



# 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)

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## 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

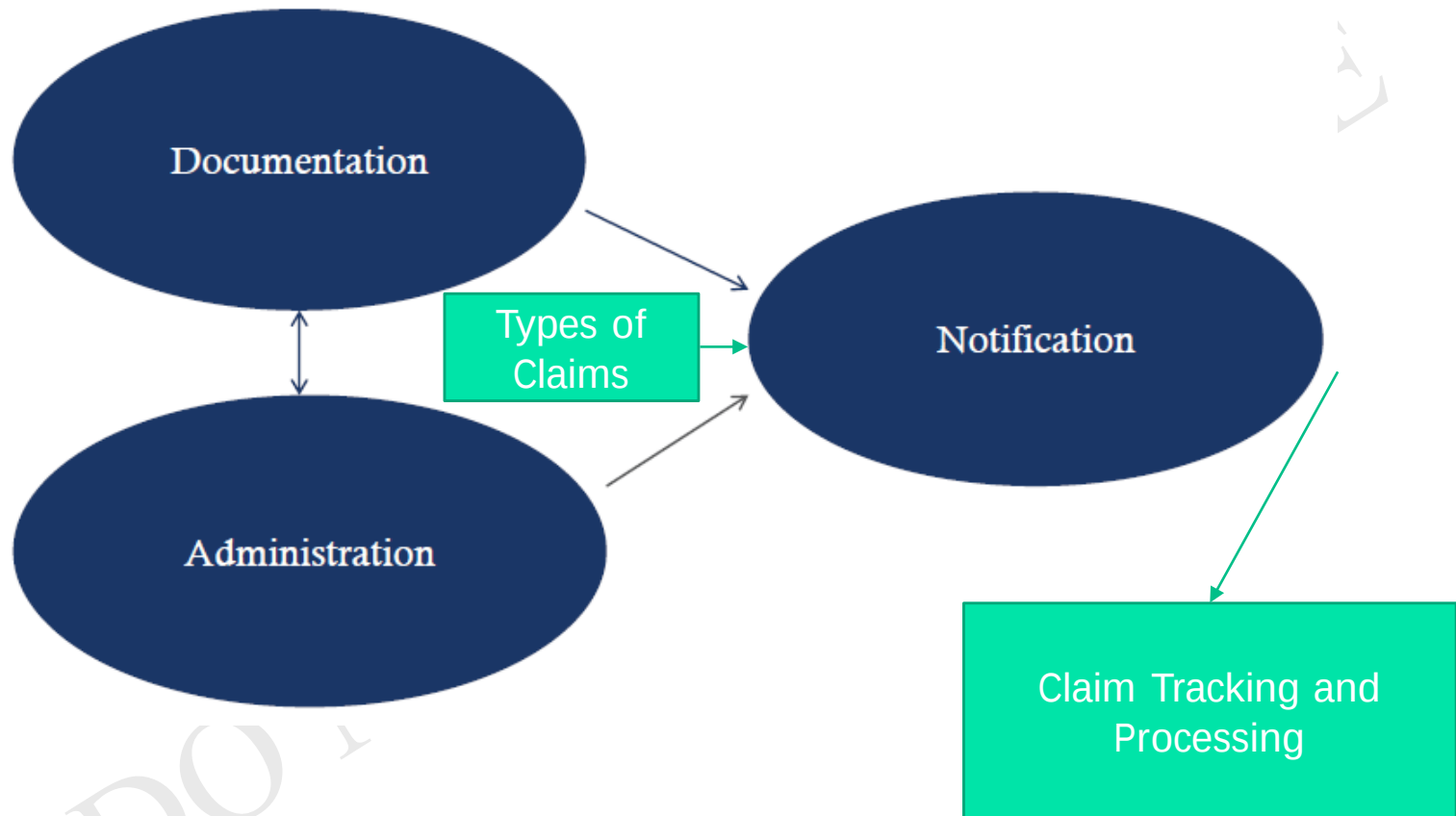
### ☐ Final recommendations

# **Claims Management**

## **(Project and Claim Documentation)**

*Record keeping and reporting by Contractor*

## Suggested terminology for claim management in Construction Phase



## Typical project documentation

*In addition to typical CCA records, the contractor's project manager should maintain records of items specific to the construction of the project. Some of these include:*

- ☐ Bid documentation
- ☐ Estimates, manpower analysis, and quantity takeoffs
- ☐ Time cards
- ☐ Job cost accounting system
- ☐ Production reporting
- ☐ Material and delivery receipts
- ☐ Schedules and progress reporting
- ☐ Cash flows
- ☐ Correspondence, transmittal, and submittal logs
- ☐ Daily reports
- ☐ Photographs and videos
- ☐ Change orders
- ☐ Periodic reviews
- ☐ E-Mail and social media

**We will talk about these items later**

## Typical project documentation

- ☐ Contract documents
- ☐ Payrolls
- ☐ Purchase orders
- ☐ Invoices
- ☐ Notice of commencement
- ☐ Notice of furnishing
- ☐ Meeting minutes
- ☐ RFIs and RFI responses and logs
- ☐ Request for change / Notices claims
- ☐ Punchlist
- ☐ Site access logs
- ☐ Funding sources
- ☐ Permits
- ☐ Payment applications

And many mores

## Typical project documentation

*Keeping accurate records of costs for equipment, overhead, direct cost items, and work orders is very important.*

If the contractor combines **too many different cost items** into a single job cost account,  
*the data can become meaningless particularly when used to **prepare analysis of damages**.*

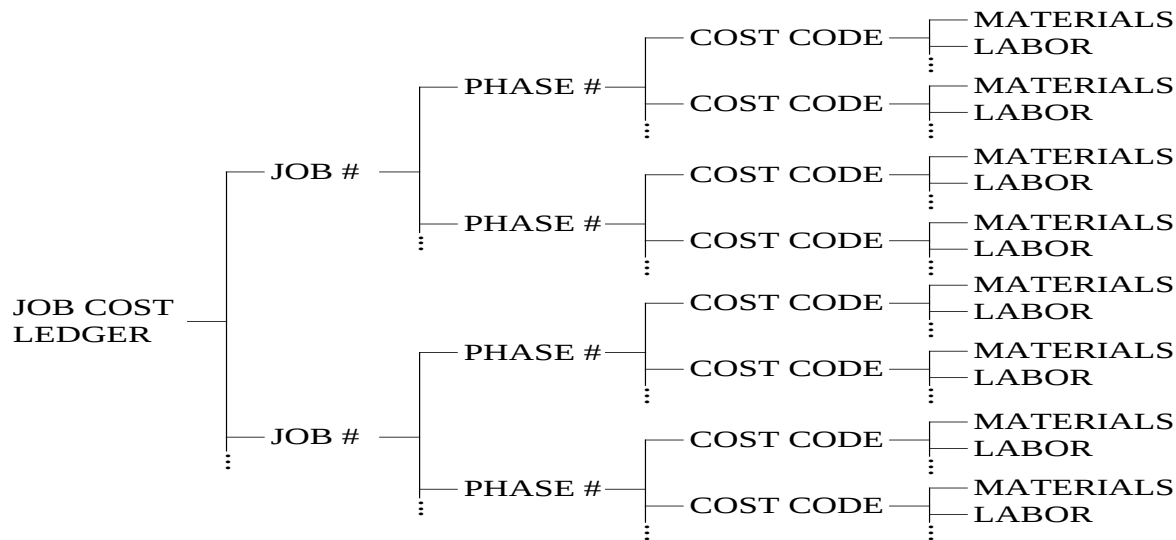
Let's look at some of these documents

## Bid, estimate, and budgets

- ❑ Cost estimates could become one of the **key foundational documents** should a **claim** arise during project execution.
- ❑ The information contained in the estimate and supporting documentation can be used to establish
  1. Contractor's original quantities
  2. Production rates
  3. Anticipated costs
- ❖ Most job cost accounting systems allow the contractor to
  1. Record budgeted costs
  2. Compare them with actual costs
- ❖ The budget should be **developed at a level of detail consistent** with
  1. Cost coding reflected in the **job cost accounting system**
  2. Any billing or contractual requirements.

**Remember Financial Course?**

## Bid, estimate, and budgets



**Remember Financial Course?**

## Bid, estimate, and budgets

❑ Because the **bid estimate** is only an estimate,

contracting agencies **hesitate** to **allow** the bid estimate to **serve as the sole basis** for claiming extra costs,

but under extreme circumstances it may be the **only reasonable method** available.

Do you remember total cost method?

1. Actual cost to perform compared with the original bid estimated cost to perform,
2. Actual cost to perform compared with a “reasonable” estimated cost to perform, and
3. Actual cost to perform compared with actual cost of identical work
  - i. Performed under normal conditions on the affected project
  - ii. Performed under another **similar project**.

