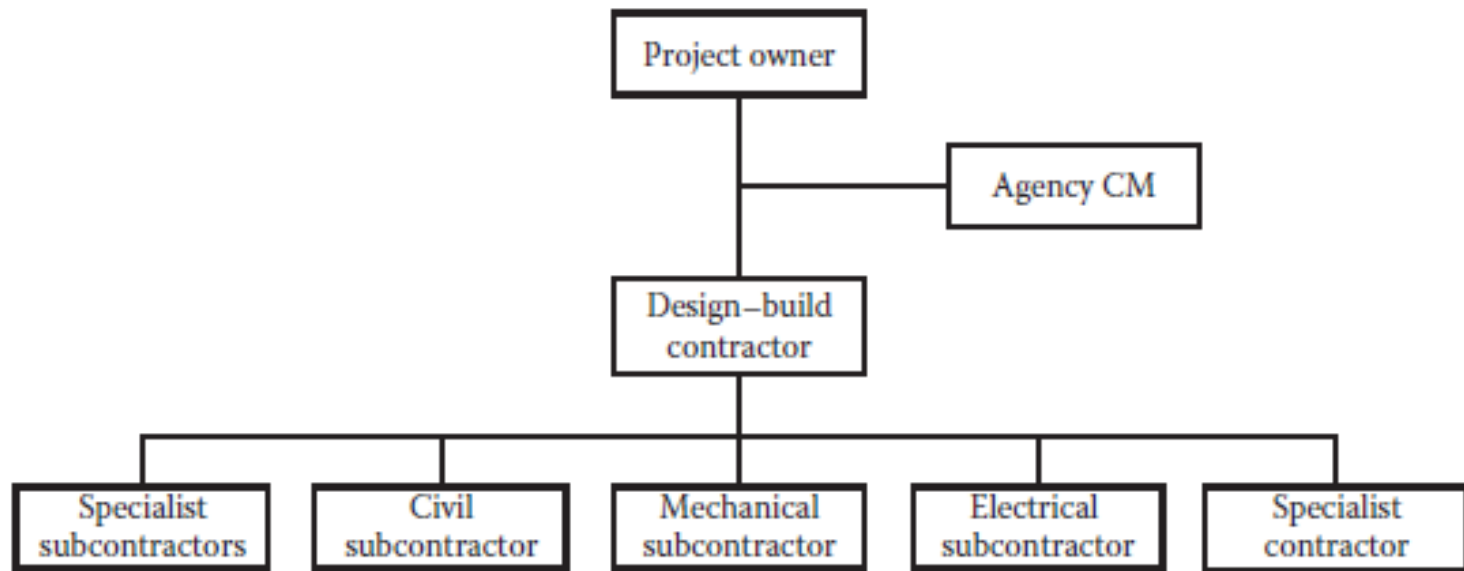
DESIGN-BUILD (DB)

DESIGN/BUILD PROJECT DELIVERY SYSTEM



Project delivery system

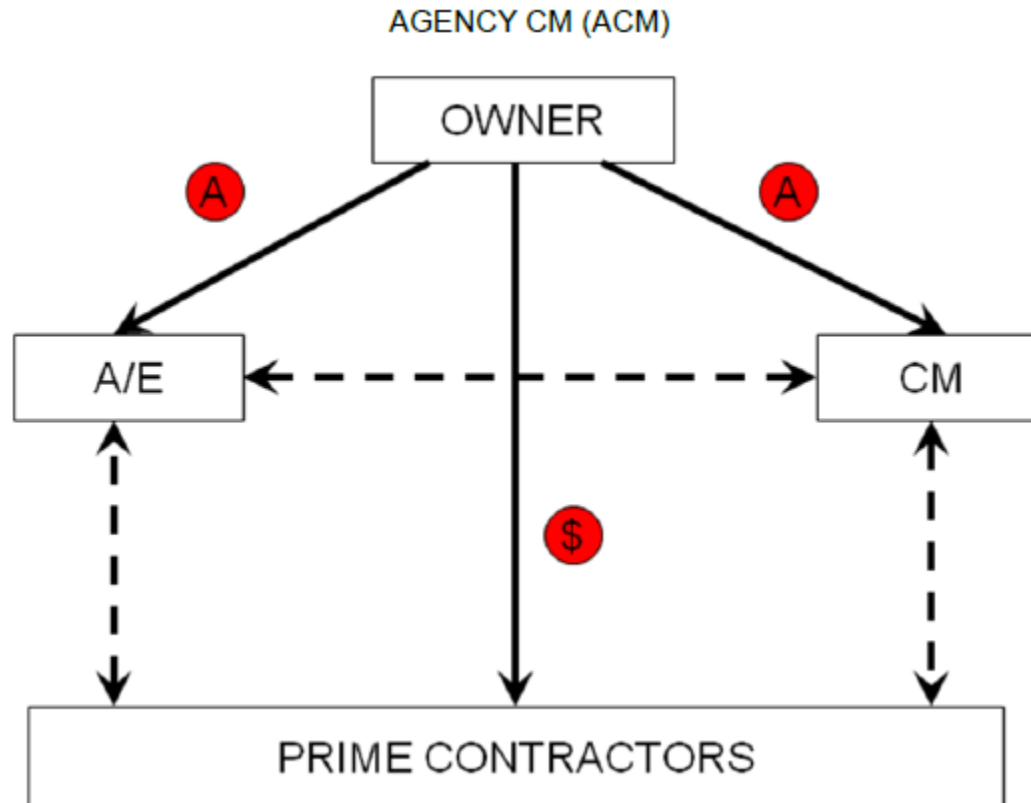
DESIGN-BUILD (DB) with Agency CM



Design-build-delivery system with agency CM.

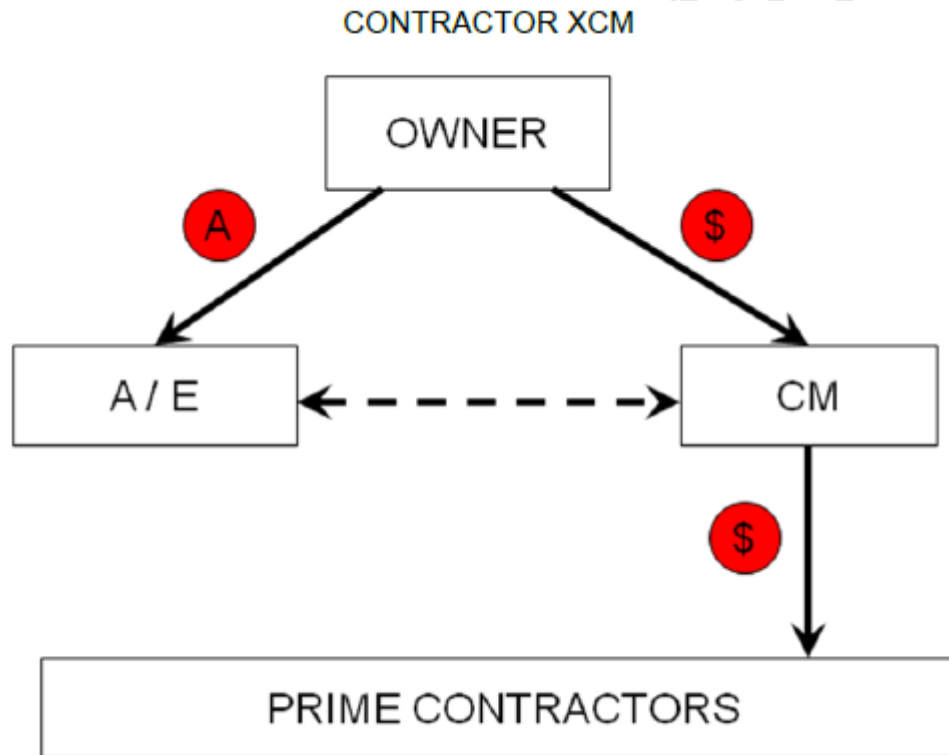
Project delivery system

Agency CM (ACM) (CM-for-fee)



