



مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

بخش سوم:

توسعه و مدیریت برنامه در فاز طراحی (Design Phase) برای مدیریت ادعاء و جلوگیری از دعاوی و اختلافات در پروژه

ارائه دهنده:

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What we will learn?

- ☐ Claims management planning
- ☐ Design management
- ☐ Design review
- ☐ Project management during the design phase
- ☐ Other parts of project management
- ☐ Contract documents
- ☐ Development and review of construction contract(s) terms and conditions

Potential killer contract clauses – Suspension by the owner for convenience

❑ AIA A201-2017: General conditions for construction

Time and cost increases clearly expressed!

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

1. that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
2. that an equitable adjustment is made or denied under another provision of the Contract.

Does it mean concurrent delay?

Read the contract carefully since another adjustment may be expressed in another provision

Let's see 4311

Potential killer contract clauses – Suspension by the owner for convenience

نشریه ۴۳۱۱ □

❖ ماده ۴۹- تعلیق

آیا اشاره ای به دلیل تعلیق مانند AIA شده است؟

۴۹-الف)

کارفرما می‌تواند در مدت پیمان، اجرای کار را برای یک بار و حداکثر سه ماه معلق کند در این صورت باید مراتب را با تعیین تاریخ شروع تعلیق به پیمانکار اطلاع دهد. در مدت تعلیق، پیمانکار مکلف است که تمام کارهای انجام شده، مصالح و تجهیزات پای کار، تاسیسات و ساختمان‌های موقت را براساس پیمان به‌طور شایسته، حفاظت و حراست کند.

کدام بالاسری؟

1. بالاسری پروژه
2. بالاسری سازمان

۴۹-ب)

کارفرما هزینه‌های بالاسری پیمانکار را در دوران تعلیق، به میزان تعیین شده در اسناد و مدارک پیمان، به پیمانکار می‌پردازد. اگر در اسناد و مدارک پیمان، تعیین هزینه‌های یاد شده، به توافق طرفین در زمان ابلاغ تعلیق موکول شده باشد، کارفرما در مورد میزان آن با پیمانکار توافق می‌نماید. در صورتی که در اسناد و مدارک پیمان، هیچ نوع پیش‌بینی برای پرداخت هزینه‌های بالاسری پیمانکار در دوره تعلیق نشده باشد، کارفرما ماهانه مبلغی معادل ۱۰ درصد متوسط کارکرد فرضی ماهانه به پیمانکار می‌پردازد. اگر به دستور کارفرما، قسمتی از کار متوقف شود، بابت هزینه‌های پیش‌گفته در مدت تعلیق، ماهانه مبلغی معادل ۱۰ درصد متوسط کارکرد فرضی ماهانه، به تناسب مبلغ کار متوقف شده، به پیمانکار پرداخت می‌شود. برای تعیین هزینه تعلیق، کسر ماه به تناسب ارائه می‌شود.

Potential killer contract clauses – Suspension by the owner for convenience

نشریه ۴۳۱۱ □

❖ ماده ۴۹- تعلیق

(۴۹-تبصره)

در صورتیکه پیش از آغاز عملیات موضوع پیمان، تعلیق پیمان از سوی کارفرما ابلاغ شود، ۸۰ درصد هزینه تعلیق محاسبه شده طبق این بند، به پیمانکار پرداخت می‌شود.

اگر هزینه ماشین آلات به عنوان بالاسری منظور شده باشد، پیمانکار مجاز است دو بار این هزینه را اخذ کند؟

(۴۹-ج)

کارفرما و پیمانکار در مورد ماشین‌آلاتی که پیمانکار مایل است در مدت تعلیق از کارگاه خارج نماید، بدون پرداخت هیچ نوع هزینه‌ای، توافق می‌کنند اجاره مربوط به دوران توقف آن تعداد از ماشین‌آلات که در کارگاه باقی می‌مانند، براساس توافق طرفین به پیمانکار پرداخت می‌شود.

(۴۹-د)

در صورتیکه تعلیق بیش از سه ماه ضروری باشد، کارفرما می‌تواند با موافقت پیمانکار، مدت تعلیق را برای یک بار و حداکثر سه ماه، با شرایط پیش‌گفته افزایش دهد. در صورت عدم موافقت پیمانکار با تعلیق بیش از سه ماه، پیمان خاتمه یافته و طبق ماده ۴۸ عمل می‌شود.

(۴۹-ه)

هرگاه عوامل موجب تعلیق کار برطرف شود، کارفرما با تعیین مهلتی برای پیمانکار به منظور آماده نمودن کارگاه، تاریخ شروع مجدد کار را به پیمانکار ابلاغ می‌کند.

Recommended clauses – Termination or suspension (GC and owner)

☐ FIDIC-2017

- 1. Employer's suspension**
- 2. Termination by employer**
- 3. Suspension and termination by contractor**



Potential killer contract clauses – Employer's suspension

❑ FIDIC-2017

❖ Employer's suspension (8.9)

در ۴۳۱۱ تنها درباره هزینه بالاسری و ماشین آلات به واسطه تعلیق صحبت شده است!

Many forms of agreements state that if suspension is a result of **contractor's fault, then contractor is not entitled to EOT and Compensation!**
How about 4311? Silent!

The Engineer may at any time instruct the Contractor to suspend progress of part or all of the Works, which instruction shall state the date and cause of the suspension.

During such suspension, the Contractor shall protect, store and secure such part or all of the Works (as the case may be) against any deterioration, loss or damage.

To the extent that the cause of such suspension is the responsibility of the Contractor, Sub-Clauses 8.10 [Consequences of Employer's Suspension], 8.11 [Payment for Plant and Materials after Employer's Suspension] and 8.12 [Prolonged Suspension] shall not apply.

What damages should be paid?

Consequences of Employer's Suspension + Plant and materials + Prolonged suspension

---AIA = Any adjustment in **cost and profit**

FIDIC is different with 4311, however somewhat similar with AIA!

Potential killer contract clauses – Employer's suspension

❑ FIDIC-2017

❖ Consequences of Employer's suspension (8.10)

We talked about this. Remember?

If the Contractor suffers delay and/or incurs Cost from complying with an Engineer's instruction under Sub-Clause 8.9 [Employer's Suspension] and/or from resuming the work under Sub-Clause 8.13 [Resumption of Work], the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

The Contractor shall not be entitled to EOT, or to payment of the Cost incurred, in making good:

- (a) the consequences of the Contractor's faulty or defective (design, if any) workmanship, Plant or Materials; and/or
- (b) any deterioration, loss or damage caused by the Contractor's failure to protect, store or secure in accordance with Sub-Clause 8.9 [Employer's Suspension].

Remember that this was also mentioned in AIA, however 4311 is silent about that

Potential killer contract clauses – Employer's suspension

❑ FIDIC-2017

❖ Payment for plant and materials after employer's suspension (8.11)

The Contractor shall be entitled to payment of the value (as at the date of suspension instructed under Sub-Clause 8.9 [Employer's Suspension]) of Plant and/or Materials which have not been delivered to Site, if:

- (a) the work on Plant, or delivery of Plant and/or Materials, has been suspended for more than 28 days and
 - (i) the Plant and/or Materials were scheduled, in accordance with the Programme, to have been completed and ready for delivery to the Site during the suspension period; and
 - (ii) the Contractor provides the Engineer with reasonable evidence that the Plant and/or Materials comply with the Contract; and
- (b) the Contractor has marked the Plant and/or Materials as the Employer's property in accordance with the Engineer's instructions.

Remember why I emphasized in scheduling course?

Potential killer contract clauses – Employer's suspension

❑ FIDIC-2017

❖ Prolonged suspension (8.12)

If the suspension under Sub-Clause 8.9 [*Employer's Suspension*] has continued for more than 84 days, the Contractor may give a Notice to the Engineer requesting permission to proceed.

If the Engineer does not give a Notice under Sub-Clause 8.13 [*Resumption of Work*] within 28 days after receiving the Contractor's Notice under this Sub-Clause, the Contractor may either:

(a) agree to a further suspension, in which case the Parties may agree the EOT and/or Cost Plus Profit (if the Contractor incurs Cost), and/or payment for suspended Plant and/or Materials, arising from the total period of suspension;

or (and if the Parties fail to reach agreement under this sub-paragraph (a))

(b) after giving a (second) Notice to the Engineer, treat the suspension as an omission of the affected part of the Works (as if it had been instructed under Sub-Clause 13.3.1 [*Variation by Instruction*]) with immediate effect including release from any further obligation to protect, store and secure under Sub-Clause 8.9 [*Employer's Suspension*]. If the suspension affects the whole of the Works, the Contractor may give a Notice of termination under Sub-Clause 16.2 [*Termination by Contractor*].

In case of prolonged suspension:

1. EOT + Cost + Profit
 2. Plant and materials
- Or
- Omission of the affected part or Terminate the contract

Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

- ❖ Termination for
contractor's
default (15.2)

Termination of the Contract under this Clause shall not prejudice any other rights of the Employer under the Contract or otherwise.

15.2.1 Notice

The Employer shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 15.2.1) to the Contractor of the Employer's intention to terminate the Contract or, in the case of sub-paragraph (f), (g) or (h) below a Notice of termination, if the Contractor:

- (a) fails to comply with:
 - (i) a Notice to Correct;
 - (ii) a binding agreement, or final and binding determination, under Sub-Clause 3.7 [*Agreement or Determination*]; or
 - (iii) a decision of the DAAB under 21.4 [*Obtaining DAAB's Decision*] (whether binding or final and binding)

Homework 5

Compare this clause with the one (termination by the owner for cause) provided by AIA A201-2017 and 4311



Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

❖ Termination for
contractor's
default (15.2)

Homework 5
Compare this clause with the
one (termination by the owner
for cause) provided by
AIA A201-2017 and 4311

and such failure constitutes a material breach of the Contractor's obligations under the Contract;

- (b) abandons the Works or otherwise plainly demonstrates an intention not to continue performance of the Contractor's obligations under the Contract;
- (c) without reasonable excuse fails to proceed with the Works in accordance with Clause 8 [Commencement, Delays and Suspension] or, if there is a maximum amount of Delay Damages stated in the Contract Data, his failure to comply with Sub-Clause 8.2 [Time for Completion] is such that the Employer would be entitled to Delay Damages that exceed this maximum amount;
- (d) without reasonable excuse fails to comply with a Notice of rejection given by the Engineer under Sub-Clause 7.5 [Defects and Rejection] or an Engineer's instruction under Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it;
- (e) fails to comply with Sub-Clause 4.2 [Performance Security];
- (f) subcontracts the whole, or any part of, the Works in breach of Sub-Clause 5.1 [Subcontractors], or assigns the Contract without the required agreement under Sub-Clause 1.7 [Assignment];
- (g) becomes bankrupt or insolvent; goes into liquidation, administration, reorganisation, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the Contractor's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws;

Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

- ❖ Termination for
contractor's
default (15.2)

Homework 5
Compare this clause with the
one (termination by the owner
for cause) provided by
AIA A201-2017 and 4311

or if the Contractor is a JV:

- (i) any of these matters apply to a member of the JV, and
- (ii) the other member(s) do not promptly confirm to the Employer that, in accordance with Sub-Clause 1.14(a) [*Joint and Several Liability*], such member's obligations under the Contract shall be fulfilled in accordance with the Contract; or
- (h) is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.



Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

- ❖ Termination for
contractor's
default (15.2)

Homework 5
Compare this clause with the
one (termination by the owner
for cause) provided by
AIA A201-2017 and 4311

15.2.2 Termination

Unless the Contractor remedies the matter described in a Notice given under Sub-Clause 15.2.1 [Notice] within 14 days of receiving the Notice, the Employer may by giving a second Notice to the Contractor immediately terminate the Contract. The date of termination shall be the date the Contractor receives this second Notice.

However, in the case of sub-paragraph (f), (g) or (h) of Sub-Clause 15.2.1 [Notice], the Employer may by giving a Notice under Sub-Clause 15.2.1 immediately terminate the Contract and the date of termination shall be the date the Contractor receives this Notice.



Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

❖ Termination for
contractor's
default (15.2)

15.2.3 After termination

After termination of the Contract under Sub-Clause 15.2.2 [Termination], the Contractor shall:

- (a) comply immediately with any reasonable instructions included in a Notice given by the Employer under this Sub-Clause:
 - (i) for the assignment of any subcontract; and
 - (ii) for the protection of life or property or for the safety of the Works;
- (b) deliver to the Engineer:
 - (i) any Goods required by the Employer,
 - (ii) all Contractor's Documents, and
 - (iii) all other design documents made by or for the Contractor to the extent, if any, that the Contractor is responsible for the design of part of the Permanent Works under Sub-Clause 4.1 [Contractor's General Obligations]; and
- (c) leave the Site and, if the Contractor does not do so, the Employer shall have the right to expel the Contractor from the Site.