## Time cards

- ❑ The **time card**, which usually serves as the **input source** for the **job payroll**,
  - ❖ **Individual's time spent** working on a **particular project** for each payroll period.
  - ❖ **Which individuals** worked on **any given day** and for **how long**.
  - ❖ **Number of hours** worked **overtime**, if any
  - ❖ **Number of hours** worked on **each task performed** that day.
  - ❖ **Each task or item** worked should be **coded to correspond** to the **cost code** reflected in the contractor's **job cost accounting system**.
  - ❖ **Record daily production** for each item worked if units installed are recorded along with the **actual time expended**.

Remember Financial Course?

*Time cards are usually prepared at the **foreman level** and then **later reviewed** by **supervisory and administrative personnel**.*



# Time cards

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## Labor Time Reporting

| Daily Labor Time Card |                |       |                     |             |            |            |             |  |              |             |              |
|-----------------------|----------------|-------|---------------------|-------------|------------|------------|-------------|--|--------------|-------------|--------------|
| Project               | Highway Bridge |       | Project No.         |             | 200808-05  |            | Wea ther    |  | Cloudy-windy |             |              |
| Date                  | July 20        |       |                     |             |            |            | Prepared by |  | G.A.S.       |             |              |
| Employee Number       | Name           | Craft | Time Classification | Hourly Rate | Cost Code  |            |             |  |              | Total Hours | Gross Amount |
|                       |                |       |                     |             | 03157.10.3 | 03157.20.3 |             |  |              |             |              |
| 132                   | Winnowich, N.  | F     | ST                  | 34.00       |            | 8          |             |  |              | 8           | \$272.00     |
|                       |                |       | OT                  |             |            |            |             |  |              |             |              |
| 221                   | Clouten, S.    | C     | ST                  | \$31.00     |            | 8          |             |  |              | 8           | \$248.00     |
|                       |                |       | OT                  |             |            |            |             |  |              |             |              |
| 248                   | Schluder, L.   | C     | ST                  | \$31.00     |            | 8          |             |  |              | 8           | \$248.00     |
|                       |                |       | OT                  |             |            |            |             |  |              |             |              |
| 319                   | Mills, R.      | O     | ST                  | \$33.00     |            | 2          |             |  |              | 2           | \$66.00      |
|                       |                |       | OT                  | 0           |            |            |             |  |              |             |              |
| 143                   | Gibson, E.     | L     | ST                  | \$22.00     |            | 8          |             |  |              | 8           | \$176.00     |
|                       |                |       | OT                  |             |            |            |             |  |              |             |              |
| 417                   | Sears, K.      | L     | ST                  | \$22.00     |            | 8          |             |  |              | 8           | \$176.00     |
|                       |                |       | OT                  |             |            |            |             |  |              |             |              |
| 176                   | Sibanda, M.    | L     | ST                  | \$22.00     | 2          | 6          |             |  |              | 8           | \$176.00     |
|                       |                |       | OT                  |             |            |            |             |  |              |             |              |
| Total Hours           |                |       |                     |             | 2          | 48         |             |  |              | 50          |              |
| Total Cost            |                |       |                     |             | \$44.00    | \$1,318.00 |             |  |              |             | \$1,362.00   |

Highway bridge, daily labor time card

**Remember**  
**Financial Course?**  
**We taught you this**  
**part**  
**comprehensively!**

## Job cost accounting system

- ❑ The **job cost accounting system**, which is the **computer application** that **project costs** are **entered into**,

should include the **same activity list** that was contained in the **original estimate**.

In other words, assuming the **estimate** was made in **sufficient detail**, the **cost coding breakdown** should **bear some resemblance in format** to the system used in the **bid estimate**.

Remember how much I emphasized on this?

**Cost estimating-Scheduling-Cost control**

**Departments should be unified!**

## Job cost accounting system

- ❑ With the **bid estimate** loaded into the **cost accounting system**, performing a **variance analysis** when **activity completion percentages** are **known** is somewhat **easy**.
- ❑ To the extent that the **cause** of the **variance** is the **responsibility** of the **owner**,  
the **contractor** should
  1. ***Timely notify*** the owner
  2. ***Request a change order*** for the impact

**Remember the variances calculated in Financial Management Course?**

## Production reporting

❑ In the case of **loss of efficiency claims**,

one of the **preferred methods** for calculating and quantifying that loss relies on **actual production rates**

### **(REMEMBER MEASURED MILE METHOD?)**

❖ To **utilize this method**,

having **access to actual production data**,

which typically **include information** about

1. **Actual labor and/or equipment hours**
  2. Corresponding **actual work units** installed,
- is essential.

*Sometimes, this information is recorded as **part of the daily reports** prepared under the contractor's supervision; however, it **can be recorded in a separate report**.*

## Production reporting – Methods of quantifying the cost of lost productivity

### ❑ Example of poorly written daily report

| Description     | Begin Time | End Time | Quantity (LF) |
|-----------------|------------|----------|---------------|
| Excavating Soil | 700        | 913      |               |
| Excavating Rock | 913        | 1400     |               |
| Excavation Soil | 1400       | 1500     |               |

Quantity 14.5

Duration 8

### ❑ Information captured to perform productivity analysis

| Description     | Begin Time | End Time | Duration | Quantity (LF) | Productivity |
|-----------------|------------|----------|----------|---------------|--------------|
| Excavating Soil | 700        | 910      | 2.1      | 20            | 9.52         |
| Excavating Rock | 910        | 1400     | 4.9      | 10            | 2.04         |
| Excavation Soil | 1400       | 1500     | 1        | 10            | 10.00        |

## Material and delivery receipts

❑ The **contractor** must be able to **prove** that it procured **permanent materials** and **equipment** and **temporary construction materials** in a **timely manner**, thus

1. Avoiding **unnecessary delays**
2. Potential **price escalations**

Remember how materials and purchase orders managed in **Financial Management Course**?

- ❖ Material records, including **purchase orders and invoices**, are required to
  - i. Verify **escalation costs**
  - ii. Establish proof that the **contractor did not cause delays** due to failure to have material on time
    - ✓ These **records also serve** as the basis on
      1. **Which escalation determinations** are made
      2. **Amounts** that will be allowed

Remember how we calculated **escalation cost** in **Delay Analysis Course**?

## Schedules and progress reporting

❑ The primary value of schedules for claims is their use

as a tool to **prove or disprove** the effect of changes and/or delays on

1. Contractual interim milestones

2. Overall project completion

❖ Electronic native files of each CPM schedule

❖ Hard copies of each CPM schedule

should be preserved for **future review**

## Schedules and progress reporting

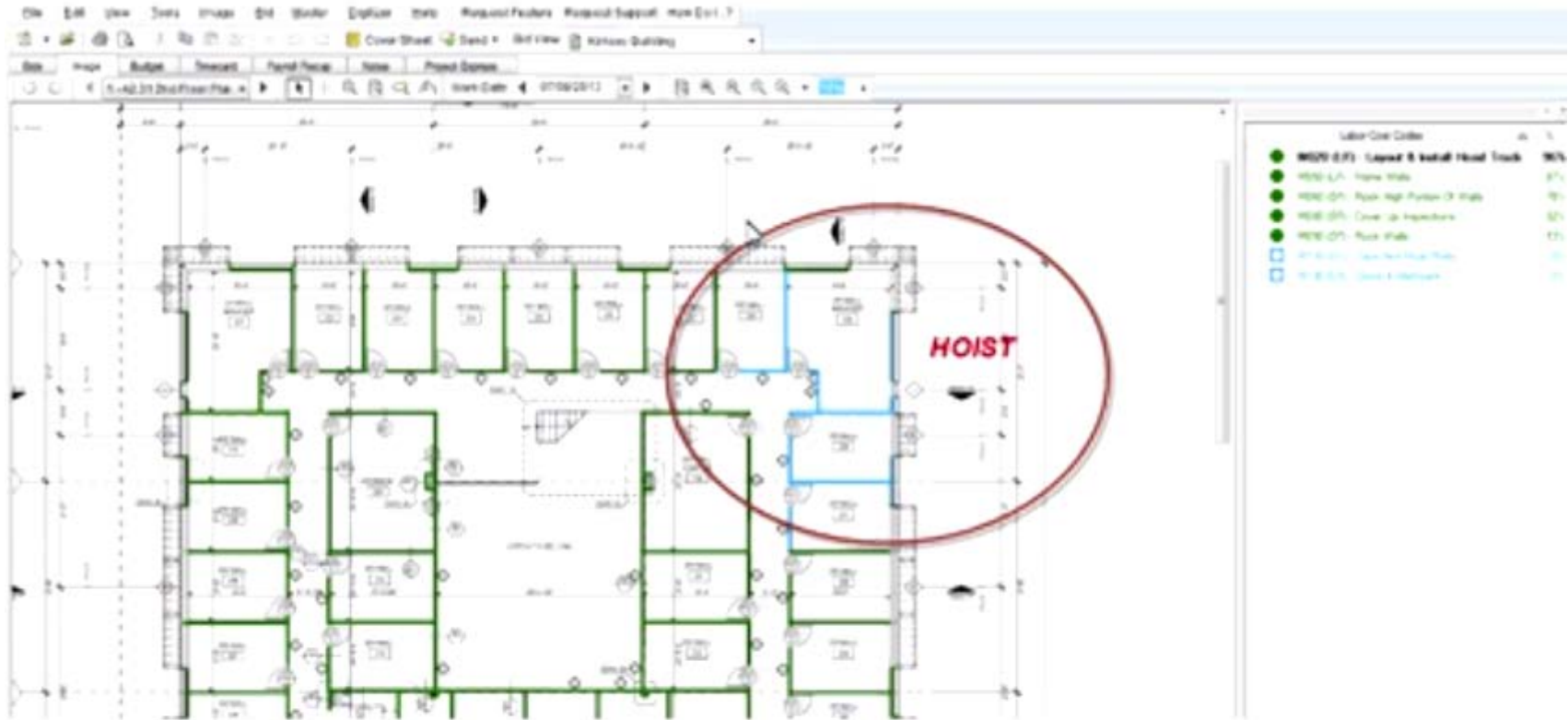
❑ This **practice includes**:

1. **Baseline**, or as-planned schedule
2. **Every update** prepared and submitted to the owner
3. **Any schedule analysis** for changes and delays
4. **Periodic** progress report
5. Schedule **narrative report**
6. **Notice** to the owner of any issues that are or will be delaying

*Contractor's ability to progress the work and complete the project on time*

Contractors, CM, and owners should consider use of a **schedule log** to **track the submission dates** of CPM schedule **updates** and their **approvals**

## Schedules and progress reporting – Example of measuring progress by measuring quantities



Digital  
Production  
Control™

## Schedules and progress reporting – Example of documentation for delays

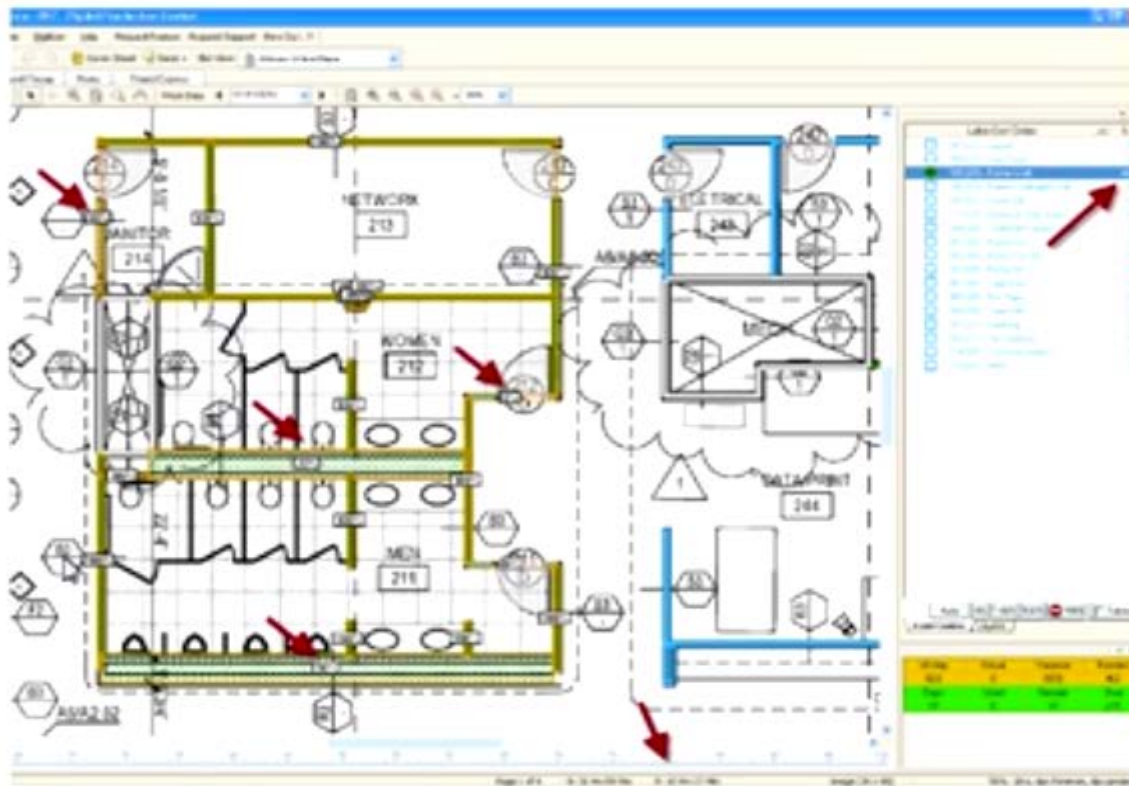
- ❑ This example documented the fragnets

ABC Office Building  
Delays to Scheduled Activities  
07/17/12

| ID | Area      | Activity                                                         | Delay     |           | Elapsed |
|----|-----------|------------------------------------------------------------------|-----------|-----------|---------|
|    |           |                                                                  | Start     | End       | Time    |
| 1  | 2nd Floor | Unable to Proceed with metal framing until shoring is removed    | 6/1/2012  | 6/15/2012 | 11      |
| 2  | 2nd Floor | Unable to Complete metal framing due to delay of window mullions | 6/18/2012 |           | 22      |
| 3  | 2nd Floor | Unable to Complete shaftwall due to delay in elevator fronts     | 5/11/2012 |           | 48      |

## Schedules and progress reporting – Example of documentation for delays

- ❑ This shows the duration and location of a delay
  - ❖ You can easily prove your claim by using this documentation system
  - ❖ You can also add photo, video, etc.



**Digital  
Production  
Control™**

## Correspondence, transmittal, and submittal logs

❑ A good idea is for the **contractor** to **keep up-to-date**

1. Logs of all correspondence
2. Logs of all drawing transmittals
3. Logs of all submittals

❖ These logs should be **prepared and maintained separately**

❖ These logs should **track** the **sender** and **who received** each piece of correspondence, transmittal, or submittal.

✓ **This allows the contractor**

**1. Easy access**

**2. Opportunity to pinpoint quickly those items that are **lagging in response** or need action.**

**3. References** when preparing **new correspondence**.

## Correspondence, transmittal, and submittal logs

- ❑ Some of other logs
  - ❖ Request for information (RFIs)
  - ❖ Proposed change order requests (CORs)
  - ❖ Site photographs

*This information is, of course, in the **contractor's files** and can be researched when needed for further detail.*

*But, the speed and convenience of having the information summarized in a log pays off when the **contractor must claim** on a prompt basis is important.*

*Commercial software is available to **manage this process**.*

## Correspondence, transmittal, and submittal logs – Request for information (RFI) tracking

- ❑ RFIs is another **key factor** for dispute and claims.
  - ❖ The **duration of the response process**, particularly on critical items, can **impact** the progress of a project.
- ❑ It is critical that **CCA**
  1. Maintains a log of the RFIs
  2. Categorizes the basis of each RFI and monitor and track each document

## Correspondence, transmittal, and submittal logs – Request for information (RFI) tracking

### What if the contractor submit improper RFIs such as providing notice?

*The CCA should reject the RFI and direct the contractor to submit the proper notice as required by the contract*

## Correspondence, transmittal, and submittal logs – Example of RFI with audit trail

RFI

Submittal

CD

Inspection

Punch List

T&M Tags

Permits

Non-Compliance

RFS

back

Copy

New

### RFI # 45

**Created By** General Contractor, Derrick Morgan

**Date Created:** 04/22/2014

**Date Submitted:** 04/22/2014

**Status:** Closed

**Priority:** Low

**Due Date:** 04/29/2014

+ Additional Send & Assignment Information

**Subject:** Question about 3" conduit E103

**Folder:**

**File Index:** 8 Construction

### History

|                       |                          |                            |                |                    |                                                                |
|-----------------------|--------------------------|----------------------------|----------------|--------------------|----------------------------------------------------------------|
| Apr 22 2014 3:55:20pm | <b>Created By</b>        | General Contractor         | Derrick Morgan |                    |                                                                |
| Apr 22 2014 3:55:31pm | <b>Submitted By</b>      | General Contractor         | Derrick Morgan | <b>Assigned To</b> | Owner/Construction Manager Priority: Low, Due Date: 04/29/2014 |
| Apr 22 2014 3:56:24pm | <b>Read By</b>           | Owner/Construction Manager | Eric           |                    |                                                                |
| Apr 22 2014 3:56:47pm | <b>Forwarded By</b>      | Owner/Construction Manager | Eric           | <b>Assigned To</b> | Engineer Priority: Low, Due Date: 04/29/2014                   |
| Apr 22 2014 3:57:16pm | <b>Read By</b>           | Engineer                   | Rodney Dawson  |                    |                                                                |
| Apr 22 2014 3:58:21pm | <b>Responded to By</b>   | Engineer                   | Rodney Dawson  | <b>Response</b>    | 1 - Engineer Response to RFI # 45                              |
| Apr 22 2014 3:58:21pm | <b>Forwarded By</b>      | Engineer                   | Rodney Dawson  | <b>To</b>          | Owner/Construction Manager                                     |
| Apr 22 2014 4:45:51pm | <b>Forwarded By</b>      | Owner/Construction Manager | Eric           | <b>To</b>          | General Contractor                                             |
| Apr 22 2014 4:45:58pm | <b>Official Response</b> | Owner/Construction Manager | Eric           | <b>Response</b>    | RFI Response # 1 - Engineer Response to RFI # 45               |
| Apr 22 2014 4:45:58pm | <b>Closed By</b>         | Owner/Construction Manager | Eric           |                    |                                                                |