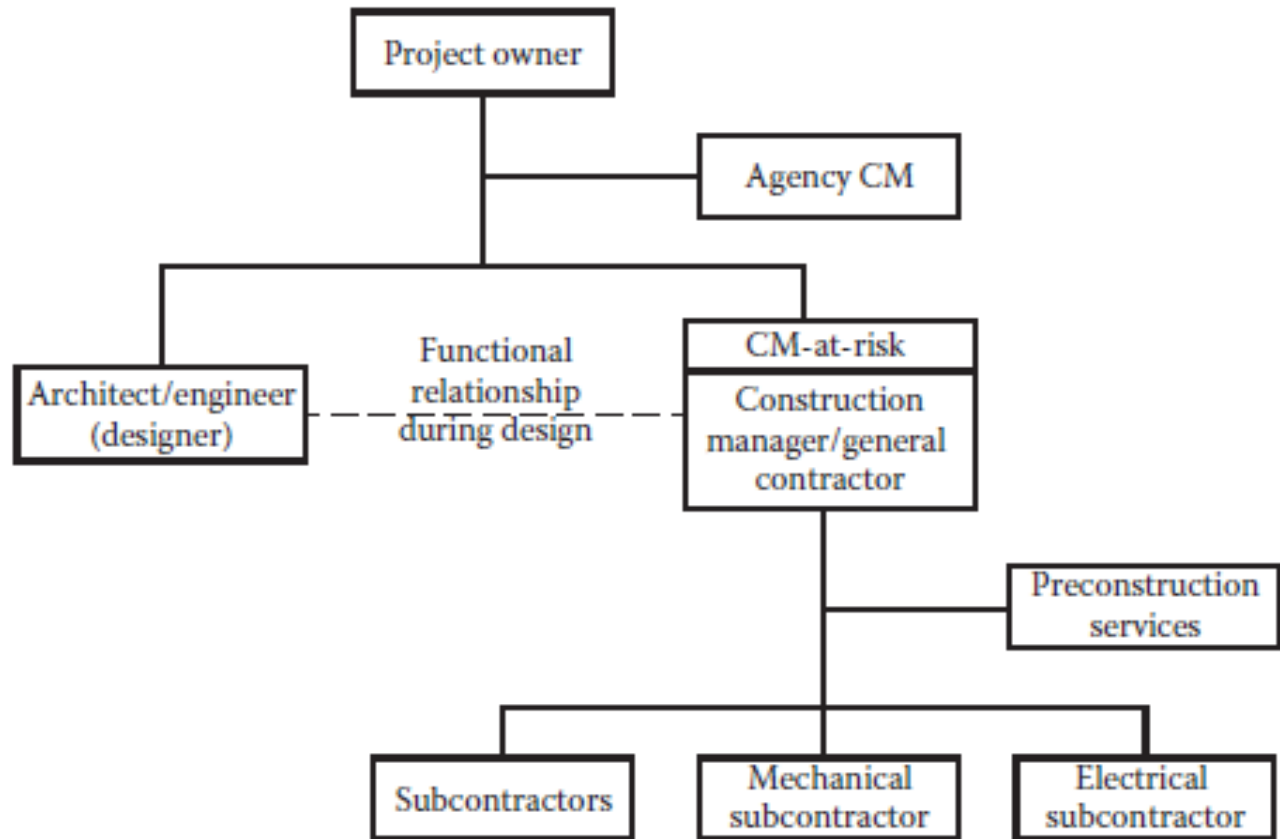
Project delivery system

Contractor XCM (CM-at-Risk)



Project delivery system

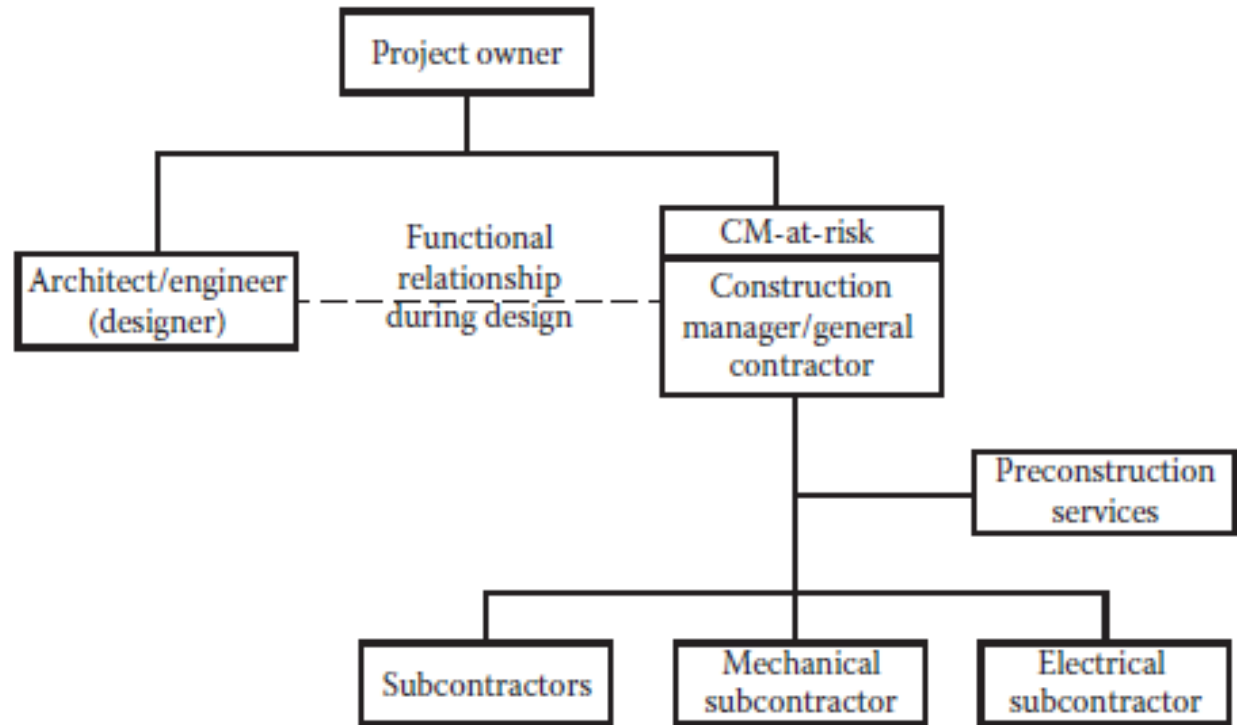
Contractor XCM (CM-at-Risk)



Construction management-at-risk (CM-at-risk) with agency CM.

Project delivery system

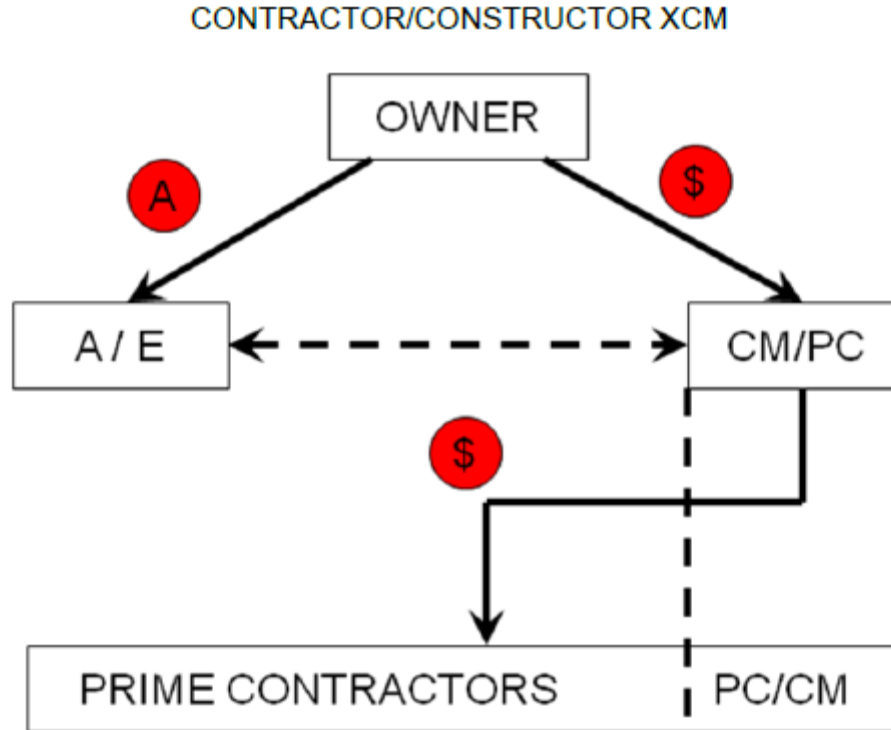
Contractor XCM (CM-at-Risk)



Construction management contractual relationship (CM-at-risk).