Homework 5

Compare this clause with the one (termination by the owner for cause) provided by AIA A201-2017 and 4311



Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

- ❖ Termination for contractor's default (15.2)

15.2.4 Completion of the Works

After termination under this Sub-Clause, the Employer may complete the Works and/or arrange for any other entities to do so. The Employer and/or these entities may then use any Goods and Contractor's Documents (and other design documents, if any) made by or on behalf of the Contractor to complete the Works.

After such completion of the Works, the Employer shall give another Notice to the Contractor that the Contractor's Equipment and Temporary Works will be released to the Contractor at or near the Site. The Contractor shall then promptly arrange their removal, at the risk and cost of the Contractor. However, if by this time the Contractor has failed to make a payment due to the Employer, these items may be sold (to the extent permitted by applicable Laws) by the Employer in order to recover this payment. Any balance of the proceeds shall then be paid to the Contractor.

Homework 5
Compare this clause with the one (termination by the owner for cause) provided by AIA A201-2017 and 4311



Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

❖ Payment after termination for contractor's default (15.4)

The Employer may withhold payment to the Contractor of the amounts agreed or determined under Sub-Clause 15.3 [*Valuation after Termination for Contractor's Default*] until all the costs, losses and damages (if any) described in the following provisions of this Sub-Clause have been established.

After termination of the Contract under Sub-Clause 15.2 [*Termination for Contractor's Default*], the Employer shall be entitled subject to Sub-Clause 20.2 [*Claims For Payment and/or EOT*] to payment by the Contractor of:

- (a) the additional costs of execution of the Works, and all other costs reasonably incurred by the Employer (including costs incurred in clearing, cleaning and reinstating the Site as described under Sub-Clause 11.11 [*Clearance of Site*]), after allowing for any sum due to the Contractor under Sub-Clause 15.3 [*Valuation after Termination for Contractor's Default*];
- (b) any losses and damages suffered by the Employer in completing the Works; and
- (c) Delay Damages, if the Works or a Section have not been taken over under Sub-Clause 10.1 [*Taking Over the Works and Sections*] and if the date of termination under Sub-Clause 15.2 [*Termination for Contractor's Default*] occurs after the date corresponding to the Time for Completion of the Works or Section (as the case may be). Such Delay Damages shall be paid for every day that has elapsed between these two dates.

Homework 5

Compare this clause with the one (termination by the owner for cause) provided by AIA A201-2017 and 4311

Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

- ❖ Termination for employer's convenience

(15.5)

- ❖ “Performance security” also known as “performance bond”

The Employer shall be entitled to terminate the Contract at any time for the Employer's convenience, by giving a Notice of such termination to the Contractor (which Notice shall state that it is given under this Sub-Clause 15.5).

After giving a Notice to terminate under this Sub-Clause, the Employer shall immediately:

- have no right to further use any of the Contractor's Documents, which shall be returned to the Contractor, except those for which the Contractor has received payment or for which payment is due under a Payment Certificate;
- if Sub-Clause 4.6 [Co-operation] applies, have no right to allow the continued use (if any) of any Contractor's Equipment, Temporary Works, access arrangements and/or other of the Contractor's facilities or services; and
- make arrangements to return the Performance Security to the Contractor.

Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

- ❖ Termination for
employer's
convenience
(15.5)

Termination under this Sub-Clause shall take effect 28 days after the later of the dates on which the Contractor receives this Notice or the Employer returns the Performance Security. Unless and until the Contractor has received payment of the amount due under Sub-Clause 15.6 [Valuation after Termination for Employer's Convenience], the Employer shall not execute (any part of) the Works or arrange for (any part of) the Works to be executed by any other entities.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 16.3 [Contractor's Obligations After Termination].

Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

- ❖ Valuation after termination for employer's convenience (15.6)

After termination under Sub-Clause 15.5 [*Termination for Employer's Convenience*] the Contractor shall, as soon as practicable, submit detailed supporting particulars (as reasonably required by the Engineer) of:

- (a) the value of work done, which shall include:
 - (i) the matters described in sub-paragraphs (a) to (e) of Sub-Clause 18.5 [*Optional Termination*], and
 - (ii) any additions and/or deductions, and the balance due (if any), by reference to the matters described in sub-paragraphs (a) and (b) of Sub-Clause 14.13 [*Issue of FPC*]; and
- (b) the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination.

Potential killer contract clauses – Termination by employer

❑ FIDIC-2017

- ❖ Payment after
termination for
employer's
convenience
(15.7)

The Employer shall pay the Contractor the amount certified in the Payment Certificate under Sub-Clause 15.6 [*Valuation after Termination for Employer's Convenience*] within 112 days after the Engineer receives the Contractor's submission under that Sub-Clause.

Potential killer contract clauses – Suspension and termination by contractor

❑ FIDIC-2017

❖ Suspension by contractor (16.1)

❖ Dispute avoidance and adjudication board (DAAB)

A material breach is a substantial breach

If:

- (a) the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of IPC];
- (b) the Employer fails to provide reasonable evidence in accordance with Sub-Clause 2.4 [Employer's Financial Arrangements];
- (c) the Employer fails to comply with Sub-Clause 14.7 [Payment]; or
- (d) the Employer fails to comply with:
 - (i) a binding agreement, or final and binding determination under Sub-Clause 3.7 [Agreement or Determination]; or
 - (ii) a decision of the DAAB under 21.4 [Obtaining DAAB's Decision] (whether binding or final and binding)

and such failure constitutes a material breach of the Employer's obligations under the Contract,

the Contractor may, not less than 21 days after giving a Notice to the Employer (which Notice shall state that it is given under this Sub-Clause 16.1), suspend work (or reduce the rate of work) unless and until the Employer has remedied such a default.

In both FIDIC and AIA, the contractor can stop the work, *however no right mentioned in 4311*

Potential killer contract clauses – Suspension and termination by contractor

❑ FIDIC-2017

❖ Suspension by contractor

(16.1) This action shall not prejudice the Contractor's entitlements to financing charges under Sub-Clause 14.8 [Delayed Payment] and to termination under Sub-Clause 16.2 [Termination by Contractor].

If the Employer subsequently remedies the default as described in the above Notice before the Contractor gives a Notice of termination under Sub-Clause 16.2 [Termination by Contractor], the Contractor shall resume normal working as soon as is reasonably practicable.

If the Contractor suffers delay and/or incurs Cost as a result of suspending work (or reducing the rate of work) in accordance with this Sub-Clause, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.



Potential killer contract clauses – Suspension and termination by contractor

❑ FIDIC-2017

❖ Termination by contractor (16.2)

16.2.1 Notice

Termination of the Contract under this Clause shall not prejudice any other rights of the Contractor, under the Contract or otherwise.

The Contractor shall be entitled to give a Notice (which shall state that it is given under this Sub-Clause 16.2.1) to the Employer of the Contractor's intention to terminate the Contract or, in the case of sub-paragraph (g)(ii), (h), (i) or (j) below a Notice of termination, if:

- (a) the Contractor does not receive the reasonable evidence within 42 days after giving a Notice under Sub-Clause 16.1 [*Suspension by Contractor*] in respect of a failure to comply with Sub-Clause 2.4 [*Employer's Financial Arrangements*];
- (b) the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate;
- (c) the Contractor does not receive the amount due under any Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [*Payment*];
- (d) the Employer fails to comply with:
 - (i) a binding agreement, or final and binding determination under Sub-Clause 3.7 [*Agreement or Determination*]; or
 - (ii) a decision of the DAAB under 21.4 [*Obtaining DAAB's Decision*] (whether binding or final and binding)

Homework 7: Compare this clause with the one (termination by the owner for cause) provided by AIA A201-2017 and 4311

Potential killer contract clauses – Suspension and termination by contractor

❑ FIDIC-2017

❖ Termination by contractor (16.2)

and such failure constitutes a material breach of the Employer's obligations under the Contract;

- (e) the Employer substantially fails to perform, and such failure constitutes a material breach of, the Employer's obligations under the Contract;
- (f) the Contractor does not receive a Notice of the Commencement Date under Sub-Clause 8.1 [*Commencement of Works*] within 84 days after receiving the Letter of Acceptance;
- (g) the Employer:
 - (i) fails to comply with Sub-Clause 1.6 [*Contract Agreement*], or
 - (ii) assigns the Contract without the required agreement under Sub-Clause 1.7 [*Assignment*];
- (h) a prolonged suspension affects the whole of the Works as described in sub-paragraph (b) of Sub-Clause 8.12 [*Prolonged Suspension*];
- (i) the Employer becomes bankrupt or insolvent; goes into liquidation, administration, reorganisation, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with the Employer's creditors; or any act is done or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws; or
- (j) the Employer is found, based on reasonable evidence, to have engaged in corrupt, fraudulent, collusive or coercive practice at any time in relation to the Works or to the Contract.

Homework 7: Compare this clause with the one (termination by the owner for cause) provided by AIA A201-2017 and 4311

Potential killer contract clauses – Suspension and termination by contractor

❑ FIDIC-2017

❖ Termination by contractor

(16.2)

16.2.2 Termination

Unless the Employer remedies the matter described in a Notice given under Sub-Clause 16.2.1 [Notice] within 14 days of receiving the Notice, the Contractor may by giving a second Notice to the Employer immediately terminate the Contract. The date of termination shall then be the date the Employer receives this second Notice.

However, in the case of sub-paragraph (g)(ii), (h), (i) or (j) of Sub-Clause 16.2.1 [Notice], by giving a Notice under Sub-Clause 16.2.1 the Contractor may terminate the Contract immediately and the date of termination shall be the date the Employer receives this Notice.

If the Contractor suffers delay and/or incurs Cost during the above period of 14 days, the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to EOT and/or payment of such Cost Plus Profit.

**Homework 7: Compare this
clause with the one
(termination by the owner
for cause) provided by
AIA A201-2017 and 4311**

Potential killer contract clauses – Suspension and termination by contractor

❑ FIDIC-2017

❖ Contractor's
obligations
after
termination
(16.3)

After termination of the Contract under Sub-Clause 15.5 [Termination for Employer's Convenience], Sub-Clause 16.2 [Termination by Contractor] or Sub-Clause 18.5 [Optional Termination], the Contractor shall promptly:

- (a) cease all further work, except for such work as may have been instructed by the Engineer for the protection of life or property or for the safety of the Works. If the Contractor incurs Cost as a result of carrying out such instructed work the Contractor shall be entitled subject to Sub-Clause 20.2 [Claims For Payment and/or EOT] to be paid such Cost Plus Profit;
- (b) deliver to the Engineer all Contractor's Documents, Plant, Materials and other work for which the Contractor has received payment; and
- (c) remove all other Goods from the Site, except as necessary for safety, and leave the Site.

Homework 7: Compare this clause with the one (termination by the owner for cause) provided by AIA A201-2017 and 4311

Potential killer contract clauses – Suspension and termination by contractor

❑ FIDIC-2017

- ❖ Payment after termination by contractor (16.4)

Homework 7: Compare this clause with the one (termination by the owner for cause) provided by AIA A201-2017 and 4311

After termination under Sub-Clause 16.2 [*Termination by Contractor*], the Employer shall promptly:

- (a) pay the Contractor in accordance with Sub-Clause 18.5 [*Optional Termination*]; and
- (b) subject to the Contractor's compliance with Sub-Clause 20.2 [*Claims For Payment and/or EOT*], pay the Contractor the amount of any loss of profit or other losses and damages suffered by the Contractor as a result of this termination.

Potential killer contract clauses – Claims and disputes

BASED ON PMBOK CONSTRUCTION EXTENSION

It is rare that a stakeholder plans for a claim or contract dispute. For the most part, stakeholders are optimistic toward their contracts and seek to avoid claim situations. In the event that a claim situation arises, the stakeholder should be prepared to identify the situation in a timely manner and be forthright in its evaluation to determine if the potential claim is justified. Owners should require a project management plan that details systems, policies, processes, procedures, and documentation. Such a procedure, if followed diligently, makes document processing effective and efficient and has proven to mitigate delays and decrease disputes and subsequent claims.

Potential killer contract clauses – Claims and disputes

❑ AIA A201-2017: General conditions for construction

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 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. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

We saw this before, remember?