## Correspondence, transmittal, and submittal logs – Example of RFI with audit trail

RFI

Submittal

CD

Inspection

Punch List

T&M Tags

Permits

Non-Con

[back](#)

### RFI # 45

|                        |                                    |                  |            |
|------------------------|------------------------------------|------------------|------------|
| <b>Created By</b>      | General Contractor, Derrick Morgan | <b>Status:</b>   | Closed     |
| <b>Date Created:</b>   | 04/22/2014                         | <b>Priority:</b> | Low        |
| <b>Date Submitted:</b> | 04/22/2014                         | <b>Due Date:</b> | 04/29/2014 |

+ Additional Send & Assignment Information

**Subject:** Question about 3" conduit E103

### RFI Response # 1

Closed

**Subject:** Engineer Response to RFI # 45

### History

|                       |                           |                            |                |                    |                    |
|-----------------------|---------------------------|----------------------------|----------------|--------------------|--------------------|
| Apr 22 2014 3:58:16pm | <b>Created By</b>         | Engineer                   | Rodney Dawson  |                    |                    |
| Apr 22 2014 3:58:21pm | <b>Submitted By</b>       | Engineer                   | Rodney Dawson  | <b>To</b>          | Owner/Construction |
| Apr 22 2014 3:58:37pm | <b>Read By</b>            | Owner/Construction Manager | Eric           |                    |                    |
| Apr 22 2014 4:45:51pm | <b>Forwarded By</b>       | Owner/Construction Manager | Eric           | <b>To</b>          | General Contractor |
| Apr 22 2014 4:45:58pm | <b>Marked Official By</b> | Owner/Construction Manager | Eric           | <b>Shared With</b> | General Contractor |
| Apr 22 2014 4:45:58pm | <b>Marked Official By</b> | Owner/Construction Manager | Eric           | <b>Shared With</b> | Owner/Construction |
| Apr 22 2014 4:45:58pm | <b>Marked Official By</b> | Owner/Construction Manager | Eric           | <b>Shared With</b> | Engineer           |
| Apr 22 2014 4:46:47pm | <b>Read By</b>            | General Contractor         | Derrick Morgan |                    |                    |

## Correspondence, transmittal, and submittal logs – Submittal tracking

- ☐ The **duration** of the **review process**, particularly on critical items, can **impact** the **progress** of a project.
- ☐ It is critical that the **CCA** **maintains** a **log of the submittals** and monitor and track the following information:
  1. The number of revisions for each submittal
  2. The duration of the review period
  3. Submittals for long-lead items

## Correspondence, transmittal, and submittal logs – Submittal tracking

❑ Prior to each project meeting, the CM should compare

1. Status of submittals as reported by the contractor
2. Status of submittals as tracked by the CCA

❖ **Discrepancies** should be discussed at the **project meeting**

to resolve **differences** and

resolution should be documented in the meeting minutes.

## Daily reports

❑ The contractor's project manager or superintendent prepares a **daily report**

❖ **Important events** that transpire on the project site are recorded.

❖ These reports should be objective, factual, and complete

❖ The following are the **most important records**.

✓ Diaries,

✓ Production records,

✓ General job progress reports

A **diary** is a record with **discreet entries** arranged by **date** reporting on **what has happened** over the course of a day or other period.

## Daily reports

- ❖ **Michael S. Simon, a New York attorney** and author of legal reviews for **Engineering News-Record**, says,

- ❖ “I need to know what happened, when it happened, why it happened, who caused it to happen, and what we did about it.

*I need to know all of this on a daily basis.*

- ❖ As your legal counsel, I must say that no single document is more important than your daily reports.

*The reports are often crucial to the outcome in negotiations or in court.*

**Write true and complete daily reports.**

***No one expects a job without problems.***

*It's essential to **write down all the facts** that exist.”*

Contractor: \_\_\_\_\_  
 Project Name: \_\_\_\_\_ Project No.: \_\_\_\_\_  
 Address: \_\_\_\_\_  
 Day and Date: \_\_\_\_\_ Report No.: \_\_\_\_\_  
 Owner Name: \_\_\_\_\_ A/E Name: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Telephone: \_\_\_\_\_  
 Contact Name: \_\_\_\_\_ Contact Name: \_\_\_\_\_  
 E-mail Address: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

### Weather:

Temperature at: 7:00 a.m. \_\_\_\_\_ 11:00 a.m. \_\_\_\_\_ 3:00 p.m. \_\_\_\_\_

Weather: \_\_\_\_\_ Wind Velocity: \_\_\_\_\_

Precipitation: \_\_\_\_\_ Total Precipitation to Date: \_\_\_\_\_

| <u>Crew:</u> | <u>Name</u> | <u>Hours</u> | <u>OT Hours</u> | <u>DT Hours</u> | <u>Task or Activity Code</u> |
|--------------|-------------|--------------|-----------------|-----------------|------------------------------|
| Contractor:  | _____       | _____        | _____           | _____           | _____                        |
|              | _____       | _____        | _____           | _____           | _____                        |
|              | _____       | _____        | _____           | _____           | _____                        |
|              | _____       | _____        | _____           | _____           | _____                        |
|              | _____       | _____        | _____           | _____           | _____                        |
|              | _____       | _____        | _____           | _____           | _____                        |

|                 | <u>Company Name</u> | <u>Number of Workers</u> | <u>Hours Worked</u> |
|-----------------|---------------------|--------------------------|---------------------|
| Subcontractors: | _____               | _____                    | _____               |
|                 | _____               | _____                    | _____               |
|                 | _____               | _____                    | _____               |
|                 | _____               | _____                    | _____               |
|                 | _____               | _____                    | _____               |
|                 | _____               | _____                    | _____               |
|                 | _____               | _____                    | _____               |
|                 | _____               | _____                    | _____               |

|           | <u>Company Name</u> | <u>Visitor Name</u> | <u>Reason for Visit</u> |
|-----------|---------------------|---------------------|-------------------------|
| Visitors: | _____               | _____               | _____                   |
|           | _____               | _____               | _____                   |
|           | _____               | _____               | _____                   |



Work Progress (include Areas and Quantities where appropriate):

Contractor:

Subcontractors:

Equipment on Site  
(including rental  
equipment):

Material Deliveries:

Company Name

Equipment Description

Hours Used

Meetings:

Yes \_\_\_\_ No \_\_\_\_

Led by: \_\_\_\_\_

Minutes:

Yes \_\_\_\_ No \_\_\_\_

Recorded by: \_\_\_\_\_

Safety Meeting:

Yes \_\_\_\_ No \_\_\_\_

Led by: \_\_\_\_\_

Items Discussed: \_\_\_\_\_

Safety Inspection:

Yes \_\_\_\_ No \_\_\_\_

Inspected by: \_\_\_\_\_

Comments: \_\_\_\_\_

Injury Today?

Yes \_\_\_\_ No \_\_\_\_

Describe: \_\_\_\_\_

Issues Raised or Resolved:

Reported by: \_\_\_\_\_ Reviewed/Approved by: \_\_\_\_\_



## Daily reports

- ☐ A form used to record track-work production on rapid transit rail system

مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

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

## Daily Production Report Form (Sample Form)

Contract 8A0033 Trackwork Constructors, Inc. Ballast Track Production Report

Job #204 Report No.: \_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_ Working Day No.: \_\_\_\_ Weather: \_\_\_\_

| Operation*                         | Route | Track | Lane | From | To | Quantity | Comments |
|------------------------------------|-------|-------|------|------|----|----------|----------|
| Excavation                         |       |       |      |      |    |          |          |
| Embankment                         |       |       |      |      |    |          |          |
| Subgrade preparation               |       |       |      |      |    |          |          |
| Subballast                         |       |       |      |      |    |          |          |
| Top ballast (first lift)           |       |       |      |      |    |          |          |
| Distribute ties and track material |       |       |      |      |    |          |          |
| Lay rail                           |       |       |      |      |    |          |          |
| Gauge and spike                    |       |       |      |      |    |          |          |
| Ballast (top off)                  |       |       |      |      |    |          |          |
| Raise and line                     |       |       |      |      |    |          |          |
| Adjust and anchor                  |       |       |      |      |    |          |          |
| Other work                         |       |       |      |      |    |          |          |

Additional Information:

Contract No.: \_\_\_\_ Today's Date: \_\_\_\_ Weather: \_\_\_\_ Temperature Range: \_\_\_\_

| Contractor's Staff: | Supervisory | Craftsman | Job Location | *Work Performed | Hours Worked |
|---------------------|-------------|-----------|--------------|-----------------|--------------|
|                     |             |           |              |                 |              |
|                     |             |           |              |                 |              |
|                     |             |           |              |                 |              |
|                     |             |           |              |                 |              |
|                     |             |           |              |                 |              |
|                     |             |           |              |                 |              |
|                     |             |           |              |                 |              |