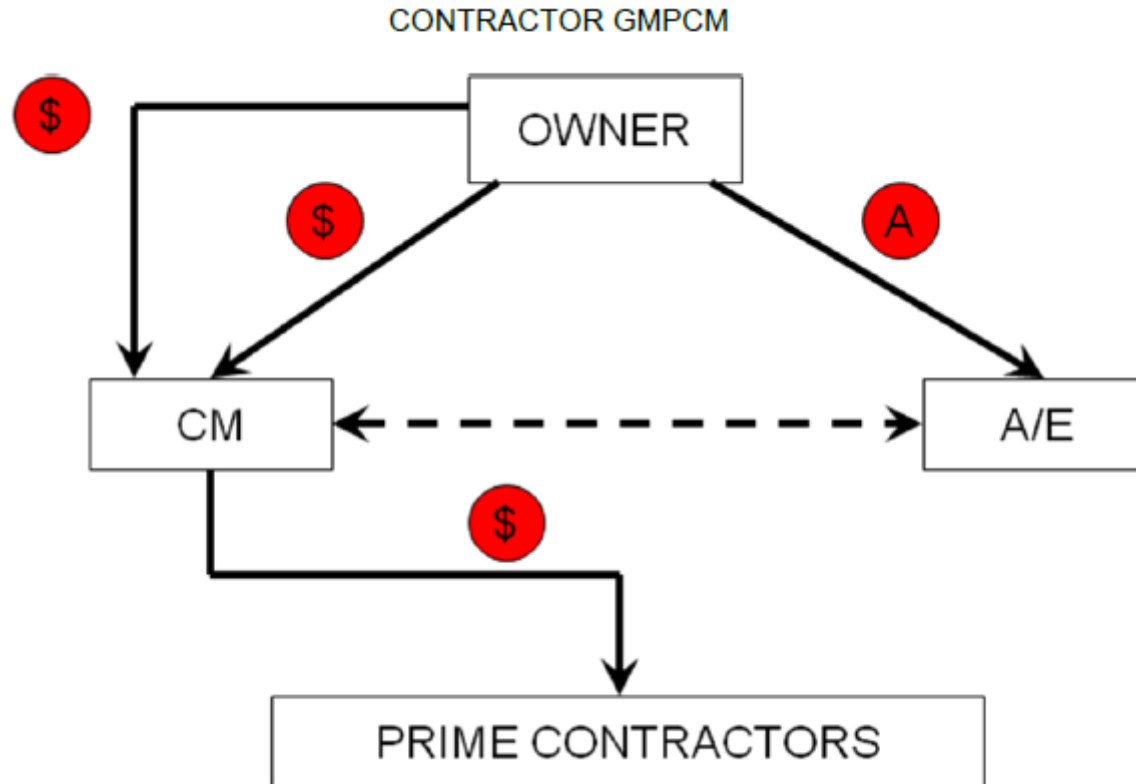
Project delivery system

CONTRACTOR/CONSTRUCTOR XCM



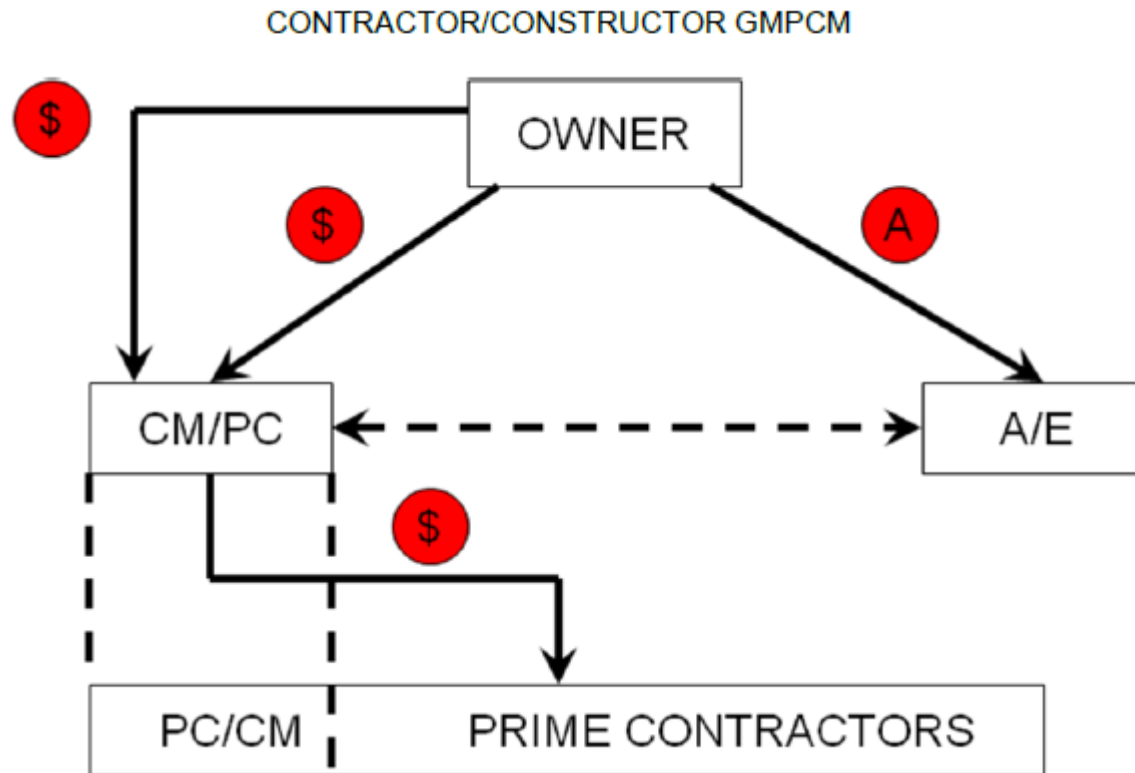
Project delivery system

CONTRACTOR GMPCM



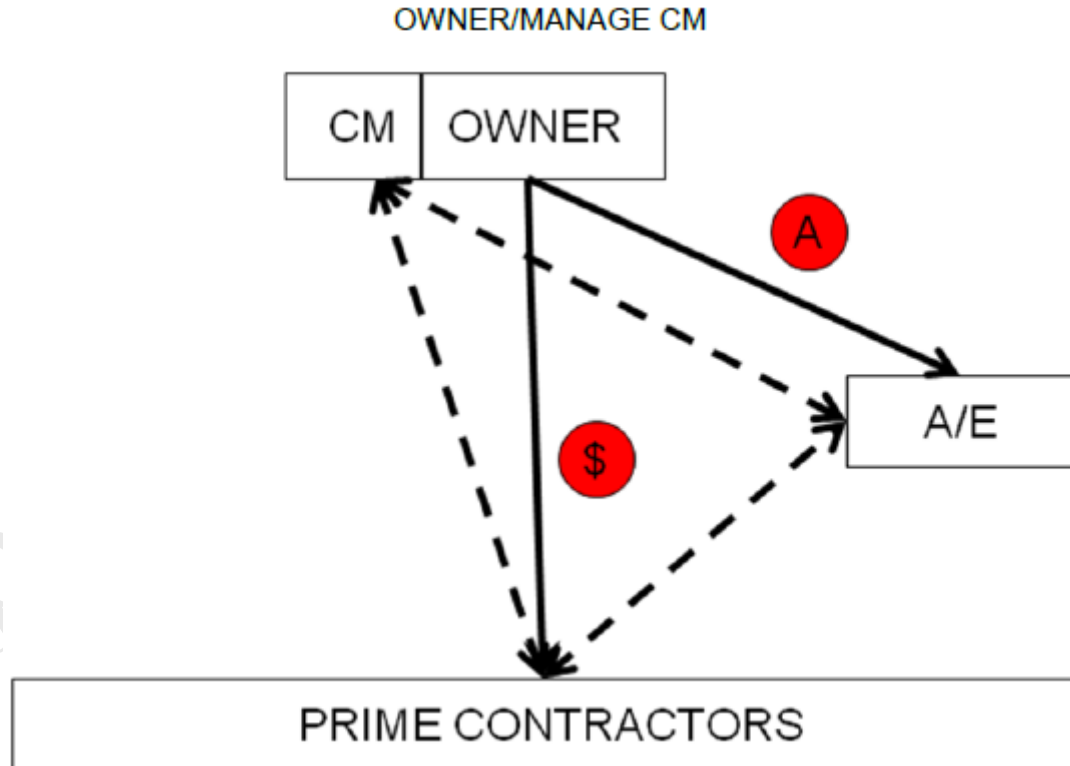
Project delivery system

CONTRACTOR/CONSTRUCTOR GMPCM



Project delivery system

OWNER/MANAGE CM (IN-HOUSE CM)





Project delivery system

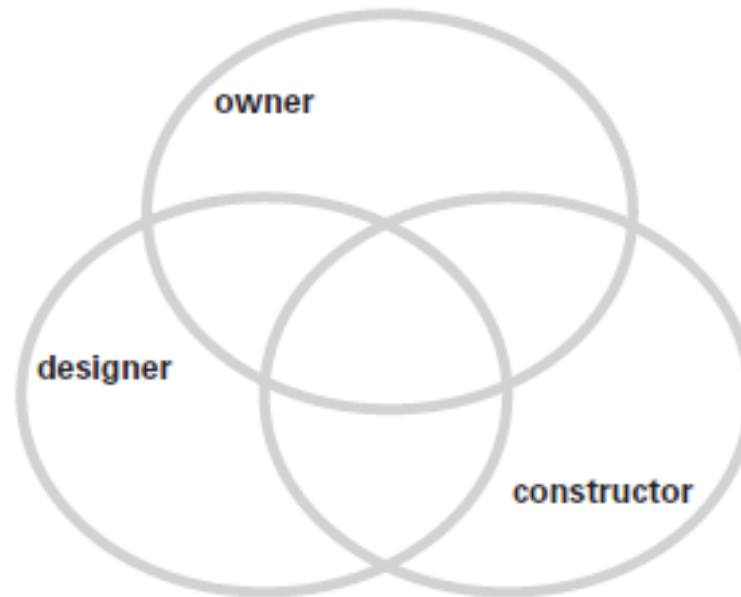
CM DELIVERY SYSTEMS

1. Owner and Construction Manager (CMAA Document CMAR-2)
2. Construction Manager and Contractor (CMAA Document CMAR-2)
3. General Conditions of the Construction Contract (CMAA Document CMAR-3),
4. Construction Manager and Designer (CMAA Document CMAR-4)

Project delivery system

Integrated Project Delivery (IPD)

Multi-Party



Claims Avoidance and Dispute Management

(CM's Role)

The relationship between claim management and project delivery system

The **CM manages** the construction process and enforces the construction contract requirements.

In that position the **CM is likely most knowledgeable** about the facts, circumstances, and parties' positions on major disputes and claims.

Although there are **many variations** of CM delivery system, ***all variations can be placed in either the “agency” or “at risk” forms of construction management.***

Therefore, the steps and tasks described in this course are relevant to **both forms of construction management** since ultimately it is in the interest of all parties on a project that disputes and claims be avoided, mitigated, and/or resolved.



Claim management objectives

❑ **Regardless** of whether the CM remains in

1. **Agency relationship** with the owner

2. **Consultant**,

3. **CM** ultimately **assumes responsibility** for the constructed project,

the **CM's role** is to represent its client's **best interests**, typically the owner.

*One of the goals of **successful project completion** now includes the expectation of **project closeout free of disputes and claims**.*

Claim management objectives

One of the **purposes** of this course is to identify and describe the **CM's activities** and **tasks** that are essential to the avoidance, mitigation, and resolution of **disputes** and **claims** that may arise on a project.