We will talk about this in “Construction Phase”

Potential killer contract clauses – Claims and disputes

❑ AIA A401-2017: General contractor and subcontractor

§ 3.3.7 If the Contractor asserts a Claim against, or defends a Claim by, the Owner that relates to the Work of the Subcontractor, the Contractor shall promptly make available to the Subcontractor all information relating to the portion of the Claim that relates to the Work of the Subcontractor.

Potential killer contract clauses – Claims and disputes

❑ AIA A401-2017: General contractor and subcontractor

❖ Contractor's claim related to SC's claim

§ 5.3 The Subcontractor shall make all Claims promptly to the Contractor for additional cost, extensions of time and damages for delays, or other causes in accordance with the Subcontract Documents. A Claim which will affect or become part of a Claim which the Contractor is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit the Contractor to satisfy the requirements of the Prime Contract. Such Claims shall be received by the Contractor not less than two working days preceding the time by which the Contractor's Claim must be made. Failure of the Subcontractor to make such a timely Claim shall bind the Subcontractor to the same consequences as those to which the Contractor is bound.

We saw this before, remember?

Potential killer contract clauses – Claims and disputes

❑ ConsensusDocs-750-2011-Revised 2014: Contractor and subcontractor

❖ Claims relating to owner

5.3.2 CLAIMS RELATING TO OWNER The Subcontractor agrees to initiate all claims for which the Owner is or may be liable in the manner and within the time limits provided in the Subcontract Documents for like claims by the Constructor upon the Owner and in sufficient time for the Constructor to initiate such claims against the Owner in accordance with the Subcontract Documents. At the Subcontractor's request and expense to the extent agreed upon in writing, the Constructor agrees to permit the Subcontractor to prosecute a claim in the name of the Constructor for the use and benefit of the Subcontractor in the manner provided in the Subcontract Documents for like claims by the Constructor upon the Owner.

We saw this before, remember?

Potential killer contract clauses – Claims and disputes

❑ ConsensusDocs-750-2011-Revised 2014: Contractor and subcontractor

❖ Claims relating to general contractor

We saw this before, remember?

5.3.3 CLAIMS RELATING TO CONSTRUCTOR The Subcontractor shall give the Constructor written notice of all claims not included in subsection 5.3.2 within three (3) Days of the facts giving rise to the event for which claim is made. Thereafter, the Subcontractor shall submit written documentation of its claim, including appropriate supporting documentation, within twenty-one (21) Days after giving notice, unless the Parties agree upon a longer period of time. The Constructor shall respond in writing denying or approving, in whole or in part, the Subcontractor's claim no later than fourteen (14) Days after receipt of the Subcontractor's documentation of claim. The Constructor's failure to respond shall be deemed a denial of the Subcontractor's claim. All unresolved claims, disputes, and other matters in question between the Constructor and the Subcontractor not relating to claims included in subsection 5.3.2 shall be resolved as provided for in ARTICLE 11.

You as a CM should summarize this:

Notice from SC (within 3 days after the facts raised)-Submit written documentation (within 21 days after giving notice)-Contractor respond (within 14 days after receipt of SC's documentation)-Not resolved (shall claim according to ARTICLE 11)

Potential killer contract clauses – Claims and disputes

❑ FIDIC-2017

- ❖ Care and supply
of documents
(1.8)

Two important items here:

1. *Contemporary records (20.2.3)*
2. *Contractor's records (6.10)*

The Contractor shall keep at all times, on the Site, a copy of:

- (a) the Contract;
- (b) the records under Sub-Clause 6.10 [Contractor's Records] and Sub-Clause 20.2.3 [Contemporary records];
- (c) the publications (if any) named in the Specification;
- (d) the Contractor's Documents;
- (e) the Drawings; and
- (f) Variations, Notices and other communications given under the Contract.

The Employer's Personnel shall have right of access to all these documents during all normal working hours, or as otherwise agreed with the Contractor.

If a Party (or the Engineer) becomes aware of an error or defect (whether of a technical nature or otherwise) in a document which was prepared for use in the execution of the Works, the Party (or the Engineer) shall promptly give a Notice of such error or defect to the other Party (or to the Parties).

Potential killer contract clauses – Claims and disputes

❑ نشریه ۴۳۱۱

❖ ماده ۱۸- مسئولیت حسن اجرای کار، برنامه کار، گزارش پیشرفت کار، هماهنگی با پیمانکاران دیگر، رئیس کارگاه

۱۸-۹

پیمانکار متعهد است که یک نسخه از برنامه، نمودارها و جدول‌های پیشرفت کار را در کارگاه آماده داشته باشد تا در صورت لزوم مهندس مشاور و کسانی که اجازه بازدید از کارگاه را دارند از آن استفاده کنند.

مقایسه شود با ۱.۸ فیدیک!
موارد مربوط به *Variation* و *Notice* و ...؟
در صورت مشکل در مدارک آیا چیزی ذکر شده؟

حال قبل از آنکه سراغ فیدیک برای گزارشات
ماهانه برویم، اول نشریه ۴۳۱۱ را بررسی کنیم!



Potential killer contract clauses – Claims and disputes

□ نشریه ۴۳۱۱

❖ ماده ۱۸- مسئولیت حسن اجرای کار، برنامه کار، گزارش پیشرفت کار، هماهنگی با پیمانکاران دیگر، رئیس کارگاه

۱۸-هـ)

پیمانکار متعهد است که در پایان هر ماه، گزارش کامل کارهای انجام شده در آن ماه را تهیه نماید. شکل و چگونگی تهیه گزارش را مهندس مشاور تهیه می‌کند. این گزارش، شامل مقدار و درصد فعالیت‌های انجام شده، میزان پیشرفت یا تأخیر نسبت به برنامه زمانی تفصیلی، مشکلات و موانع اجرایی، نوع و مقدار مصالح و تجهیزات وارد شده به کارگاه، تعداد و نوع ماشین‌آلات موجود و آماده به کار، تعداد و تخصص نیروی انسانی موجود و دیگر اطلاعات لازم می‌باشد. در صورتی که جزئیات دیگری برای چگونگی تهیه گزارش پیشرفت کار در اسناد و مدارک پیمان تعیین شده باشد، پیمانکار موظف به رعایت آن است.

حالا به سراغ فیدیک می‌رویم!

Potential killer contract clauses – Claims and disputes

❑ FIDIC-2017

❖ Contemporary records (20.2.3)

Two important items here:

1. *Contemporary records (20.2.3)*
2. *Contractor's records (6.10)*

In this Sub-Clause 20.2, "contemporary records" means records that are prepared or generated at the same time, or immediately after, the event or circumstance giving rise to the Claim.

The claiming Party shall keep such contemporary records as may be necessary to substantiate the Claim.

Without admitting the Employer's liability, the Engineer may monitor the Contractor's contemporary records and/or instruct the Contractor to keep additional contemporary records. The Contractor shall permit the Engineer to inspect all these records during normal working hours (or at other times agreed by the Contractor), and shall if instructed submit copies to the Engineer. Such monitoring, inspection or instruction (if any) by the Engineer shall not imply acceptance of the accuracy or completeness of the Contractor's contemporary records.

Potential killer contract clauses – Claims and disputes

❑ FIDIC-2017

- ❖ Contractor's records (6.10)

Two important items here:

1. *Contemporary records (20.2.3)*
2. *Contractor's records (6.10)*

We saw this before,
remember?

Unless otherwise proposed by the Contractor and agreed by the Engineer, in each progress report under Sub-Clause 4.20 [Progress Reports], the Contractor shall include records of:

- (a) occupations and actual working hours of each class of Contractor's Personnel;
- (b) the type and actual working hours of each of the Contractor's Equipment;
- (c) the types of Temporary Works used;
- (d) the types of Plant installed in the Permanent Works; and
- (e) the quantities and types of Materials used

for each work activity shown in the Programme, at each work location and for each day of work.



Potential killer contract clauses – Claims and disputes

❑ FIDIC-2017

- ❖ Progress reports
(4.20)

Two important items here:

1. *Contemporary records (20.2.3)*
2. *Contractor's records (6.10)*

Monthly progress reports, in the format stated in the Specification (if not stated, in a format acceptable to the Engineer) shall be prepared by the Contractor and submitted to the Engineer. Each progress report shall be submitted in one paper-original, one electronic copy and additional paper copies (if any) as stated in the Contract Data. The first report shall cover the period up to the end of the first month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the month to which it relates.

Deadline for progress reports!
Within 7 days!

Monthly update? Time to submit?



Potential killer contract clauses – Claims and disputes

❑ FIDIC-2017

❖ Progress reports

(4.20)

Reporting shall continue until the Date of Completion of the Works or, if outstanding work is listed in the Taking-Over Certificate, the date on which such outstanding work is completed. Unless otherwise stated in the Specification, each progress report shall include:

- (a) charts, diagrams and detailed descriptions of progress, including each stage of (design by the Contractor, if any) Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection and testing;
- (b) photographs and/or video recordings showing the status of manufacture and of progress on and off the Site;
- (c) for the manufacture of each main item of Plant and Materials, the name of the manufacturer, manufacture location, percentage progress, and the actual or expected dates of:
 - (i) commencement of manufacture,
 - (ii) Contractor's inspections,
 - (iii) tests, and
 - (iv) shipment and arrival at the Site;

Potential killer contract clauses – Claims and disputes

❑ FIDIC-2017

❖ Progress reports

(4.20)

- (d) the details described in Sub-Clause 6.10 [Contractor's Records];
- (e) copies of quality management documents, inspection reports, test results, and compliance verification documentation (including certificates of Materials);
- (f) a list of Variations, and any Notices given (by either Party) under Sub-Clause 20.2.1 [Notice of Claim];
- (g) health and safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations; and
- (h) comparisons of actual and planned progress, with details of any events or circumstances which may adversely affect the completion of the Works in accordance with the Programme and the Time for Completion, and the measures being (or to be) adopted to overcome delays.

Potential killer contract clauses – Claims and disputes

□ نشریه ۴۳۱۱

❖ ماده ۵۳- حل اختلاف

۵۳-الف)

هرگاه در اجرا یا تفسیر مفاد پیمان بین دو طرف اختلاف نظر پیش آید، دو طرف می‌توانند برای حل سریع آن، قبل از درخواست ارجاع موضوع یا موضوعات مورد اختلاف به داوری طبق بند "ج" بر حسب مورد، به روش تعیین شده در بندهای ۱ و ۲ عمل نمایند.

در فاز Construction درباره این ماده صحبت میکنیم!

در واقع در فاز Construction درباره خیلی نکات اجرایی
دیگر در حین اجرا صحبت خواهیم کرد!



مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

بخش چهارم:

برنامه ریزی فاز تدارکات/مناقصه (Procurement/Bidding Phase) برای مدیریت ادعاء و جلوگیری از دعاوی و اختلافات در پروژه

ارائه دهنده:

سید محمدرضا علوی پور

(PhD, PMP, CMIT)

دانشگاه Illinois Tech آمریکا

What we will learn?

- ☐ Procedure of procurement/bidding phase
- ☐ Recommendations for general contractors at the time of bidding
- ☐ Contract risk management
 - ❖ By GC/CM
 - ❖ BY SC

Procedure of Procurement/Bidding Phase



Procedure

☐ The procedure includes the following:

1. Bidder pre-qualification and review
2. Pre-bid inquiries
3. Addendums
4. Bid reviews
5. Pre-purchase of special equipment or materials
6. Award recommendations
7. Notice to proceed
8. Subcontractor and product lists
9. Schedule of values



Bidder pre-qualification review

- ❑ The **owner** may **desire**, or be **required**, to **pre-qualify** potential bidders.
 - ❖ The **CM** should assist in developing a **list of relevant qualifications**.
- ❑ The **request for qualifications (RFQ)** should be **sent** to a wide range of **potential bidders** and advertised as required by **code and local jurisdictions**.
 - ❖ The **qualification criteria** should be **detailed** in the **RFQ** to be sure all respondents are **aware** of the **desired factors**.
- ❑ The **CM** develops a **scoring or ranking system** for objective review of the qualification packages received, which can be **included in the RFQ**.
- ❑ Specific project and contract circumstances **may** warrant pre-qualification of **subcontractors**.



Bidder pre-qualification review

- ❑ The **qualification packages** should be reviewed by a **committee** set up for this **specific purpose**.
 - ❖ It is **advisable** that the **CM** and **design** professional be on the **committee** or at least serve as **committee advisors**.
 - ❖ The **committee** should adhere to the **scoring methodology** proposed and distributed during the **RFQ process**.