Subcontractors on Job:

| Contractor: | Supervisory | Craftsman | Job Location | Work Performed |
|-------------|-------------|-----------|--------------|----------------|
|             |             |           |              |                |
|             |             |           |              |                |
|             |             |           |              |                |
|             |             |           |              |                |

\* Should correlate



## Daily reports

- ❑ A form used to demonstrate the disruptive effect of extra work and interference on the track-work contractor for the project

مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

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

### Job Report Summary of Effect of Disruptions and Interference (Sample Form)

Contract 8A0033

Trackwork Constructors

Summary Narrative of Extra Work and Disruptions on Ballasted Track

Excerpts taken from Supervisor and Management Daily Diaries

Week Ending: \_\_\_\_\_

| Date | Entered by | Disruptions | Entered by | Extra Work |
|------|------------|-------------|------------|------------|
|      |            |             |            |            |

Number of Shifts \_\_\_\_\_  $\frac{\text{Extra Work Volume}}{\text{Direct Work Volume}} = \text{_____} \%$   $\frac{\text{Extra Work Volume}}{\text{Total Work Volume}} = \text{_____} \%$

Miscellaneous Comments:

## Photographs and videos

- ❑ Photographs provide **one of the best**—if not the best—record of job progress.
- ❑ The contractor should endeavor to take pictures of representative job **progress regularly**, preferably **no less than weekly**, or more frequently if needed.
- ❑ The **time-lapsed photographs** are very beneficial  
if a **dispute arises** in determining the status of construction  
at **various points in time**.
- ❑ When using **digital photography**, the contractor should ensure that
  1. Photographs are digitally dated,
  2. In some cases time stamped.

**Remember we talked about this in Planning and Scheduling course?**

## Photographs and videos

❑ Additionally, a **log** should be maintained for **each photograph** that records the following information:

- ❖ **Photograph number**

- ❖ **Specific format** should be tied to the **filename** of the electronic photograph

- ❖ **Date** the photograph was taken;

- ❖ **Who took** the photograph; and

- ❖ **A brief description** of

1. Location
2. What the photograph depicts
3. Orientation of the view

## Photographs and videos

- ❑ Contractors also should consider **video recording** any **high-risk activities**  
e.g., big lifts, and possibly from multiple angles, or equipment testing.

*These videos will be very valuable if an incident occurs.*



## Change orders

❑ There are **several different types of documents** frequently associated with the **change order process**. These documents include:

1. **Design clarifications** **provided** by the **designer**

❖ e.g., “plan clarifications” or “supplemental instructions” or “minor changes”

2. **Request for change orders**

❖ e.g., “proposal request” and “change order request (COR)”

3. **Design revisions** **directed** by the **designer**

❖ e.g., “change directive” and “change order”

4. **Change Order Log** **provided** by the **designer**

5. **Change Order Status (COS)** **provided** by the **contractor** (**for** unresolved changes)

## Change orders

☐ The GC should

1. Have a **change order request (COR) form** for
  - i. Each change or
  - ii. Potential claim encountered
2. Should **immediately complete** the form upon **observance** of
  - i. Change situation
  - ii. Claim situation

## Change orders

❑ If the **GC** is directed to proceed with **work** that the contractor **believes** is a **change** and the **CM believes** that it is a **minor change** or only a **clarification**, the **contractor** should record its efforts in an **extra work form** so the **specific details** regarding the **contractor's actual efforts** are recorded on a **daily basis**.

❖ If **changed or extra work** is being performed at **multiple locations**,

**multiple forms** are recommended.

*Additionally, the GC should **attempt to obtain the owner's acknowledgment of the changed or extra work performed on a daily basis.***

***SAME THING SHOULD OCCUR FOR SC IN RELATION TO GC***

**What if the owner or GC does not accept or approve them?**



## Change orders

### What if the owner or GC does not accept or approve them?

- ❑ Although **either of these acknowledgments** will likely **not** be perceived as **approval** of a change order or claim,

it does **establish for the record** what **specific work was performed** by the contractor should entitlement to a **change be recognized** at a **later date**.

- ❖ This **form** should **identify and quantify**

- ✓ Actual work performed;
- ✓ Specific location;
- ✓ Contractor's labor, material, and equipment

such that the activity can be **priced out later**.

## Change orders

### Important note!

- ❑ A separate file should be kept for each change,
  - ❖ With a **copy** of the **initiation form** (proposal request, change order request, change directive, change order)
  - ❖ Pertinent **correspondence**,
  - ❖ Associated **invoices**,
  - ❖ Extra **work forms** and/or **time cards**,
  - ❖ **Memos-to-file**,
  - ❖ Any **other items** relevant to the change order or claim.

*Keeping a separate folder **exclusively** for copies of all initiation forms is also advisable.*

This will serve as a **handy reference** when making **periodic reviews of the status** of job claims and change orders.

## Change orders

### Important note!

- ❑ To keep the owner informed of the status of unresolved change orders and claims, the **contractor** should prepare and submit a **periodic (e.g., weekly or monthly) status report** to the owner

reflecting the open and unresolved change requests and/or claims.

*The **purpose** of such a report is to **show** the owner and/or its representatives*

1. Which items are still **in progress**,
2. Which are **awaiting** the owner's and/or architect's/engineer's **action**,
3. Which are **ready to be negotiated**, and
4. Which are **negotiated** and **awaiting formal modification**.



## Change orders

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

### ☐ Change Order Status (COS) report

Contract No. \_\_\_\_\_ Date \_\_\_\_\_ Change Order Status Report No. \_\_\_\_\_

| Extra Work Order # | Change Order # | Date Initiated | Description | Date of Request to Proceed | Date of Receipt of Notice to Proceed | Projected Cost (Ballpark Figure) | Proposal Submitted |        | Date Negotiated | Modification |        | Remarks (Current Status) |
|--------------------|----------------|----------------|-------------|----------------------------|--------------------------------------|----------------------------------|--------------------|--------|-----------------|--------------|--------|--------------------------|
|                    |                |                |             |                            |                                      |                                  | Date               | Amount |                 | No.          | Amount |                          |
|                    |                |                |             |                            |                                      |                                  |                    |        |                 |              |        |                          |



## Change orders

### ☐ Change Order Status (COS) cover letter

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

TRACKWORK CONSTRUCTORS, INC.

P.O. Box  
City, State, Zip

April 8, 2007  
Ref#: 433

Owner's Representative, Inc.  
Main Rail Yard Project  
Street Address  
City, State, Zip

Attention: Mr. A. Jones  
Resident Engineer

RE: Contract Number 8C0033  
Change Order Status Report No. 24

Gentlemen:

Submitted herewith is our monthly *Change Order Status Report No. 24* outlining the current status of all unresolved claims and change orders. We call your attention to the following figures and request you take whatever action necessary to process these items into contract modifications.

1. Outstanding Change Orders \_\_\_\_.
2. Outstanding Work Order Accounts \_\_\_\_\_. These \_\_\_\_\_ represent, in addition to the outstanding change orders in (1) above, a combination of directives by the resident engineer (RE), claims by Trackwork Constructors, and changes initiated by us with the RE's concurrence. All but \_\_\_\_\_ of these have been reduced to writing, yet there have been no change orders issued for any of them by the owner.
3. Trackwork Constructors has submitted cost proposals for \_\_\_\_\_ outstanding change orders (totaling \$\_\_\_\_\_) and \_\_\_\_\_ outstanding work orders (totaling \$\_\_\_\_\_) for a total dollar value of \$\_\_\_\_\_.
4. The remaining claims and change orders represent a projected total dollar value of \$\_\_\_\_\_, of which \$\_\_\_\_\_ has been expended by us to date. We expect to have proposals for these items to you shortly.
5. Outstanding time extension requests not associated with any of the previously referenced changes and/or claims.

We look forward to your earliest attention to these open items. Thank you.

Very truly yours,

B. Johnson  
Project Manager

## Periodic review

### ☐ In addition to

1. Updating the project schedule each month
2. Producing a change order status report periodically

the GC should **endeavor to have a formal review session** of all documents to:

1. **Determine** whether **any actions** have been **overlooked** or
2. **Determine** whether **additional actions** need to be **taken**.

## Periodic review

GC should **not wait** until the **end of the project** to file delay and/or impact, or extra work claims,

**but**

they should try to prepare and file them **as they are incurred**,

or

**at least give notice** of the potential claims.



## E-Mail and social media

- ❑ The use of **e-mail** has become a **very common** form of communication, **not only** between **project personnel**, but also for **intradepartmental communication** and **communication outside** of the company, such as with subcontractors, vendors, owners, and regulatory bodies.
  - ❖ As such, companies must have **procedures in place** to retain e-mails.
- ❑ Unfortunately, **e-mails are not the only method** of transmitting inappropriate communications.
  - ❖ Therefore, the **company must educate** and train its employees about the proper use of e-mail, **social media**, and **other forms of electronic communication**.