- ❑ As part of the CM's contract administration responsibilities, the CM is expected to **administer disputes and claims** through the contractually specified processes and administrative remedies.

CM's role and responsibility regarding claims management

❑ The CM's role and responsibility regarding **claims management** spans all project phases including:

1. Before construction: Avoidance measures that can help to reduce the **likelihood** of **disputes** and **claims** before construction contract(s) are awarded.
✓ Remember SCL Protocol?
2. Construction phase: Practices that enable early detection of **potential disputes** and **claims** and facilitate resolution during the construction phase.
3. Post-Construction phase: Participation and support of **activities** that assist in equitable post-construction resolution of disputes and claims.

As almost all construction disputes and claims ultimately involve **time** and **money**, the CM's **management of time and cost** also has direct bearing on the **resolution of disputes**.

Since the dispute may result from virtually **any aspect of the construction** contract, every role and responsibility of the **CM** may in some way relate to the issue in dispute.



What CM should do in this process?

CLAIMS AVOIDANCE

- ✓ Issues CM's should be aware of that may cause, aggravate or help resolve claims during the course of the contract and as part of typical project management processes
- ✓ What CM's can do or not do that may avoid, cause, aggravate or help resolve claims

DISPUTE MANAGEMENT

- ✓ Issues CM's should be aware of that present risks or opportunities to them or their client during a formal dispute outside of typical project management processes
- ✓ What CM's can do or not do to protect themselves and their clients in the dispute resolution process

How to perform claims avoidance and dispute management?

Let's see!

Claims Avoidance and Dispute Management

(General Concepts and Framework)



Introduction

❑ An active program of

1. Claims
2. Change order

identification and notification is the only way to inform the owner of adverse or potentially adverse job conditions.

❑ It is necessary to **advise** the owner of the **potential magnitude** of cost and time effects early enough to

1. Secure adequate funds
2. Make appropriate and timely adjustments,

which the owner otherwise would not, or could not, do alone.