*By doing so, the **likelihood** that an **unqualified bidder** may be awarded the contract for construction is **reduced** and the ensuing **problems** that would arise during construction are **avoided**.*



Pre-bid inquiries

- ❑ **Potential bidders** should be allowed adequate **time to review** the bid documents and transmit any **questions** prior to preparing their bid.
- ❑ The **bid documents** should clearly identify a **single point of contact** to whom **all such questions** should be directed.
- ❑ A **pre-bid meeting** should be held to discuss the **project requirements**.
 - ❖ It should be clearly established **if attendance** at the **pre-bid meeting** is a **mandatory requirement** for a bid to be **accepted**.
 - ✓ Coordinating the meeting with a **site visit or “showing.”**
 - ❖ **Any questions** rendered at this meeting should be **addressed** by **addendum to the bid documents (if correction needed, correct the documents).**
 - ❖ Prepare and issue **meeting minutes** as an **addendum**
 - ❖ **Answer** pre-bid questions promptly and in **writing**



Pre-bid inquiries

☐ The **CM** should also, in **conjunction with the designer and the owner**,

set a **closing date for questions** allowing sufficient time to

1. Address the questions
2. Issue addenda

*By **clearly documenting and responding to all such inquiries**, the CM has established any information or **clarifications provided to bidders** and which may subsequently become the subject of disputes or claims.*



Addendums

❑ The owner, CM, or design professional **may have information** that was **not available** when the bid documents were issued.

❖ **These questions** must be addressed by **addendum issued to all bidders**.

✓ Where possible, **addenda** should **answer questions** by **directing** the bidder to the **pertinent section of the bid documents** and **amending** contract documents, if necessary.

Remember?

Rather than just including the **tender queries and responses** as an **addendum to the contract**,

as is often the practice,

the **contract documents** should be **amended** to
reflect the instructions given in the responses to such queries.



Addendums

- ☐ The CM should **advise the owner** that the **bidding period may need to be extended** in the event the **scope of the information** included in the **addenda** would warrant such an extension.

*It is critical that the scope of the work is clearly stated, **through the issuance of addenda**, so that subsequent disputes and claims regarding the intent of the contract documents are **avoided**.*



Bid reviews

❑ The **CM** should **review all bids** received for **compliance with the bid requirements** for submission in the following order.

1. Pre-qualify per process mentioned (if used).
2. License as required by local jurisdictions.
3. Submit all required documents and affidavits.
4. Properly complete and sign bid form.
5. Properly complete and sign bond form.
6. Ensure bid does not contain irregularities, omissions, or non-requested stipulations and exceptions.



Bid reviews

If the bidder(s) pass all the points mentioned satisfactorily, then the **following steps** should be taken:

1. Review all bids for proper mathematical calculations and extensions.
2. Tabulate all bids for comparison of individual and total prices.
3. Compare tabulation with the engineer's estimate for the project.
4. Compare the bids for obvious discrepancies or unbalanced pricing.
5. If applicable, identify the bid scoring criteria established in the RFP.



Bid reviews

- ❑ Once the **lowest and responsive bidder** is identified,
the bid should be **reviewed** to determine if any **bid items vary significantly** from the **other bidders** or the **engineer's estimate**.
 - ❖ If a **significant variance** is identified, the bid should be **confirmed** with the **contractor**.

Additionally, the **CM** should advise the owner to **include language** in the bid documents to **prohibit unbalanced bids**.

The **CM** should perform these tasks **objectively and promptly** to **avoid unnecessary delays** to the **award of the contract**.



Pre-purchase of special equipment or materials

- ❑ In some projects, the **design cannot be completed** unless
the exact equipment and/or material is **known**.
- ❖ For this reason, this **equipment or material** may be purchased by the **owner** **before** a contractor is **awarded the contract**.
 - ✓ This **pre-purchase** should be **managed by the CM** and executed in a manner that is **consistent** with the **terms of the construction contract** to
both facilitate installation and to avoid potential disputes or claims by the contractor.



Award recommendations

- ❑ The **CM** should assemble the **proposal evaluations** and **scoring**
- ❑ The **CM** then should **present the findings** in a **written report** to the owner.

Any discrepancies, abnormalities, and resulting actions taken should be noted in the report.

- ❑ The **CM** should also offer considerations for **differences between the contractors** or the **cost estimate**.
- ❑ The **CM** should **recommend award** or **rejection of bid(s)** and the **justification** for this recommendation.
 - ❖ *If the apparent low bidder is **significantly** and **unreasonably** below other bidders, there is the **potential** that the contractor will **try to recover its flawed bid** by **aggressively pursuing changes** on the project.*

This will likely lead to disputes and claims.



Notice to proceed

- ☐ The **notice to proceed** establishes the **beginning date of construction** and directs the contractor to begin the project.
- ☐ The **CM** or **architect/engineer (A/E)** may prepare the **notice to proceed**; however, it is **signed by the owner** because the owner's signature is required on **contractual authorizations** to the contractor.



Notice to proceed

❑ Contracts that contain **liquidated damages** or **penalty/bonus clauses** commonly use the **notice to proceed** to officially announce the **start of construction** and the beginning of the time **allowed by the contract** for the project.

❖ Because of the **importance of this document**,
*it should be **delivered to the contractor** by a method that **documents receipt**.*

(۴-ج)

تاریخ **شروع** کار، تاریخ نخستین صورت مجلس تحویل کارگاه است که پس از مبادله پیمان، تنظیم می شود.

(۲۸-ب)

کارفرما پس از مبادله پیمان، تاریخ **تحویل کارگاه** را که نباید بیشتر از ۳۰ روز از تاریخ مبادله پیمان باشد، به پیمانکار اعلام می کند. پیمانکار باید در تاریخ تعیین شده در محل کار حاضر شود و طی صورت مجلس هایی، اقدام به تحویل گرفتن کارگاه نماید. در صورتیکه حداکثر ۳۰ روز از تاریخ تعیین شده برای **تحویل کارگاه** حاضر نشود، کارفرما حق دارد که طبق **ماده ۴۶**، پیمان را فسخ کند.



دیریت ادعاء و جلوگیری از دعاوی و اختلافات در پروژه

Notice to proceed

☐ Notice to Proceed

❖ Engineers Joint Contract
Documents Committee (EJCDC
C-550)

Notice to Proceed

Date: _____

Project: _____

Owner: _____

Owner's Contract No.: _____

Contract: _____

Engineer's Project No.: _____

Contractor: _____

Contractor's Address: *[send Certified Mail, Return Receipt Requested]*

You are notified that the Contract Times under the above Contract will commence to run on _____. On or before that date, you are to start performing your obligations under the Contract Documents. In accordance with Article 4 of the Agreement, the date of Substantial Completion is _____, and the date of readiness for final payment is _____ [(or) the number of days to achieve Substantial Completion is _____, and the number of days to achieve readiness for final payment is _____].

Before you may start any Work at the Site, Paragraph 2.01.B of the General Conditions provides that you and Owner must each deliver to the other (with copies to Engineer and other identified additional insureds and loss payees) certificates of insurance which each is required to purchase and maintain in accordance with the Contract Documents.

Also, before you may start any Work at the Site, you must:

_____ *[add other requirements]*.

Owner

Given by:

Authorized Signature

Title

Date

Copy to Engineer



و جلوگیری از دعاوی و اختلافات در پروژه

Notice to proceed

☐ Notice to Proceed by
Construction Specification
Institute (CSI)



Knowledge for Creating
and Sustaining
the Built Environment

NOTICE TO PROCEED

Project: _____ Date: _____

A/E Project Number: _____
To: _____ Contract For: _____

You are hereby notified that the Contract Times stated for the Project will commence on _____. On that date, start performing the obligations required by the Contract Documents. (Date)

Before commencing Work at the Project Site, deliver the certificates of insurance to the Owner as required by the Contract Documents.

Also before commencing Work at the Project Site, perform:

Authorized By: _____
(Owner)

(Authorized Signature)

(Title)

Accepted By: _____
(Contractor)

(Authorized Signature)

(Title)

(Date)

☐ Attachments

Copies: ☐ Owner ☐ A/E ☐ Consultants ☐ _____ ☐ _____ ☐ _____ ☐ File



Subcontractor and product lists

- ❑ Standard FIDIC and AIA general conditions require the contractor to **submit a list of proposed subcontractors**.
- ❑ Some owners may require these to be **submitted** with the contractor's bid or proposal.
- ❑ These lists are prepared by the contractor, submitted to the CM or A/E for review, and forwarded by the CM or A/E to the owner for final approval.

(۲۴-ب)

پیمانکار می‌تواند به منظور تسهیل و تسریع در اجرای قسمت یا قسمت‌هایی از عملیات موضوع پیمان، پیمان‌هایی با پیمانکاران جزء ببندد، مشروط به آنکه آنان را از واگذاری کار به دیگران ممنوع کند. در صورتیکه در اسناد و مدارک پیمان، کارفرما، لزوم تأیید صلاحیت پیمانکاران جزء را پیش‌بینی کرده باشد، پیمانکار موظف است که، تأیید کارفرما را در این مورد تحصیل نماید. این واگذاری نباید از پیشرفت کار طبق برنامه زمانی اجرای کار بکاهد، و به هر حال به هیچ روی، از مسئولیت و تعهدات پیمانکار نمی‌کاهد. پیمانکار مسئول تمام عملیاتی است که توسط پیمانکاران جزء یا کارکنان آنها انجام می‌شود. در پیمان‌های بین پیمانکار و پیمانکاران جزء باید نوشته شود که در صورت بروز اختلاف بین آنها، کارفرما حق دارد، در صورتی که مقتضی بداند، به مورد اختلاف رسیدگی کند. پیمانکار و **پیمانکار جزء** نیز می‌پذیرند که نظر کارفرما در این مورد قطعی است و تعهد می‌کنند که الزاماً آن را اجرا کنند.



Subcontractor and product lists

What happens if the owner or the A/E objects to any of the proposed subcontractors?



Subcontractor and product lists

What happens if the owner or the A/E objects to any of the proposed subcontractors?

- ❑ If the **owner or the A/E objects** to any of the proposed subcontractors, the **A/E notifies the contractor** of the objection in **writing**.
- ❑ **Changes to the lists** may entitle the contractor to changes in the **contract sum** if the contractor **incurs additional costs** because of the changes.

*The standard AIA and EJCDC general conditions state that the contractor will **not be forced** to use subcontractors to which the contractor has an objection.*

محل مسکوت در ۴۳۱۱؟

Subcontractor and product lists



Knowledge for Creating
and Sustaining
the Built Environment

SUBCONTRACTORS AND MAJOR MATERIAL SUPPLIERS LIST

Project:

From (Contractor):

Date: _____

To (A/E):

A/E Project Number:

Contract For:

List Subcontractors and Major Material Suppliers proposed for use on this Project as required by the Construction Documents. Attach supplemental sheets if necessary.

[illegible]☐ Attachments

Signed by:

Date:

Copies: ☐ Owner ☐ Consultants ☐
☐



Subcontractor and product lists

❑ **Product lists** may also be **required** and are a **means** for the **CM** or **A/E** to **verify** that the contractor will use **only specified products** or approved substitutions.

❖ **Product lists** are **not to be used** to propose **substitutions**.

✓ Even the smallest project contains hundreds of products, and **these lists** can be **extensive and time consuming** to produce.

***Only critical products** are usually important enough to be listed and verified, and the **contract documents need to be clear** about which products need to be included.*



Schedule of values

- ❑ **Many standard conditions of the contract**, including general conditions prepared by **AIA and FIDIC**, require the **contractor to submit a schedule of values** before beginning the work.
 - ❖ It is **prepared by the contractor** for use as the basis of the **contractor's applications for payment**.
 - ❖ The **schedule of values** breaks the work down into **smaller, measurable** portions that the **A/E and owner** are able to observe, measure, and use to **determine the percent complete**.
 - ❖ **Separation of work activities** into separate **labor and material** categories makes for easier review that allows for **easier processing**.

The AIA publishes a standard form for this purpose, AIA Document G703,

Continuation Sheet.



Schedule of values

- ☐ The schedule of values is **submitted to the A/E and approved before** *work on the project begins or prior to submission of the initial pay application.*
- ☐ A **draft schedule** is often submitted by the contractor to ***ensure** that it **contains sufficient detail** to meet with the A/E's approval **prior** to the contractor preparing the **final schedule of values**.*
- ☐ *Front-end loading* is a **deceptive technique**, raising the amount of mobilization costs, supervision, or early work activities to improve contractor cash flow.
- ☐ As **construction proceeds**, the **schedule is updated** to include **amounts authorized by change order**.