## Project correspondence

❑ We talked in detail about this in delay analysis course, however we should consider the following points:

- ❖ Every letter or email needs a prompt and complete reply
- ❖ Avoid letter-writing wars
- ❖ Address each issue raised directly
- ❖ Use references when responding
- ❖ Let the facts and the contact speak for themselves
- ❖ Be professional; remember you wear the “white hat” (a moral person)
- ❖ A letter should follow all oral direction
- ❖ Insist on timely notice and timely action
- ❖ Keep correspondence impersonal

## Project meetings

- ❑ **Project meetings and minutes** are an important forum to **discuss**
  1. Current progress
  2. Status of submittals and RFIs
  3. Manpower and equipment
  4. Potential change orders
  5. Potential issues and actions
  
- ❑ **During the meeting**, the **CM** should review the **contractor's progress** **compared** to the **current approved project schedule**, including progress on the **critical path** and **overall progress** to ascertain the **contractor's ability** to meet the performance **obligations** under the contract.



## Document management

❑ Many of the records mentioned may be **submitted to the Engineer** (or his representative or equivalent under various forms of contract) on a periodic basis **to sign off**.

❖ While it may **not always be possible to persuade** an **Employer's agent to 'sign off'** on such records,

i. If they are **submitted to such a party**

ii. If they are **not refuted** within a **reasonable time**,

*then it would be **difficult to deny** their accuracy at a **later date**.*

## Document management

FIDIC Sub-Clause 20.1 [*Contractor's Claims*] includes specific requirements to keep records relating to claim events as follows:

The Contractor shall keep contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

۱۸- و)

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.

## Document management

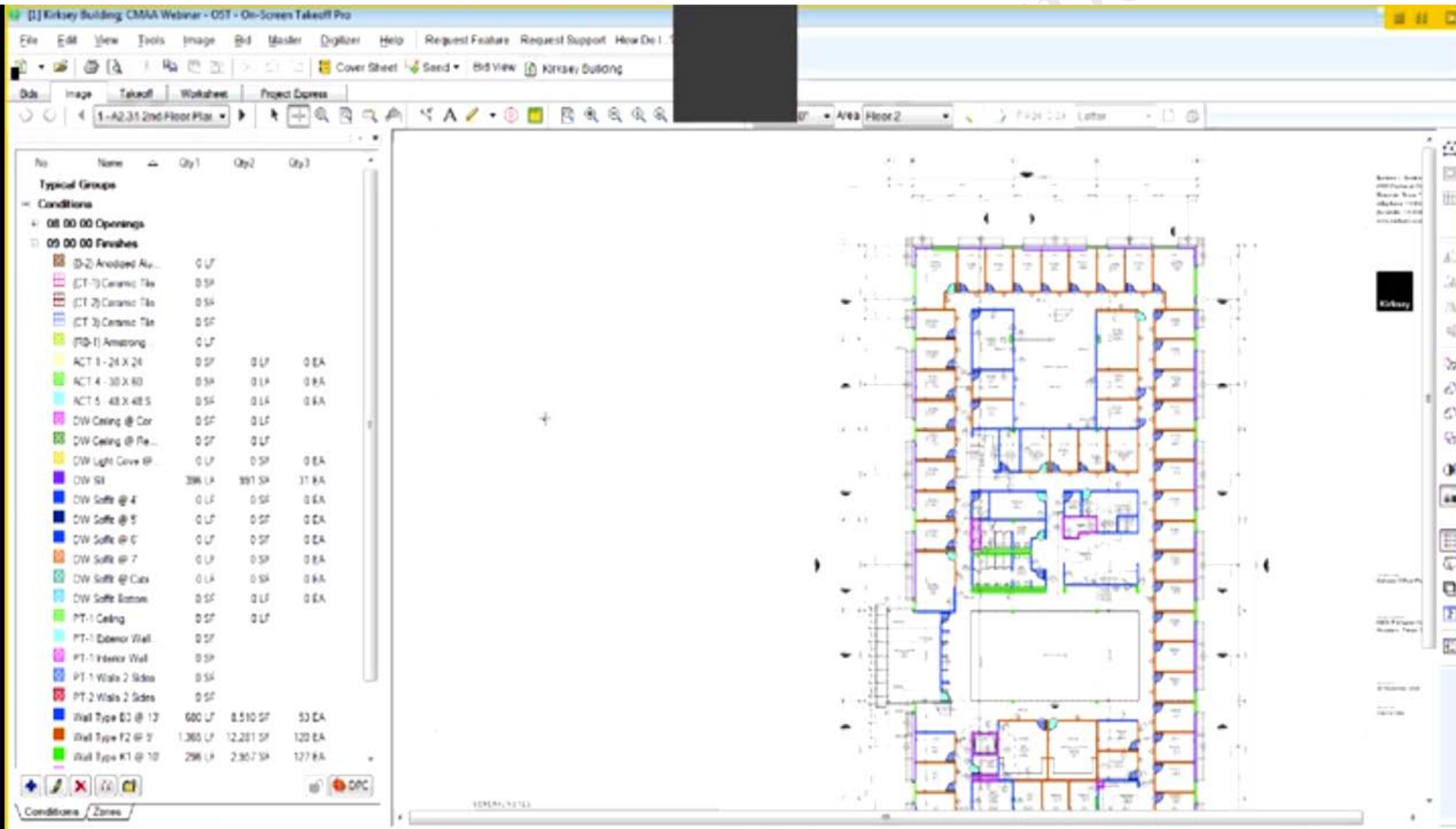
*It is therefore extremely important that,*

1. Firstly, a **robust contract administration system** is created and
2. Secondly that **systems and procedures** are put in place to **adequately record** the events and the effects on a **contemporaneous basis**.

## Document management

*Let's see some examples!*

## On-Screen takeoff



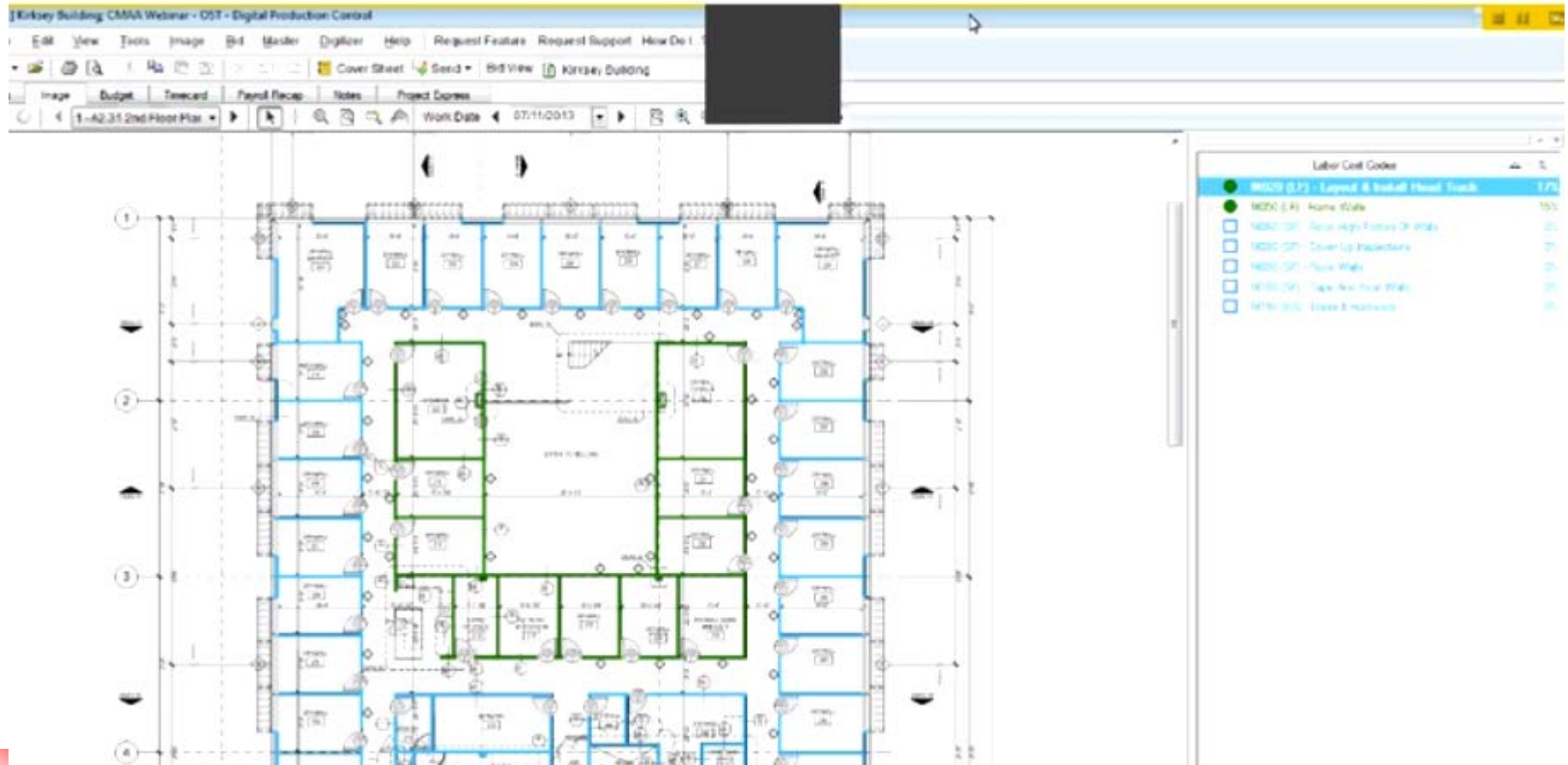
The screenshot displays the On-Screen Takeoff (OST) software interface. The main window shows a floor plan of a building, with various rooms and areas highlighted in different colors (blue, green, yellow, orange, red). The left pane shows a list of items for takeoff, organized into groups. The right pane shows a detailed view of the selected item, including its description, quantity, and unit.