Introduction

1. Early notification

2. With request for direction from the owner

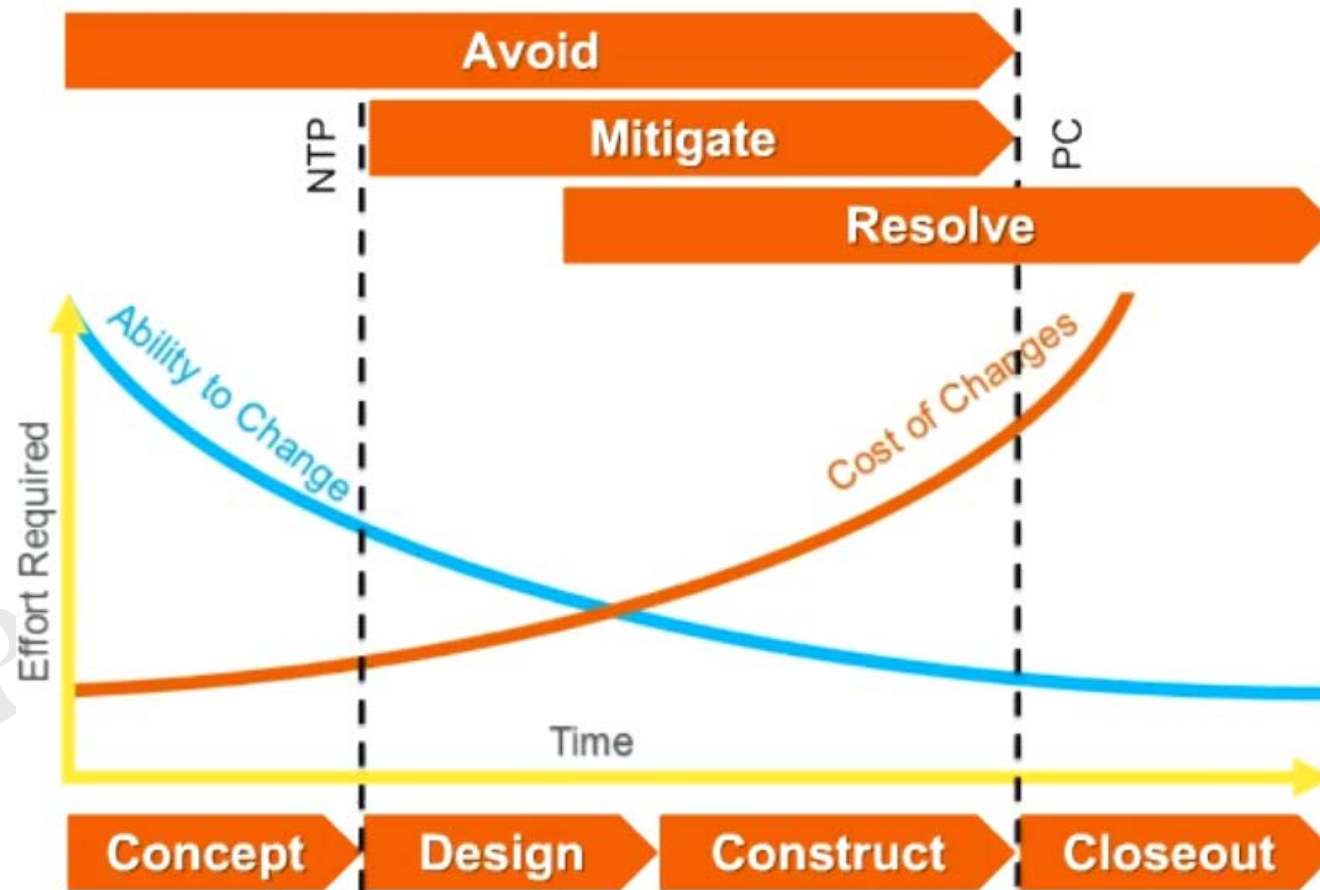
increases the chances of early resolution and

saves both parties from unfavorable surprises later on.

Strong organizational procedures and project controls needed.

Introduction

NTP: NOTICE TO PROCEED
PC: PROJECT COMPLETION





Introduction

CLAIMS AVOIDANCE

Coordination & Process
Change Orders
Standard of Care
Technology

DISPUTE MANAGEMENT

Communication
Records
Alternative Resolution
Litigation and Arbitration



Claims avoidance – Pre-construction phase: Examples

- ☐ Project market knowledge (political, environmental & other)
- ☐ Project owner investigation
- ☐ Contractor, subcontractor & supplier qualification
- ☐ Set reasonable owner expectations
 - ❖ Program requirements
 - ❖ Estimating
 - ❖ Planning
 - ❖ Scheduling
- ☐ Transparency / fairness in contracting
- ☐ Constructability review
- ☐ Thorough bid review / scope of work confirmation
- ☐ Schedule / contract time confirmation



Claims avoidance – Construction phase: Examples

- ☐ Establish safety controls
- ☐ Establish quality assurance / quality control program
- ☐ Communication
- ☐ Use of construction technology
- ☐ Include subcontractors and suppliers in schedule or sequencing changes
- ☐ Contract administration and documentation



Claims avoidance – Unavoidable claims

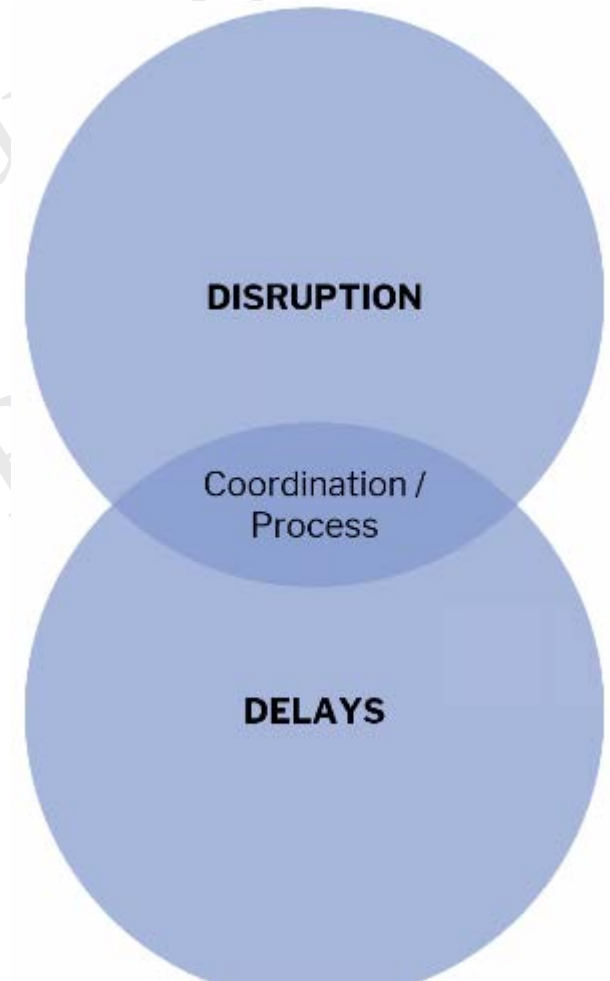
❑ Some claims are unavoidable

- ❖ This is also called **no-fault claims**
- ❖ *Example: differing subsurface conditions*
- ❖ **Good faith efforts** to settle these can establish goodwill that may help facilitate later discussions

Claims avoidance – Coordination and process

❑ CM control – failure to properly administer the contract

1. **Lack** of **coordination**
2. **Poorly** conceived or **implemented** process



Claims avoidance – Coordination

❑ Relies heavily on **communication** and **preparation**

- ❖ Review designer response to RFIs
- ❖ Increase efficiency
- ❖ Avoid time impacts





Claims avoidance – Process

1. **Communicate** your desired process/methods and
2. **Persistently enforce** them

Do you remember delay analysis course?

❑ **Example of failure:**

The monthly progress reports we got were consistently so bad that we just stopped commenting on them.

- ✓ **Timely review**
- ✓ **Return of submittals**
- ✓ **Record management**
- ✓ **Knowing and understanding the process by parties**



Claims avoidance – Coordination / Process

COORDINATION

Regular meetings

PROCESS

Establish action items → Follow up

Minutes → corrections

Ensure understanding of your contract clauses

Clarify ambiguities.

Remove 2" down to sound concrete

What does it mean?

- ✓ Remove 2"=== to reach sound concrete?
- ✓ Remove 2" down=====to reach sound concrete?

What would happen when contractor remove 2" when it is necessary to continue?



Claims avoidance – Change orders

❑ Favorable resolution

- ❖ Documentation
- ❖ Link between change/entitlement to impact to damages
- ❖ Properly give time or money when due
- ❖ Supportable cost evaluation method

❑ Validation

- ❖ Often include markups for overhead
 - ✓ Contractors often seek to double dip here
- ❖ Ensure work being performed is not contract work
- ❖ Ensure deleted work is credited

Mandates **documents** and **records** you learned in delay analysis course in your contract!

Use prospective delay analysis methods and methods for cost evaluation you learned in delay analysis course!

Remember **Eichleay formula** should **not be used** in case of change orders?

Claims avoidance – Change orders

*Not always possible to agree on issues of **time and money** prior to
change becoming critical!*

- ❑ **Department of transportations (DOTs)** often
 - ✓ Award time but
 - ✓ Leave issues of money until the end of the project
- ❑ **Veterans Affair (VA)** change orders are unilateral actions that allow the VA to order the contractor to **continue work** without
agreeing on either time or money.
 - ❖ This is **very risky** and cases show more disputes

Remember Retrospective delay analysis methods?

Claims avoidance – Standard of care

❑ What is standard of care?

❑ It means that how the following parties should have executed their roles?

- ❖ Engineering
- ❖ Design
- ❖ CM's performance
- ❖ Contractors performance

❑ How to measure?