Schedule of values – AIA: G703 – 1992

Continuation Sheet

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO:

APPLICATION DATE:

PERIOD TO:

ARCHITECT'S PROJECT NO:

[illegible]

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



Schedule of values – AIA: G703 – 1992

Schedule of Values

Project Name:

Project #:

Contractor:

Application #:

Application Date:

Period to:

Item #	Description of Work	Scheduled Value	WORK COMPLETED		Stored Materials (not in Work Completed)	Total Completed Stored to Date	% Complete	Balance to Finish	Retainage*
			Previous Application	This Period					10%
9970	Demolition	\$ 3,000.00	\$ 2,000.00	\$ -	\$ -	\$ 2,000.00	67%	\$ 1,000.00	\$ 200.00
9955	Drywall & Carpentry	\$ 36,000.00	\$ 11,000.00	\$ 4,200.00	\$ 1,800.00	\$ 17,000.00	47%	\$ 19,000.00	\$ 1,700.00
9940	Doors & Hardware	\$ 1,000.00	\$ -	\$ 500.00	\$ -	\$ 500.00	50%	\$ 500.00	\$ 50.00
9943	Electrical	\$ 7,000.00	\$ 1,000.00	\$ 3,000.00	\$ 850.00	\$ 4,850.00	69%	\$ 2,150.00	\$ 485.00
Totals		\$ 47,000.00	\$ 14,000.00	\$ 7,700.00	\$ 2,650.00	\$ 24,350.00	52%	\$ 22,650.00	\$ 2,435.00

Recommendations for General Contractors at the Time of Bidding

General contractor's considerations

These considerations parallel those of the Owner, with a slightly different perspective.



General contractor's considerations – Assess the time allowed in the contract

- ❑ Like the Owner, the **General Contractor** also **must assess** the **risks of delays** to the **Contract completion**.
- ❑ The **Contractor** should **assess the time allowed** by the Contract to determine if **enough time** is **provided** to perform the work **without** the use of extraordinary resources.
 - ❖ The **Contractor** must include in its bid the **cost** for additional effort (**such as overtime**) required to meet the Contract completion date.



General contractor's considerations – Assess exculpatory language

- ❑ If the Contract is dominant with **exculpatory language**, especially in the area of **no-damages-for-delay**, the Contractor should carefully consider **accepting the risks** involved.
 - ❖ Some projects are **not worth** the **risk of bidding**.
- ❑ The **Contractor** should **consult** with **qualified counsel** before entering into a **highly restrictive Contract** with **exculpatory language**.
 - ❖ Again, if the **risk is too great**, the Contractor may consider **not bidding** on the project or **pricing** it accordingly.



General contractor's considerations – Assess exculpatory language

- ❑ **Not only** must Contractors assess the **risk of exculpatory language** in a Contract, but they must also **read, understand, and comply** with the **Contract provisions**, particularly with respect to **changes** and **claims**.

*For instance, the Contract may specify a **time limit** for issuing notice of a **change** or for **filing a claim**.*

*The **Contractor** must **comply** with these requirements.*

*Also, the **Contractor** should make sure to **submit all information** and **documentation** required by the **Contract**.*

Contract Risk Management

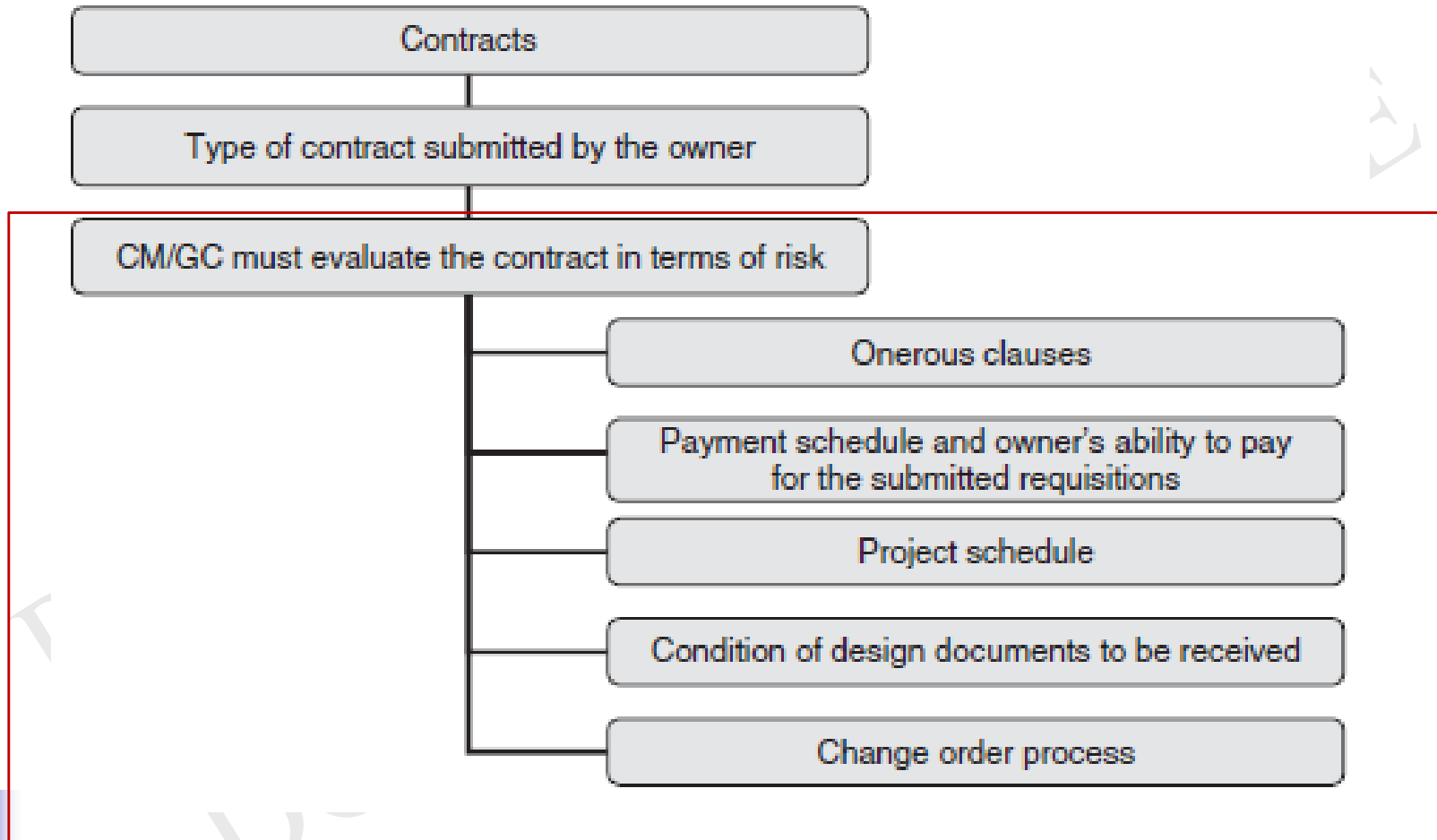
(By GC/CM)



Preparing for contract risk management

- ☐ The **risks** are too numerous, too great, and too detailed to be completed **solely by the owner** of the company.
- ☐ It is the **responsibility** of the **owner** of the company to know the **management responsibilities** in the **contract**.
- ☐ The **risk management team** and their **respective roles** are described later in this section.

Preparing for contract risk management





Contract provisions that must be reviewed for clarification

1. Owner's responsibility

- Drawings and specifications (construction documents)
- Site layout
- Soil borings and site conditions
- Environmental reports and approvals
- Reduction of any hazardous material
- Special studies (traffic, water, utilities)
- Permits clarification
- Utilities
- Disputes with adjacent owners or municipality
- Testing responsibility
- Other areas where the owner has control and must submit the information



Contract provisions that must be reviewed for clarification

2. Schedule

- Type that has to be prepared
- Updates required
- Penalty clauses
- Substantial completion provisions
- Delays (not covered by force majeure)
- Extensions
- Delays caused by owner or owner's subcontractors or vendors



Contract provisions that must be reviewed for clarification

3. Costs

- As defined in the contract
- Allowances and how to be used
- Definition of allowance items
- Contingency and how it is to be used and who controls it?
- General condition's clarifications (what is included and what is excluded?)
- Inflation clause
- Costs covered by the owner
- Value engineering
- New regulations by municipal and government agencies
- Auditing of project by the owner



Contract provisions that must be reviewed for clarification

4. Change orders

- How defined
- Method for developing costs
- Approval process
- Who signs off on any change orders?
- Will rates change if new agreements are agreed upon?



Contract provisions that must be reviewed for clarification

5. Dispute resolution

- Records that have to be kept
- Type of daily reports that have to be maintained
- Owner and CM/GC executive review
- Independent review board
- Mini trials
- Mediation
- Arbitration
- Other legal means, including litigation
- Notice provisions



Contract provisions that must be reviewed for clarification

6. Requisitions and retainer

- Schedule of values required? When is it paid and how often?
- What is required with submittal?
- Waiver of liens and from whom?

A construction lien is a claim made against a property by a contractor or subcontractor who has not been paid for work done on that property.

- Subcontractors invoices
- Percentage of retainer
- When will the retainer be released?
- Will retainer be held on fee, bonds, or insurance?
- Final payment (In what manner?)

The construction retainer is the final payment



Contract provisions that must be reviewed for clarification

7. Insurance

- Coverage
- Is builder's all risk policy required?
- Will wrap-up insurance be considered?

*A liability policy that serves as **all-encompassing insurance** which protects all contractors and subcontractors working on a large project.*

- Understanding the requirements
- Who is to be covered?

Contract provisions that must be reviewed for clarification

8. Bonds

- Types (i.e., bid, performance, payment, lien)
- Enforcement
- Circumstances in which they will be evoked



Contract provisions that must be reviewed for clarification

9. Unforeseen conditions

- Foundations and bearing capacity
- Property lines
- Utilities

Contract provisions that must be reviewed for clarification

10. Owner's representative, architect, and consultants

- Definition of role
- Changes of scope
- Means and methods
- Review shop drawings and RFIs

Contract provisions that must be reviewed for clarification

11. Coordinated drawings

- CM/GC vs. the design team
- What is to be coordinated?

Contract provisions that must be reviewed for clarification

12. Close-out

- Punch lists
- Final waiver of liens and claims
- Department of Buildings sign off
- Close-out documents
- Warranties (what is covered and when does it start?)
- Maintenance agreements (if any)
- Specific equipment use and maintenance classes
- Maintenance costs required?

Contract provisions that must be reviewed for clarification

13. Termination

- Under what circumstances?
- Define payment

Is it enough? No!

GC/CM should also check potential Onerous Contract Clauses



Potential onerous contract clauses

The **CM/GCs** should review certain clauses in the contract to make sure that any potential risk involved is within acceptable levels, including, but not limited to the following:

1. Payment
2. Retainage or Retention
3. Change orders
4. Authorization
5. Liquidated damages or consequential damages
6. Force majeure
7. No damages for delay (by the owner)
8. Warranty
9. Allowances
10. Construction documents
11. Dispute resolution
12. Construction acceleration
13. Schedule
14. Approval process
15. Implied warranty
16. Coordination of drawings
17. Unforeseen conditions
18. Owner's responsibility
19. Inflation clauses
20. Shop drawings

Contract Risk Management

(By SC)

Contract risk management by specialty contractor

Contract risk assignments

Contract clause	Specialty contractor's owner	Project manager	Construction superintendent	Estimator	Scheduler	Insurance agent	Attorney
Indemnification	•					•	•
Coordination of trades		•	•		•		
Schedule acceleration		•	•		•		
Waiver of future claims	•	•					
Concealed conditions			•	•			
No damages for delay				•	•		
Time extensions		•	•	•	•		
Extras and changes	•	•	•				
Pass through	•	•	•				
Pay when paid	•	•					

- ❑ The **indemnification clause** **contractually shifts** the **risk of economic loss** from one party to another. Through the indemnification clause, the **specialty contractor** may be required to assume certain liabilities of the owner, prime contractor, or other specialty contractors.
- ❑ **Pass-through clauses** **bind specialty contractors** to the **provisions of the prime contract** that affect their work. The main purpose is to **require the specialty contractor to be bound by the same performance standards** as the prime contractor **even though** these obligations are **not expressly contained in the subcontract**.



مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

بخش پنجم:

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

ارائه دهنده:

سید محمدرضا علوی پور

(PhD, PMP, CMIT)

دانشگاه Illinois Tech آمریکا

What we will learn?