| No                       | Name                 | Qty1     | Qty2      | Qty3   |
|--------------------------|----------------------|----------|-----------|--------|
| <b>Typical Groups</b>    |                      |          |           |        |
| <b>Conditions</b>        |                      |          |           |        |
| <b>08 00 00 Openings</b> |                      |          |           |        |
| <b>09 00 00 Finishes</b> |                      |          |           |        |
| 01                       | (D-2) Anodized Al... | 0 LF     |           |        |
| 02                       | (CT-7) Ceramic Tile  | 0 SF     |           |        |
| 03                       | (CT-7) Ceramic Tile  | 0 SF     |           |        |
| 04                       | (CT-3) Ceramic Tile  | 0 SF     |           |        |
| 05                       | (FID-1) Armstrong    | 0 LF     |           |        |
| 06                       | ACT 1 - 24 X 24      | 0 SF     | 0 LF      | 0 EA   |
| 07                       | ACT 4 - 30 X 60      | 0 SF     | 0 LF      | 0 EA   |
| 08                       | ACT 5 - 48 X 48 S    | 0 SF     | 0 LF      | 0 EA   |
| 09                       | DW Ceiling @ Cor     | 0 SF     | 0 LF      |        |
| 10                       | DW Ceiling @ Re...   | 0 SF     | 0 LF      |        |
| 11                       | DW Light Cove @      | 0 LF     | 0 SF      | 0 EA   |
| 12                       | DW St                | 396 LF   | 391 SF    | 31 EA  |
| 13                       | DW Soffit @ 4        | 0 LF     | 0 SF      | 0 EA   |
| 14                       | DW Soffit @ 5        | 0 LF     | 0 SF      | 0 EA   |
| 15                       | DW Soffit @ 6        | 0 LF     | 0 SF      | 0 EA   |
| 16                       | DW Soffit @ 7        | 0 LF     | 0 SF      | 0 EA   |
| 17                       | DW Soffit @ Cais     | 0 LF     | 0 SF      | 0 EA   |
| 18                       | DW Soffit Bottom     | 0 SF     | 0 LF      | 0 EA   |
| 19                       | PT-1 Ceiling         | 0 SF     | 0 LF      |        |
| 20                       | PT-1 Exterior Wall   | 0 SF     |           |        |
| 21                       | PT-1 Interior Wall   | 0 SF     |           |        |
| 22                       | PT-1 Walls 2 Sides   | 0 SF     |           |        |
| 23                       | PT-2 Walls 2 Sides   | 0 SF     |           |        |
| 24                       | Wall Type B3 @ 12    | 600 LF   | 8,510 SF  | 53 EA  |
| 25                       | Wall Type F2 @ 3     | 1,365 LF | 12,281 SF | 120 EA |
| 26                       | Wall Type K1 @ 10    | 296 LF   | 2,367 SF  | 127 EA |



## Example of scope

❑ Green color shows completion



## Example of chronology and database

An example of a simple database that may be compiled in a spreadsheet is shown in Table.

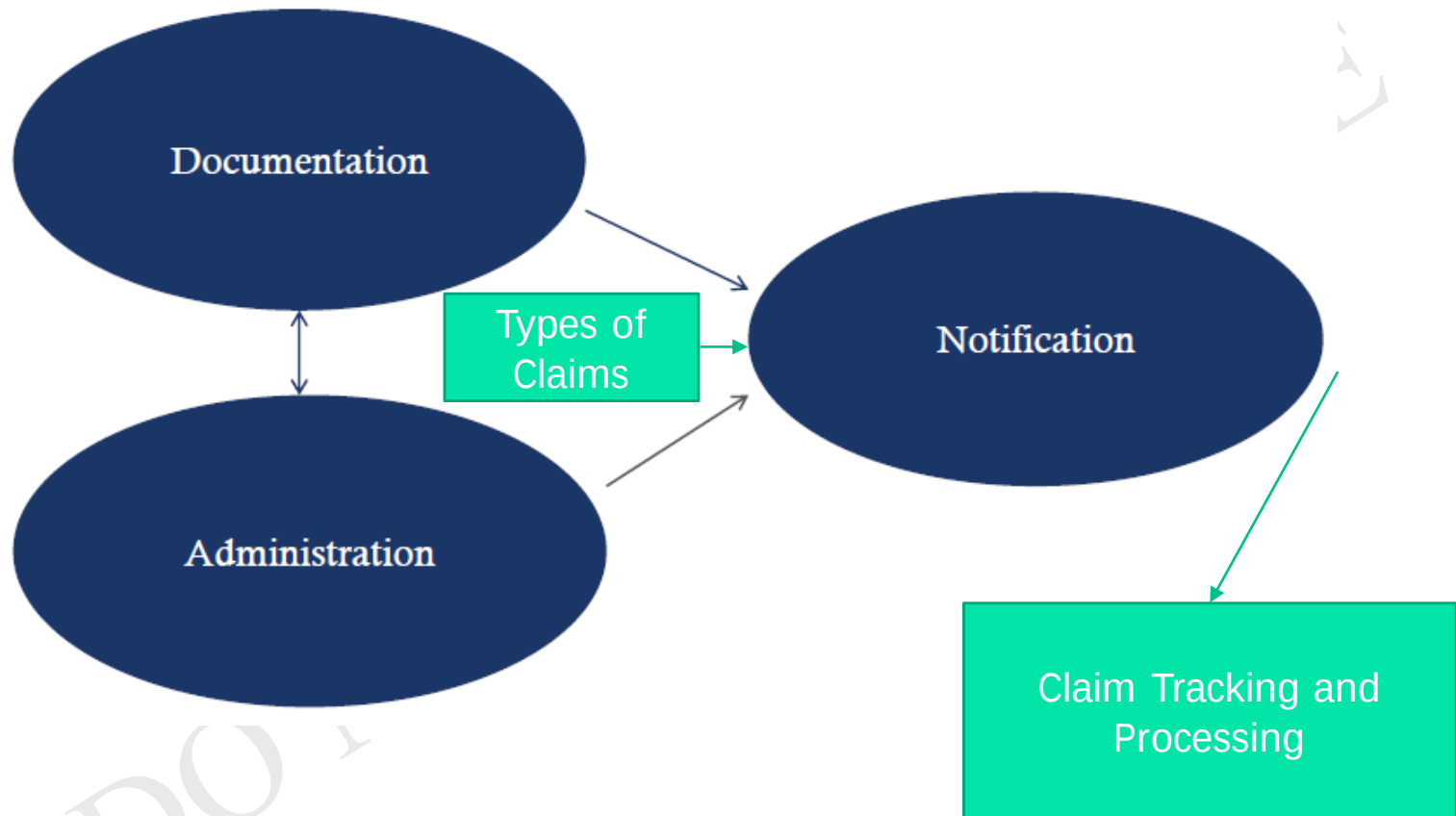
Johnson Construction Group  
Northern ring road, Newtown  
Document database – Waterproofing claim

| Date      | Type    | Ref.  | From | To   | Subject                                                            | Contents                                                                                                                      |
|-----------|---------|-------|------|------|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| 08-Jul-13 | Letter  | 0306  | JCG  | APS  | Supply and Apply Eliminator System (Spray Type Waterproofing)      | Letter of intent                                                                                                              |
| 18-Jul-13 | Mat App | 44    | JCG  | ENGR | Materials Approval                                                 | Product and subcontractor approval                                                                                            |
| 25-Sep-14 | Test    | C1194 | APS  | JCG  | Test Certificate                                                   | Test Certificate 2A Underpass Bridge                                                                                          |
| 14-Oct-14 | Letter  | 2053  | ENGR | JCG  | Laying of Sub-grade at Different Locations in Type 1 waterproofing | Waterproofing under investigation. Instructed not to lay until approved. APS to provide requested information                 |
| 16-Oct-14 | Letter  | 001   | JCG  | APS  | Waterproofing Type 1                                               | Request technical clarifications. Enclosing mix designs                                                                       |
| 17-Oct-14 | Letter  | 2196  | JCG  | ENGR | Laying of Sub-grade at Different Locations Waterproofing Type 1    | Conf of verbal instructions. Proceed with sub-grade where waterproofing completed                                             |
| 17-Oct-14 | Letter  | 2061  | ENGR | JCG  | Laying of Sub-grade at 1C-2A on Waterproofing Membrane Type 1      | Letter of undertaking required from APS                                                                                       |
| 25-Oct-14 | Email   | 1194  | APS  | JCG  | Waterproofing Type 1                                               | Re Meeting 12 Oct. required RSA mix design to confirm compatibility. Pointing out conflicts in dwgs and request clarification |
| 01-Nov-14 | Letter  | 2114  | ENGR | JCG  | Waterproofing Membrane Type 1                                      | Repeat request for APS to provide undertaking of product performance                                                          |
| 02-Nov-14 | Letter  | 2264  | JCG  | ENGR | Waterproofing Type 1–APS report                                    | Request instructions re use of RSA and RSA specification                                                                      |
| 03-Nov-14 | Letter  | 2123  | ENGR | JCG  | Waterproofing Type 1–APS report                                    | Query why RSA is required. Repeat request for performance undertaking                                                         |