- ❖ CMAA standards of practice
- ❖ CII best practices
- ❖ Company policy
- ❖ Contract
- ❖ Project specifications
- ❖ Etc.



Claims avoidance – Technology

❑ Existing technology

- ❖ Microsoft Suite
- ❖ Office 365
- ❖ Google Drive
- ❖ PMWeb
- ❖ Drones
- ❖ BIM
- ❖ Etc.



Claims avoidance – Technology

❑ Future of technology

- ❖ Artificial intelligence (AI)
- ❖ Autonomous equipment
- ❖ Smart contracts
- ❖ Big data
- ❖ 3D printing





Introduction

CLAIMS AVOIDANCE

Coordination & Process
Change Orders
Standard of Care
Technology

DISPUTE MANAGEMENT

Communication
Records
Alternative Resolution
Litigation and Arbitration



Dispute management – Communication

An open and positive communication process is critical to keeping the project on track.

Advice

☐ Communication needs to be **recorded**
in **writing**

☐ **Verbal communication** should be
followed by a **written version**
including the **invitation** for other
parties to **add/revise the record**.

☐ If you **disagree**, do so **clearly** and
firmly but **diplomatically** in **writing**.

Caution

☐ If it is **not written**, it **didn't happen**.

☐ **Silence** can imply **acceptance**.

☐ Know **when to stop** communicating.

❖ Sometimes progress requires
taking **no action**

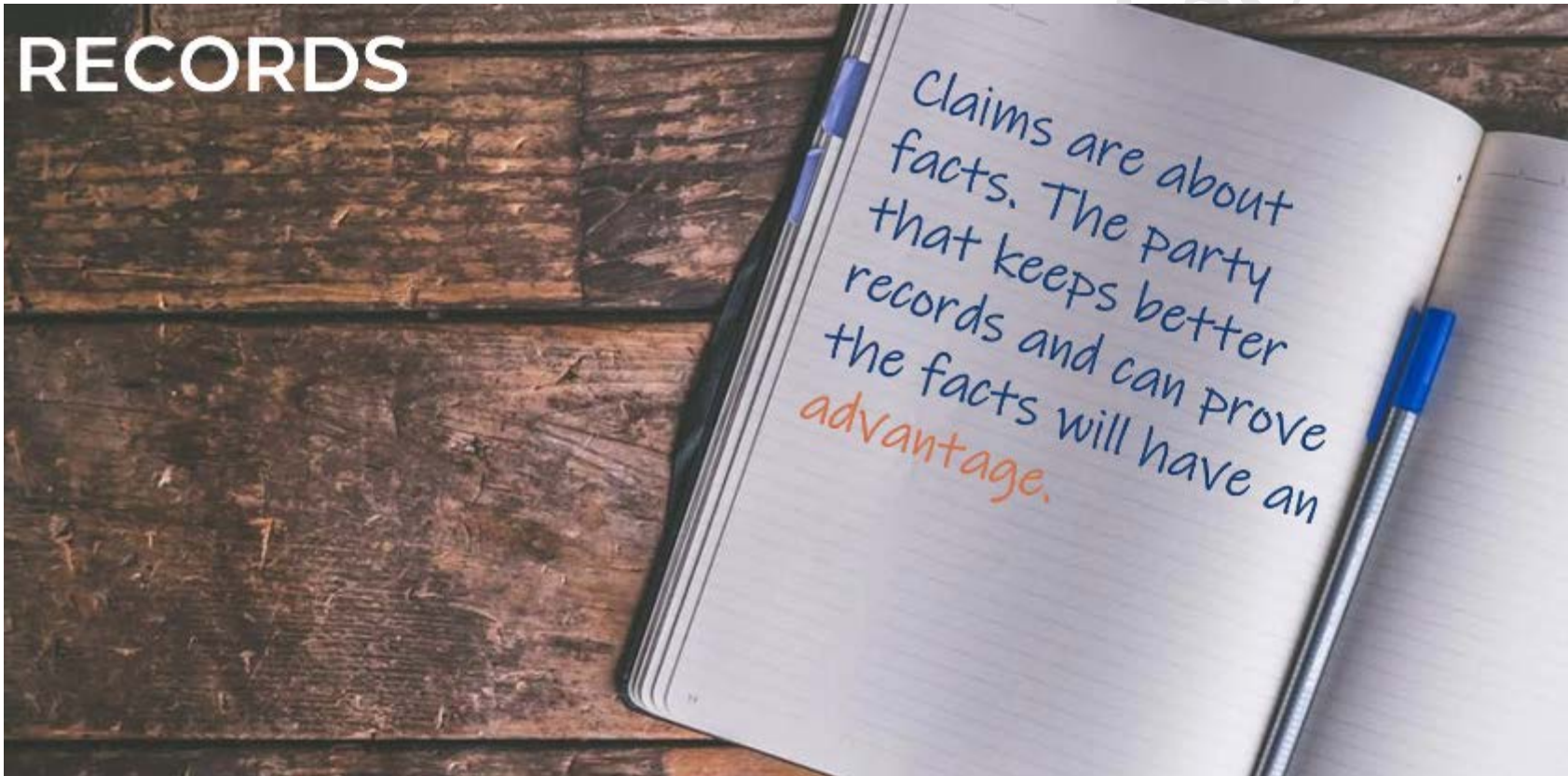
Dispute management – Communication

When you're approaching a cliff, sometimes progress requires taking no action.



SOMETIMES IT IS BETTER TO COMMUNICATE LESS

Dispute management – Records



Dispute management – Records

How progress records are kept

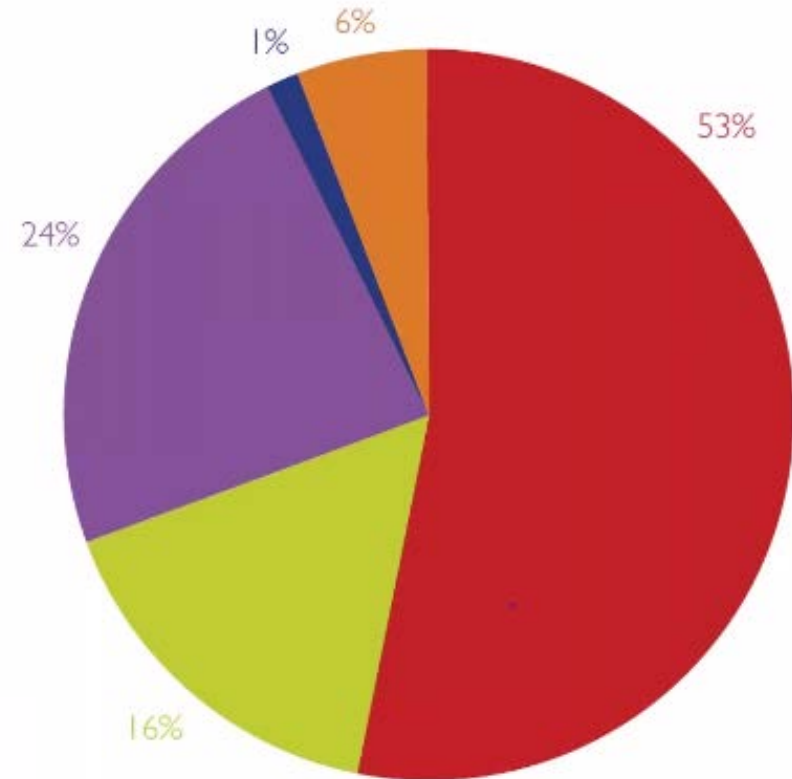
❑ This research was conducted by Chartered Institute of Building (CIOB) (2010)

❑ More than half of respondents on **paper only**

❑ This type is **useless** for

1. Promptly detecting trends,
2. Managing the effects of lack of progress, and
3. Identifying factual data relative to loss-causing events.

- On paper only
- On paper but immediately transcribed into a database
- By direct entry on an Excel spreadsheet
- By direct entry onto an access or other relational database
- By automated electronic transfer to a database





Dispute management – Records

More than one-third of respondents to the records part of the survey identified a failure to keep the necessary progress [and labor] records ...