☐ Claims management

- ❖ Introduction
- ❖ Project and claim documentation
- ❖ Contract and claim administration
- ❖ Types of claim
- ❖ Claim and dispute notification
- ❖ Claim and dispute tracking and processing
- ❖ Notes to consider before writing the claim

☐ Claims and disputes resolution

- ❖ Resolution methods
- ❖ Contract forms

What we will learn?

☐ Parties' considerations

- ❖ Construction manager
- ❖ General contractor and subcontractors
- ❖ Design consultant

☐ Lessons learned from case studies

- ❖ Recommendations
- ❖ Examples

☐ Final recommendations

Claims Management

(Introduction)

While virtually all the actions taken in the pre-design and design phases represent measures that help the owner avoid claims, the actions taken by the CM during the construction phase also help mitigate the potential impacts of unforeseen issues that may develop into disputes and claims.

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 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**,

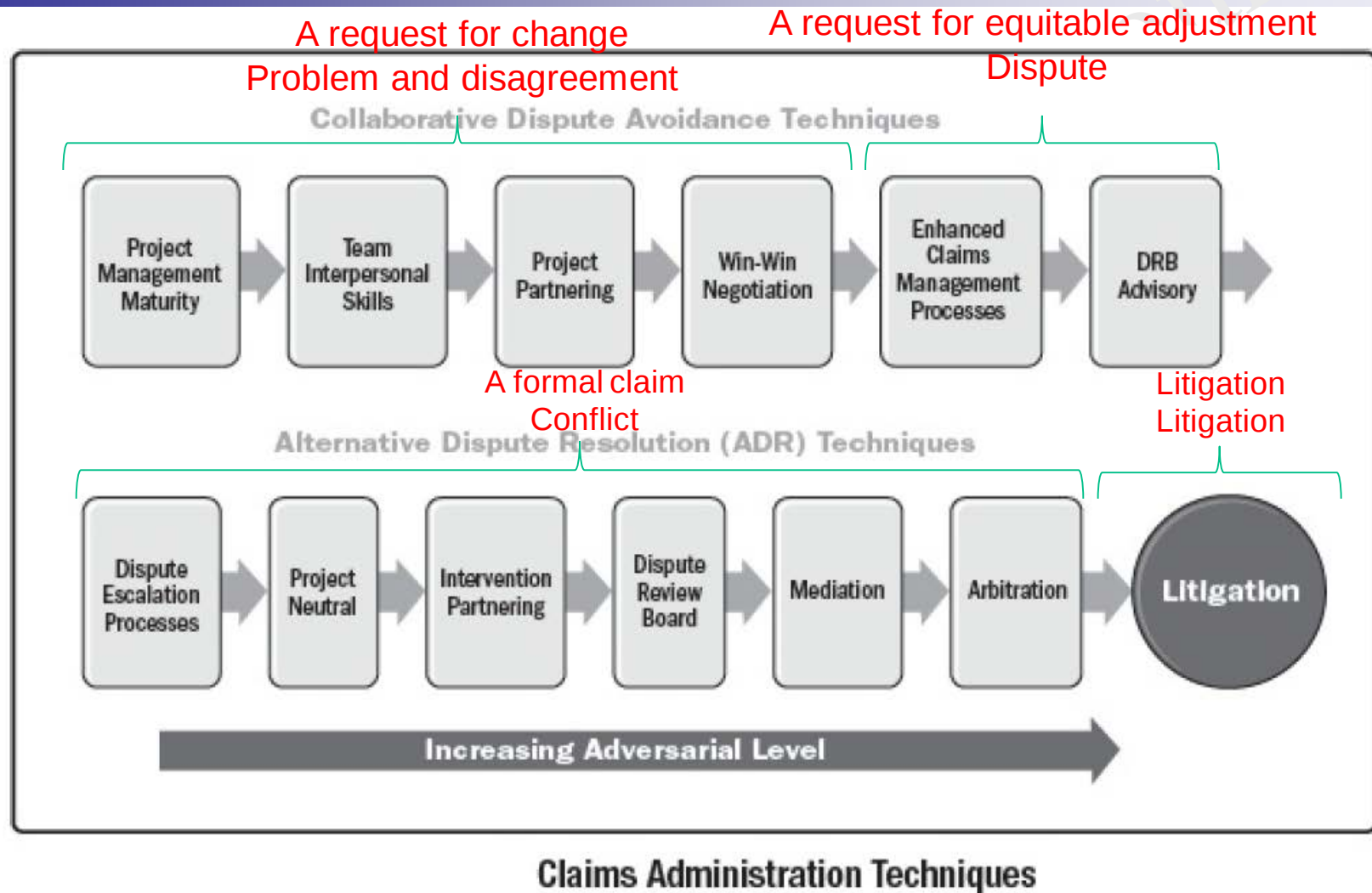
the issue takes the form of a dispute

Dispute

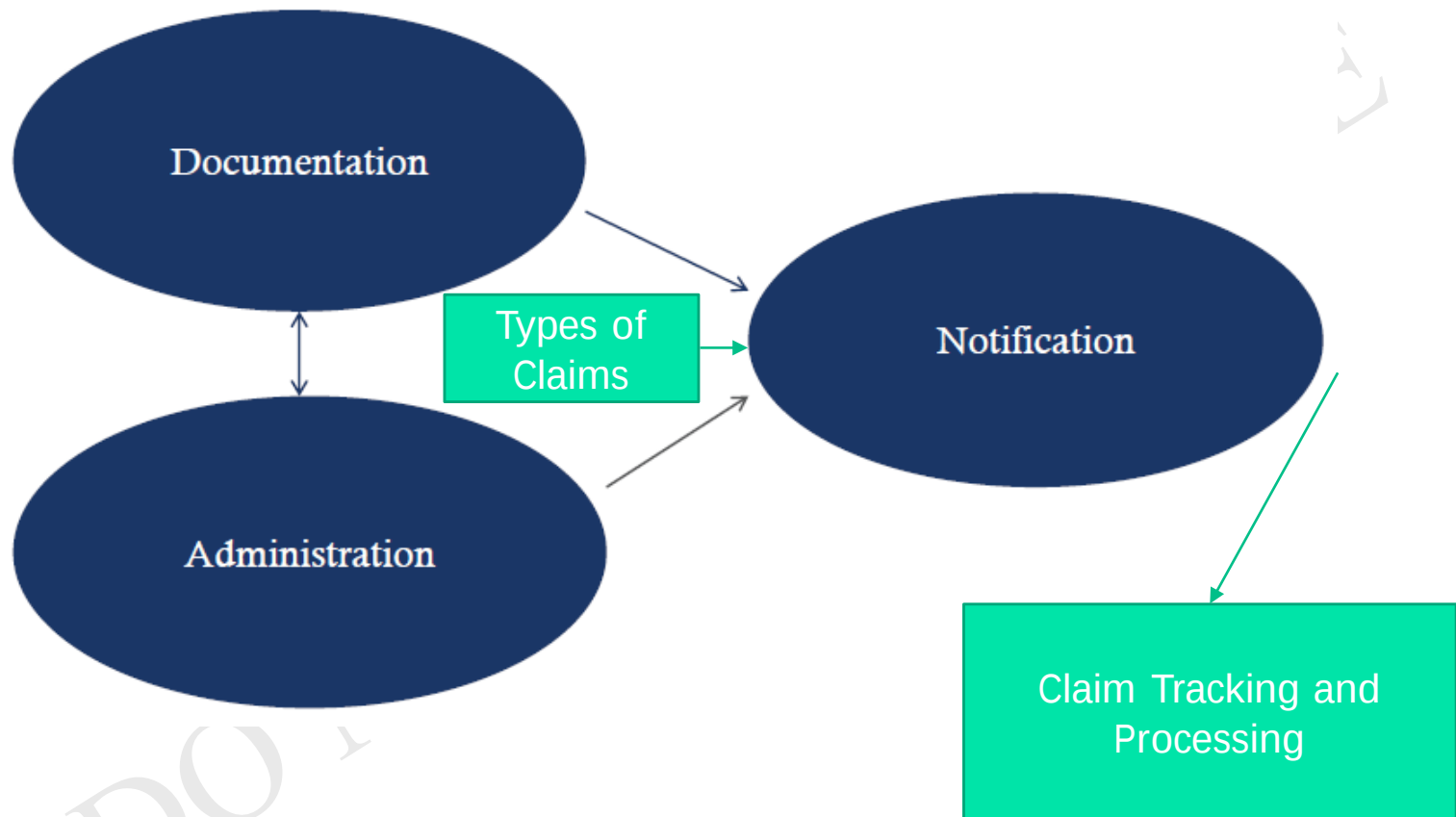
It is “**any contract question or controversy** that must be settled **beyond** the jobsite management”

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 PMI



Suggested terminology for claim management in Construction Phase



Elements of every claim

❑ Every claim consists of **three elements**:

(1) **Identification of and entitlement to recovery**

- ❖ To identify a possible claim, **project personnel** must **understand** the **conditions entitling the contractor** to pursue such relief.

(2) **Impacts**

- ❖ The **contractor** must be able to **demonstrate** the **impacts** of the **change**.

(3) **Quantification**

- ❖ Quantification defines the **dollars and days** for which you believe you are **entitled to recover**.
 - ❖ These are your **“damages.”**
 - ❖ This often requires **proof** that:
 - Owner** proximately **caused** the breach
 - Resultant damages** were reasonably **foreseeable**

Claims Management

(Project and Claim Documentation)

Importance of complete project documentation

KEY POINT:

- ❑ The standard dictum of “put everything in writing” applies here.
- ❑ It is to be noted in this regard that, to be effective,
documentation must be prepared during the construction process.
 - ❖ Records created **after the fact** will not generally receive consideration.
- ❑ Project photographs, dated and identified, can be **very effective** when documenting for claims.

Importance of complete project documentation

KEY POINT:

It is also noted that frequently when a dispute arises and when the **contractor presents his documentation** or evidence to support his position, including photographs, *the other party will frequently seek to reach a settlement rather than allowing the claim and the dispute resolution process to proceed.*

Thorough and complete documentation is the key.

Importance of complete project documentation

- ❑ **Avoid** claims and disputes or at least **reduce** disputed issues.
- ❑ **Preserve** **right** to claim
 - ❖ A sense of entitlement **without proof** of **entitlement** leads **nowhere**
- ❑ **Defend** against **claims of others**

Remember that many claims and disputes **don't happen** on the
real time on the project,
but **significant disputes** happen **years after the claim arises.**

Remember that you don't know what is going to happen!

What to document?

Choose what data and level of detail should be tracked for defending against a claim

Remember the documents we mentioned in delay analysis course?

1. Programme records
2. Progress records
3. Resource records
4. Costs records
5. Correspondence and administration records
6. Contract and tender documents

Claims Management

(Project and Claim Documentation)

Record keeping and reporting by construction contract administration (CCA)

Introduction

- ☐ Documentation created by **construction contract administration (CCA)** is effective for
 1. **Communication** of the construction stage activity.
 2. **Historical record** of the construction stage activity.
- ☐ The documentation should be **maintained in a format** that can be **easily retrieved**.

Let's see some of them!

Non-conforming work notice

- ❑ **AIA Document A201** states that work **not conforming to the requirements** of the contract documents may be considered **defective**.
 - ❖ The A/E has the authority to **reject work** that does not conform to the requirements of the contract documents.
 - ❖ Only the owner **can accept nonconforming work**; the **A/E is not authorized** to do so.
 - ❖ The A/E, upon **discovery of nonconforming work**, should
 1. **Document** the **deficiencies in a field observation report** and
 2. **Present copies** to the contractor and the owner
 - ✓ A specific document in the **form of a Notice of Nonconforming Work** is an aid in **documenting and tracking nonconforming work** and the remedy.

NONCONFORMING WORK NOTICE

Project: _____ Report Number: _____
 _____ From: _____
 To: _____ Date Observed: _____ Date Reported: _____
 _____ A/E Project Number: _____
 Re: _____ Contract For: _____

Specification Section:	Paragraph:	Drawing Reference:	Detail:
------------------------	------------	--------------------	---------

Nature of Nonconformance:

Signed by: _____ Date: _____ Date Response Needed: _____

Proposed Correction (Response):

Amount of Time for Correction:

☐ Attachments

Response From:	To:	Date Rec'd:	Date Ret'd:
----------------	-----	-------------	-------------

Signed by: _____ Date: _____

Copies: ☐ Owner ☐ A/E ☐ Consultants ☐ _____ ☐ _____ ☐ _____ ☐ File

Field observation reports

- ❑ The A/E's **record of site visits** consists basically of
 1. Site observations and
 2. Communications
- ❑ Having the **previous site report** in hand while performing the **new observation** **provides continuity** as well as an opportunity to **update and close open items**.
- ❑ These reports are for the **benefit of the A/E** and may be used as **a means of communication** with the owner and the contractor.
 - ❖ AIA Document G711, Architect's Field Report, is a useful format.