Without such information it is impossible to detect the symptoms of disruption and the resultant lost productivity, or to predict with any certainty the effects of progress made in relation to progress planned.

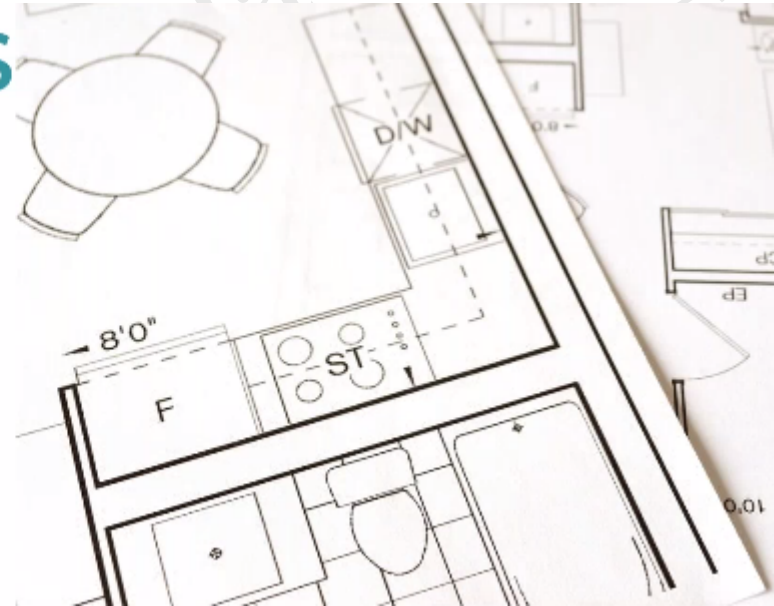
CIOB: Managing the Risk of Delayed Completion in the 21st Century

Dispute management – Records

Do you remember the records we talked in both delay analysis and scheduling courses?

USEFUL RECORDS

- ✓ Daily Reports
- ✓ Schedule Updates
- ✓ Meeting Minutes
- ✓ Aerial Photos
- ✓ Labor Records
- ✓ 4D Records
- ✓ Separate Records for Claims / Disputes

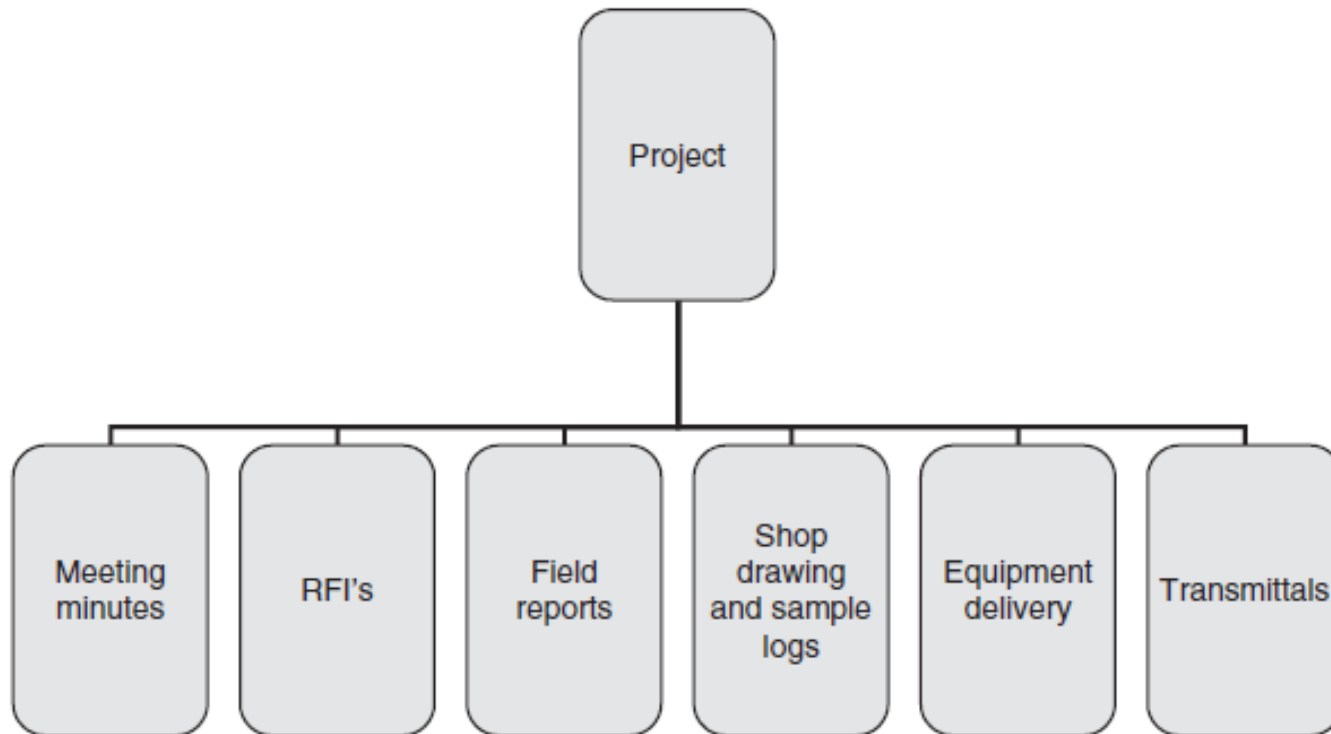


YOU NEED TO MANAGE THE RECORDS!

**Engineering And Construction Documentation Control And Configuration
Management Course**

Dispute management – Records

Sample list of activities to be documented during a project





Dispute management – Records

Project information

Company Name	Bid date: _____
Address	Bid time: _____
City, State, ZIP	Project location: _____
Phone Number	Legal description: _____
	Project name: _____
	Projected budget: _____
	Project funding: _____

Owner: _____	Contact person: _____
Billing address: _____	Phone number: _____

Architect: _____	Contact person: _____
	Phone number: _____

Drawings/Specifications:

Complete ☐ Incomplete ☐ Latest revision date _____

Schedule

Start Date _____ Duration _____

Finish Date _____

Site Information:

Good access	Yes ☐ No ☐	Water available	Yes ☐ No ☐
On-site obstructions	Yes ☐ No ☐	Power available	Yes ☐ No ☐
Poor soils	Yes ☐ No ☐	Telephone available	Yes ☐ No ☐
Drainage problems	Yes ☐ No ☐	Natural gas available	Yes ☐ No ☐
High security risk	Yes ☐ No ☐	Office available	Yes ☐ No ☐
Demolition needed	Yes ☐ No ☐	Debris service available	Yes ☐ No ☐



Dispute management – Records

Shop drawing-log

#	Section Number	Work Item	Required Submission	Received		Sent to		Returned		Additional Comments	
				Date	Contractor	Date	Reviewer	Date	Comments		



Dispute management – Records

Project photo-video log

Construction Company
Address
City, State, ZIP
Phone Number

Date: _____
Owner: _____
Contractor: _____
Project number: _____
Project name: _____

Item No.	Video / Photo No	Type		Description	Date	Taken By
		Progress	Defect			



Dispute management – Records

- ❑ Documentation is **key** to a **successful claim** or defense
- ❑ Parties' positions are **often undermined** by the **absence of documentation** and evidence
- ❑ Volume of records is **secondary** to **quality** of records
- ❑ Records must be **effectively organized** and **easily accessed** to be effective in a claim
- ❑ Create **issue files** and keep a **separate** set of **relevant records** for ongoing claims or issues in disputes

Dispute management – Alternative dispute resolution

The industry has also moved towards greater use of alternative dispute resolution methods such as mediation, dispute resolution boards....

The CM should understand these different resolution methods and processes in order to properly serve their client.

CMAA Claims Management Guidelines 2018



Dispute management – Alternative dispute resolution

❑ Alternative Dispute Resolution (ADR) has **traditionally** been understood to mean the **use** of either

1. Mediation (میانجی گری)
2. Arbitration (داوری)

as **alternative methods**.

❑ The issue by issue **arbitration model** may **no longer** be appropriate.

So, what has happened to ADR?

Dispute management – Alternative dispute resolution

So, what has happened to ADR?

- ❑ Fortunately **voluntary dispute settlement** has **great flexibility**" [Coulson 1983].
 - ❖ His point of view was correct, and in 1992 Groton wrote
*"There has been a veritable explosion in the development and use of new dispute resolution techniques,
particularly techniques for resolving disputes **at the job site** during the course of construction" [Groton 1992].*

Dispute management – Alternative dispute resolution

So, what has happened to ADR?

- ❑ The Army Corps of Engineers has assumed a major **leadership role** in adopting and **encouraging** the use of **ADR** [Cushman 1991].
- ❑ This role is summarized by Edelman who states that
 - ❖ "We want to encourage our managers to experiment with ADR to **create new or hybrid procedures** . . .
 - ❖ We want to encourage **creativity** rather than prescribe a list of "accepted" **ADR procedures**" [Edelman 1990].
 - ❖ He does, however, present a list, or "**continuum of techniques**" ranging from
 1. "the hot tub where **disputes** are **somehow resolved** while everyone gets a ***nice hot soak***"
 - to
 2. "**ultimate dispute resolution technique**, **litigation**, which I equate to war."

Dispute management – Alternative dispute resolution

So, what has happened to ADR?

□ He comments on the continuum as follows:

- ❖ Another important characteristic of the **continuum** is that there are **vacant spaces** in the list.
- ❖ These spaces indicate that **ADR is a developing field**; **new procedures** and approaches to **dispute resolution** are being created as **experience grows** [Edelman 1990].

*ADR is a **growing field**.*

- ❖ *New methodologies, new thoughts and new experiences are reported on an **ongoing basis**.*

Dispute management – Alternative dispute resolution

- ❑ Not surprisingly, as the incidence of disputes and claims has **increased** in the construction industry, the industry has also moved towards **greater use of alternative dispute resolution (ADR)** methods such as

- ❖ Mediation (میانجی گری)
- ❖ Dispute resolution boards (i.e. dispute review boards),
- ❖ Arbitration (داوری)
- ❖ Mini-trial (رسیدگی اختصاری)

So, what has happened to ADR?

- ❑ Many of these **alternative dispute resolution methods** are specified in the **construction contract**.
- ❑ Many of these **alternative dispute resolution methods** are used during the **construction phase**, and may require the **involvement** or **administration** by the **CM**.

The CM should understand these **different resolution methods and **processes** to properly serve their client.**

Dispute management – Alternative dispute resolution

So, what has happened to ADR?

❑ The Center for Public Resources (CPR formed in 1977) is a New York based organization that promotes **dispute resolution** throughout American business and industry.

❖ In 1990 it became *interested* in the **problem of disputes** in the construction industry and **formed** a Construction Disputes Study Committee.

✓ This committee published a **report** in late 1991 entitled "Preventing and Resolving Construction Disputes" [CPR 1991].

The **report** was *reviewed* while in draft form and comments were provided to the **study committee**.

CII found the final document to be totally **consistent** with the research done, and copies were **distributed** to members of the Board of Advisors in **January 1992**.

Dispute management – Alternative dispute resolution

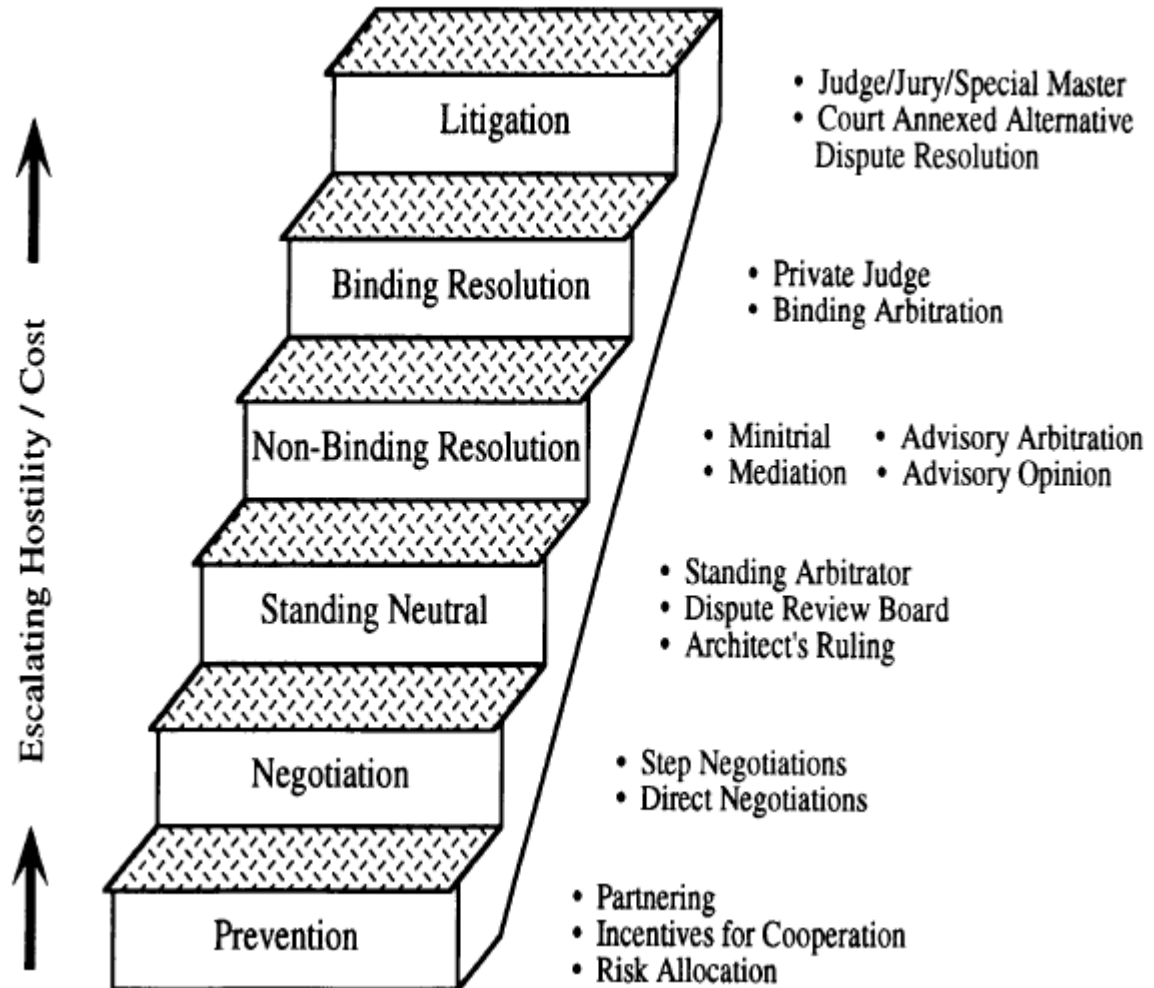
*Although **many agencies** have been actively involved in the process, the **much of what** is proposed **extracted from this report**.*

❑ The spectrum of **ADR techniques** identified by the Center for Public Resources (CPR) will be grouped under the following **four headings**:

1. Pre-construction techniques
2. Dispute prevention techniques
3. Dispute Resolution Techniques
4. Conflict Resolution Techniques

Dispute management – Alternative dispute resolution

- ❑ Different techniques exhibit rising levels of hostility and cost source



Dispute management – Alternative dispute resolution

- ❑ Another model by HKA Consulting Inc.

DISPUTE RESOLUTION CONTINUUM

• Litigation

• Arbitration
• Special Master
• Binding DRB's

• Expert Determination
• Admin. Board
• Mini Trial

• Non-Binding DRB's
• Mediation

• Negotiation

• Contemporaneous

↑
HOSTILITY AND COST

MORE

Parties Decide for Themselves

CONTROL OF OUTCOME

LESS

Third Party Imposes Decision

Global Construction Disputes Report

موسسه مهندسی و مدیریت ساخت علوی پور (ACEMI)

دفتر آموزش

تهران، بلوار فردوس شرق، مجتمع آبگینه، طبقه سوم اداری، واحد C42



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