*What should be included in the **field observation reports**?*



Field observation reports

❑ **Field observation reports** include the following standard information:

- Project name
- A/E project number
- Date of visit (including day of week)
- Report number
- Weather (clear, overcast, rainy, misting, foggy, hot, warm, cold, windy, etc.)
- Approximate temperature range
- Site conditions (clear, muddy, dusty)
- Time and duration of visit
- Others present during the visit
- Remarks:
- Status of project, work in progress, work completed
- Products delivered/stored materials onsite
- Items discussed
- Deficiencies noted
- Contractor comments/queries
- Signature and date of report



Field observation reports



Knowledge for Creating
and Sustaining
the Built Environment

PERIODIC FIELD OBSERVATION REPORT

Project: _____ Report Number: _____

Owner: _____ Date: _____ Time: _____

Re: _____ A/E Project Number: _____

Weather

☐ Clear ☐ Snow ☐ Warm
☐ Overcast ☐ Foggy ☐ Hot
☐ Rain ☐ Cold ☐ _____

Site Conditions

☐ Clear ☐ Dusty
☐ Muddy ☐ _____
☐ Temperature Range _____

Day

☐ Monday ☐ Thursday
☐ Tuesday ☐ Friday
☐ Wednesday ☐ _____

Persons Contacted:

Work Observed:

Items Discussed:

Remarks:

☐ Attachments

Signed by:

Date:

Copies: ☐ Owner ☐ A/E ☐ Contractor ☐ Consultants ☐ _____ ☐ _____ ☐ File

By: Alavipour, PhD, PMP, CM

Project representative's documentation

- ❑ A full-time project representative normally keeps a **daily log (journal)** in which **important events** that penetrate on the project site are **recorded**.
 - ❖ The **log** should contain **only facts** related to the project.
 - ❖ Logs should contain **sequential entries** with **no gaps**.
 - ❖ **Weekends** and holidays should be **accounted** for, **even if a “No Work” entry is required**.
 - ❖ Each entry can be **separated** by a **line and date or time**.
 - ❖ An entry made in error should **not be erased** but **crossed out with a single neat line**.
 - ❖ Logs should **not have the appearance** of information **inserted or removed** at a **time other than** when the **original** entry was made.

Project representative's documentation

- ❑ The A/E's project representative may be required to **complete and distribute weekly and monthly reports**.
 - ❖ The weekly/monthly reports **summarize** the **daily log** and specifically **address important issues** that remain unresolved.
 - ❖ The report also **addresses important activities** that occurred during the report period.
 - ❖ These reports give an **overview of construction activity and progress** in relation to the construction **progress** schedule.
 - ❖ **Attention** should be **drawn to items** that may **impact** the **schedule or the construction cost**.

Project: _____ Report Number: _____
Owner: _____ Date: _____ Time: _____
Re: _____ A/E Project Number: _____

Weather

☐ Clear ☐ Snow ☐ Warm
☐ Overcast ☐ Foggy ☐ Hot
☐ Rain ☐ Cold ☐ _____

Site Conditions

☐ Clear ☐ Dusty
☐ Muddy ☐ _____
☐ Temperature Range _____

Day

☐ Monday ☐ Thursday
☐ Tuesday ☐ Friday
☐ Wednesday ☐ _____

Persons Contacted:

Work Observed:

Items Discussed:

Materials Delivered:

Requested Revisions or Interpretations:

Nonconforming Work Reported this Date to Contractor:

Remarks:

☐ Attachments

Signed by:

Date:

Copies: ☐ Owner ☐ A/E ☐ Contractor ☐ Consultants ☐ _____ ☐ _____ ☐ File

Project: _____ Report Number: _____

Owner: _____ Report Date: _____

Contractor: _____ A/E Project Number: _____

Contract Completion Date/Time: _____ Approved Time Extensions (Days): _____

Date Construction Started: _____ Contract Completion Date/Days: _____

Revised Completion Date: _____ Percent of Project Completion: _____

Percent of Time Used: _____ Days Elapsed: _____

Is Project on Schedule: _____ If not, why? _____

Summary of Construction Activities Since Last Report:

☐ Attachments

Signed by: _____

Date: _____

Copies: ☐ Owner ☐ A/E ☐ Contractor ☐ Consultants ☐ _____ ☐ _____ ☐ File

Review, analysis, and evaluation

- ☐ **Feedback** should occur **during each stage of a project**, especially during the **construction stage**.
- ☐ During **large or complex projects**, feedback to the project team should be **continuous rather than periodic**.
- ☐ Documentation in the form of **photos or video recordings** of both **successful and less-than-desirable** execution of the project helps to transition the **review from the field** to in-house personnel.

Project: _____

☐ Specification Item: _____

☐ Drawing Item: _____

To: _____

Date: _____

A/E Project Number: _____

Re: _____

Contract For: _____

Use this form to suggest improvements based on actual experience. The improvements may involve changes in the master specification or the standard drawing detail library.

Detailed Explanation:

Suggested Improvement:

Supporting Data Attached: ☐ Specification ☐ Drawing ☐ Photograph ☐ Video ☐ _____

Signed by: _____

Date: _____

Copies: ☐ _____ ☐ _____ ☐ _____ ☐ _____ ☐ _____ ☐ _____ ☐ File

Request for interpretations

- ❑ The acronym **RFI** is sometimes used to mean **request for information**.
- ❑ **AIA Document A201 and FIDIC** state that the architect will **review and respond** to requests for information about the contract documents.
 - ❖ **RFIs** should be **limited** to **requesting an interpretation** of the documents or may be a request for information that may be **missing**.
 - ❖ The **A/E requirement** to respond to RFIs should **not give rise** to a practice of a contractor or subcontractor **not reviewing the documents** and **simply asking** where to find a particular piece of information.

Construction Specifications Institute (CSI) uses the acronym RFI to mean a request for interpretation, since that is a specific contractual obligation.

- ❖ RFIs asking for interpretation of an item in the contract documents, **may be initiated** by the **owner or by the contractor**.



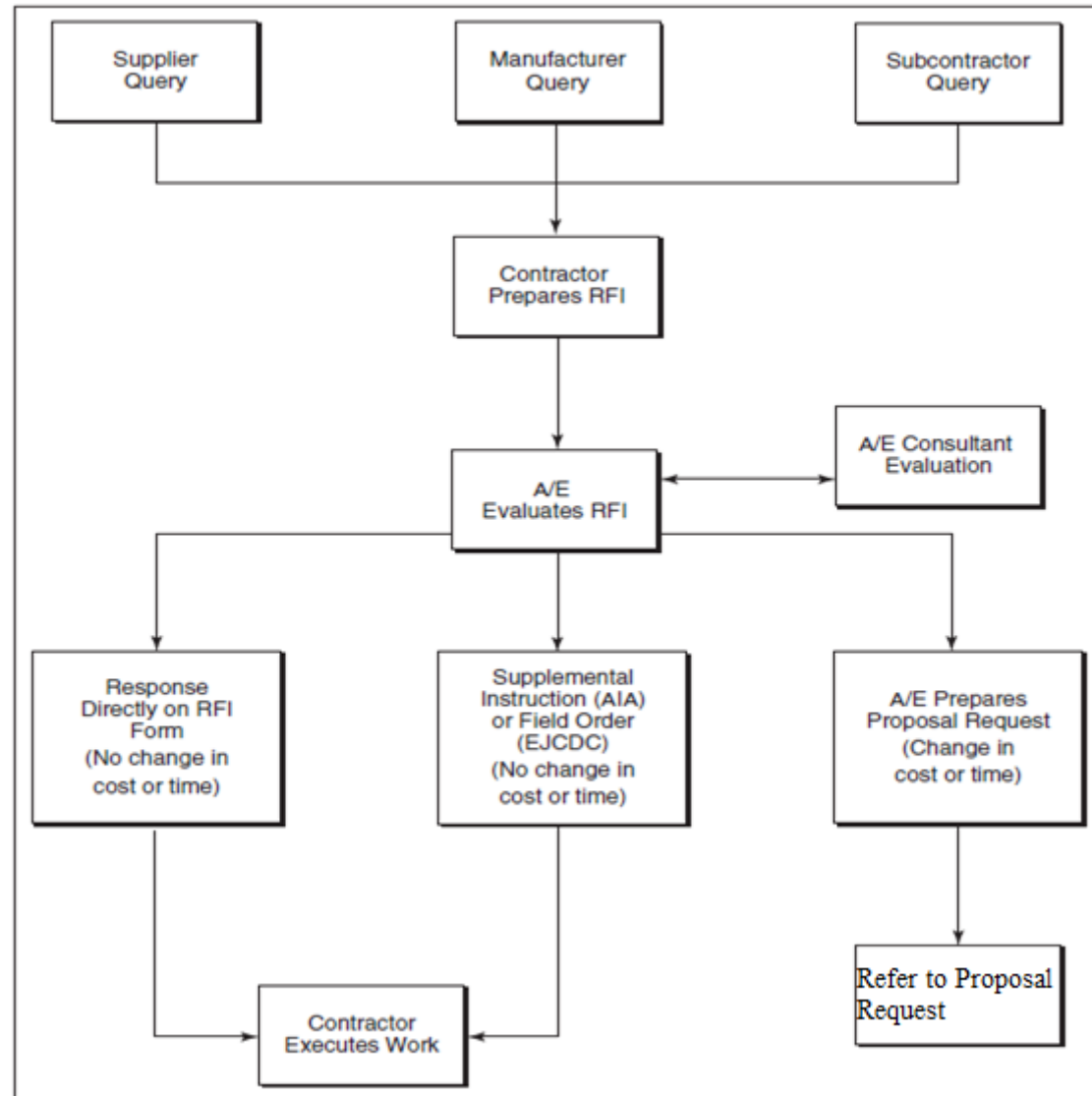
Request for interpretations

Procedures should be established among the parties to the contract for the management of RFIs.

Depending on the nature of the RFI, there are **several possible responses**.

The **reply** to the contractor could be:

1. Written directly on the RFI form as a **clarification**, or
2. **Minor change** in the work.
3. Revised drawings, revised specifications, or a **proposal request**.





Project:	_____	R.F.I. Number:	_____
	_____	From:	_____
To:	_____	Date:	_____
	_____	A/E Project Number:	_____
Re:	_____	Contract For:	_____

Request:

Response:

Response From: _____ To: _____ Date Rec'd: _____ Date Ret'd: _____

Signed by: _____ Date: _____

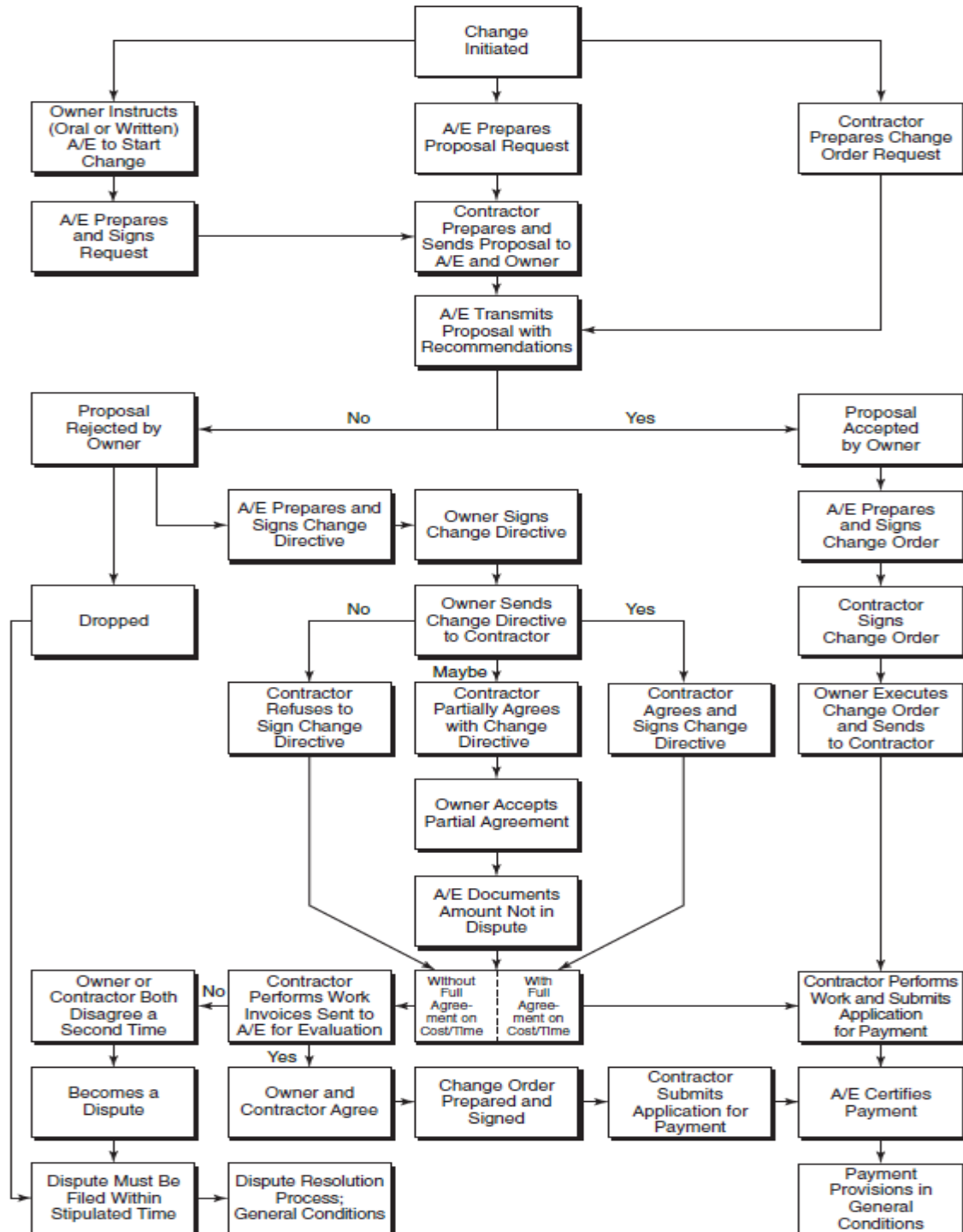
Copies: ☐ Owner ☐ Consultants ☐ _____ ☐ _____ ☐ _____ ☐ _____ ☐ File

❑ Ret'd = Returned

By: Alavipour, PhD, PMP,



By: Alavipour, PhD, PMP, CMIT



Proposal request

- ❑ A proposal request is a **written document**,
usually prepared by the **A/E**, that describes a **proposed change** to the project.
 - ❖ A proposal request is for **information only** and is not an instruction to
 1. Execute the proposed changes or
 2. Stop work in progress.

Proposal request

- ❑ The proposal request must include **enough detail** for the contractor to accurately estimate the **cost and time impact** of the proposed change on the project.
 - ❖ The proposal request should state the **reasons** for the **proposed change**.
 - ❖ This is not a change order or a directive to make changes to the project.
 - ✓ It is only a request for the contractor to **prepare** and submit a written and itemized quotation of changes in the contract sum or time that would result from the proposed change
if accepted.

Remember that I emphasized on TIA before ordering a change order?

- ❖ The request may be **supplemented** by additional or revised drawings and specifications.

2. The **proposal request** is sent to the **contractor for evaluation** of how the proposed change will *affect the contract sum and time*.

3. The contractor then responds to the owner with a change order request itemizing changes to the contract sum, the contract time, or both.

- ❖ The change order request should not be confused with a proposal request.



Work Changes Proposal Request

PROJECT: *(Name and address)*

PROPOSAL REQUEST NUMBER:

OWNER ☐

DATE OF ISSUANCE:

ARCHITECT ☐

CONTRACT FOR:

CONSULTANT ☐

OWNER: *(Name and address)*

CONTRACT DATE:

CONTRACTOR ☐

ARCHITECT'S PROJECT NUMBER:

FIELD ☐

OTHER ☐

FROM ARCHITECT: *(Name and address)*

TO CONTRACTOR: *(Name and address)*

Please submit an itemized proposal for changes in the Contract Sum and Contract Time for proposed modifications to the Contract Documents described herein. Within () days, the Contractor must submit this proposal or notify the Architect, in writing, of the date on which proposal submission is anticipated.

THIS IS NOT A CHANGE ORDER, A CONSTRUCTION CHANGE DIRECTIVE OR A DIRECTION TO PROCEED WITH THE WORK DESCRIBED IN THE PROPOSED MODIFICATIONS.

DESCRIPTION: *(Insert a written description of the Work)*

ATTACHMENTS: *(List attached documents that support description)*

REQUESTED BY THE ARCHITECT:

(Signature)

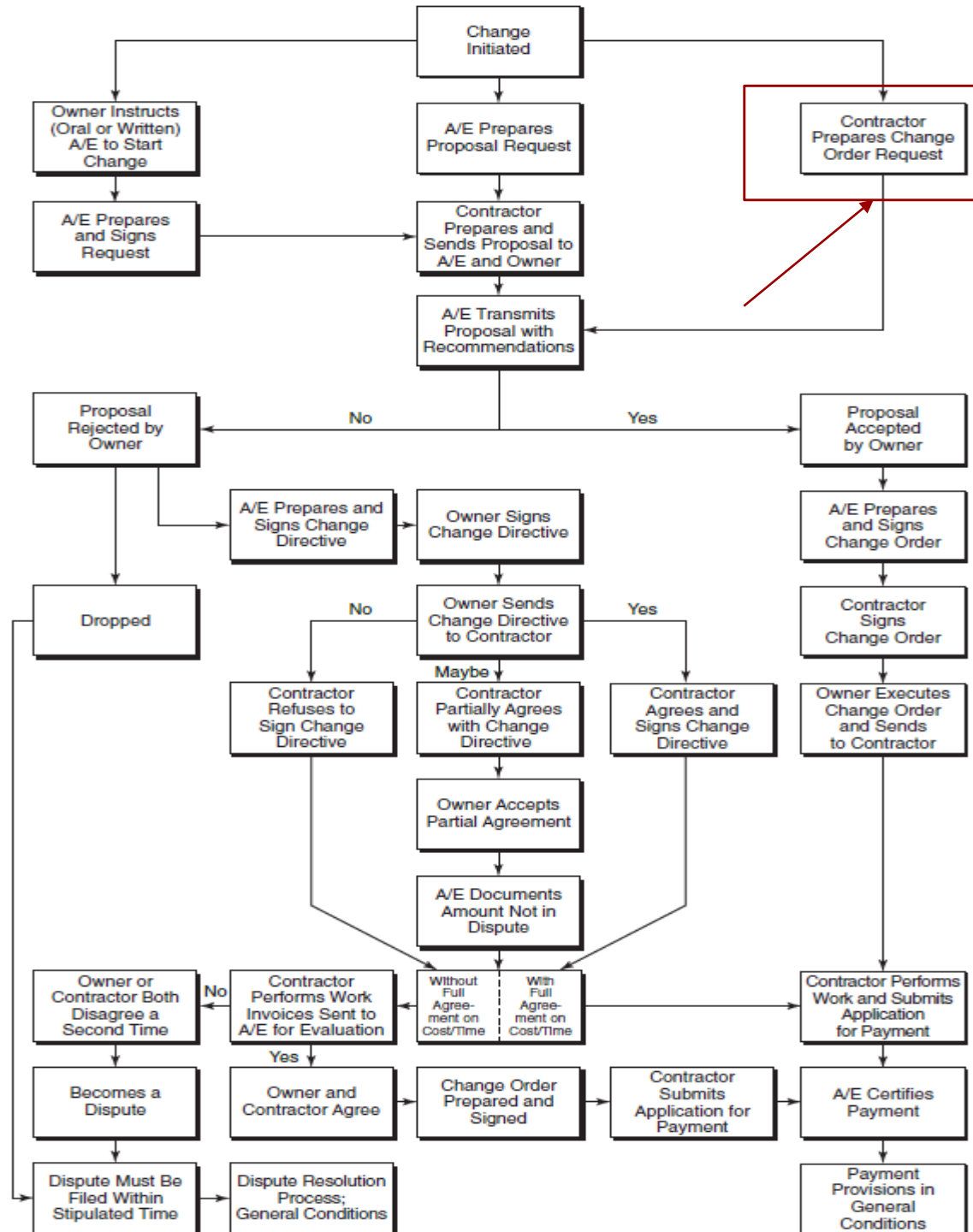
(Printed name and title)

Change order request

A change order request may be **used by the contractor** to initiate **proposed changes** that the contractor **deems necessary**.

❑ A contractor-initiated change order request should

1. State **reasons** for the proposed change
2. State an **itemization of time and costs** for labor, material, taxes, subcontracts, bonds, insurance, and overhead and profit.
3. Reference the portion of the **drawings or specifications** generating the need for change.



CHANGE ORDER REQUEST (PROPOSAL)

Project: _____ Change Order Request Number: _____

 From (Contractor): _____
 To: _____ Date: _____

 A/E Project Number: _____
 Re: _____ Contract For: _____

This Change Order Request (C.O.R.) contains an itemized quotation for changes in the Contract Sum or Contract Time in response to proposed modifications to the Contract Documents based on Proposal Request No. _____.

Description of Proposed Change:

Attached supporting information from: ☐ Subcontractor ☐ Supplier ☐ _____ ☐ _____

Reason For Change:

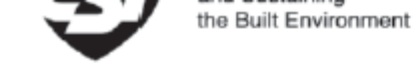
Does Proposed Change involve a change in Contract Sum? ☐ No ☐ Yes [Increase] [Decrease] \$ _____
 Does Proposed Change involve a change in Contract Time? ☐ No ☐ Yes [Increase] [Decrease] _____ days.

Attached pages: ☐ Proposal Worksheet Summary: _____
☐ Proposal Worksheet Detail(s): _____

Signed by:

Date:

By: Alavipour, PhD, PM



PROPOSAL
WORKSHEET SUMMARY

Project: _____ Change Order Request Number: _____

To: _____ From: _____

Re: _____ Date: _____

Proposal Request Number: _____ A/E Project Number: _____

Complete and attach Proposal Worksheet Detail for each element of Work. Enter Worksheet Information below.

ADDITIONS:

	Sheet	Description	Material	Labor	Subtotal
1					
2					
3					
4					
5					
6					
7					
Subtotal					

DEDUCTIONS:

	Sheet	Description	Material	Labor	Subtotal
1					
2					
3					
4					
5					
6					
7					
Subtotal					

Subcontractor's Net: _____

Subcontractor's OH&P: _____

Subcontractor's Bond: _____

Subcontractor's Total: \$ _____

Contractor's OH&P: _____



Change order request



PROPOSAL
WORKSHEET DETAIL

Project: _____

Change Order Request Number: _____

To: _____

From: _____ Contact: _____

Re: _____

Date: _____

Proposal Request Number: _____

A/E Project Number: _____

SHADED AREAS FOR A/E USE

ADDITIONS					UNIT PRICES		SUBTOTALS		TOTAL	
	Ref. No.	Item Description	Quantity		Materials	Labor	Materials	Labor		
1										
2										
3										
4										
Subtotal (Enter this number on Worksheet Summary.)										

DEDUCTIONS					UNIT PRICES		SUBTOTALS		TOTAL	
	Ref. No.	Item Description	Quantity		Materials	Labor	Materials	Labor		
1										
2										
3										
4										
Subtotal (Enter this number on Worksheet Summary.)										





Minor changes to the project or clarifications of the contract documents are defined as instructions or clarifications not involving adjustment of the contract sum or time.

Remember?
We talked about this in Design Phase!

By: Alavipour, PhD, PMP,



FIELD ORDER

Project: _____ Field Order Number: _____
From: _____
To: _____ Date: _____
A/E Project Number: _____
Re: _____ Contract For: _____

You are hereby directed to execute promptly this Field Order which interprets the Contract Documents or orders minor changes in the Work without change in Contract Sum or Contract Time.

If you consider that a change in Contract Sum or Contract Time is required, submit a Change Order Request to the A/E immediately and prior to proceeding with this Work.

Specification Section:	Paragraph:	Drawing Reference:	Detail:
------------------------	------------	--------------------	---------

Description of Interpretation or Change:

☐ Attachments

Signed by: _____

Date: _____

Copies: ☐ Owner ☐ Consultants ☐ _____ ☐ _____ ☐ _____ ☐ _____ ☐ File

Claims Management

(Project and Claim Documentation)

Record keeping and reporting by Contractor

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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