# **Claims Management**

## **(Contract and Claim Administration)**

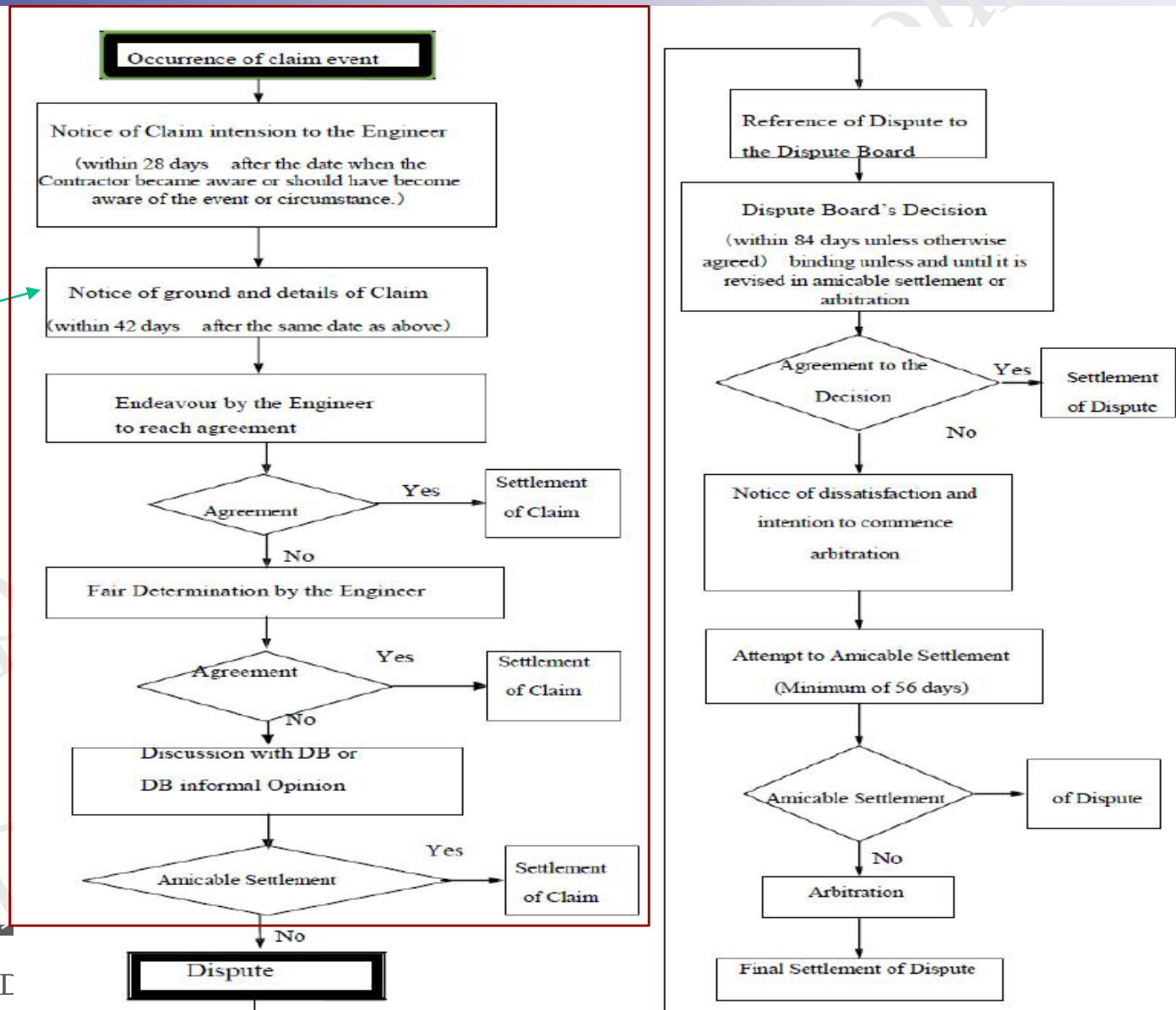
## Suggested terminology for claim management in Construction Phase



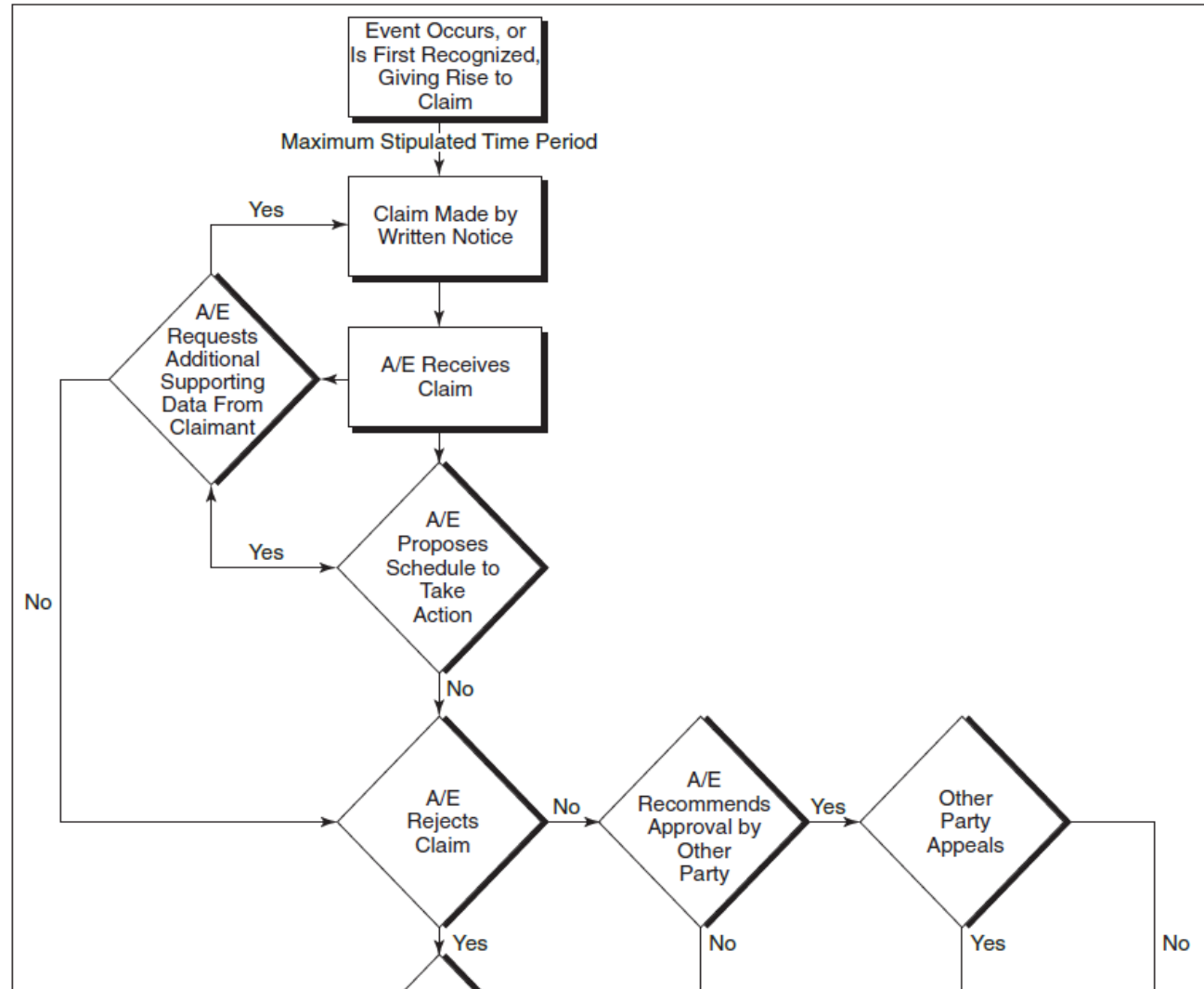
## Claims management process – Sample 1

**Submitting final details** of the claim **within 42 days** of the **end** of the events giving rise to the claim

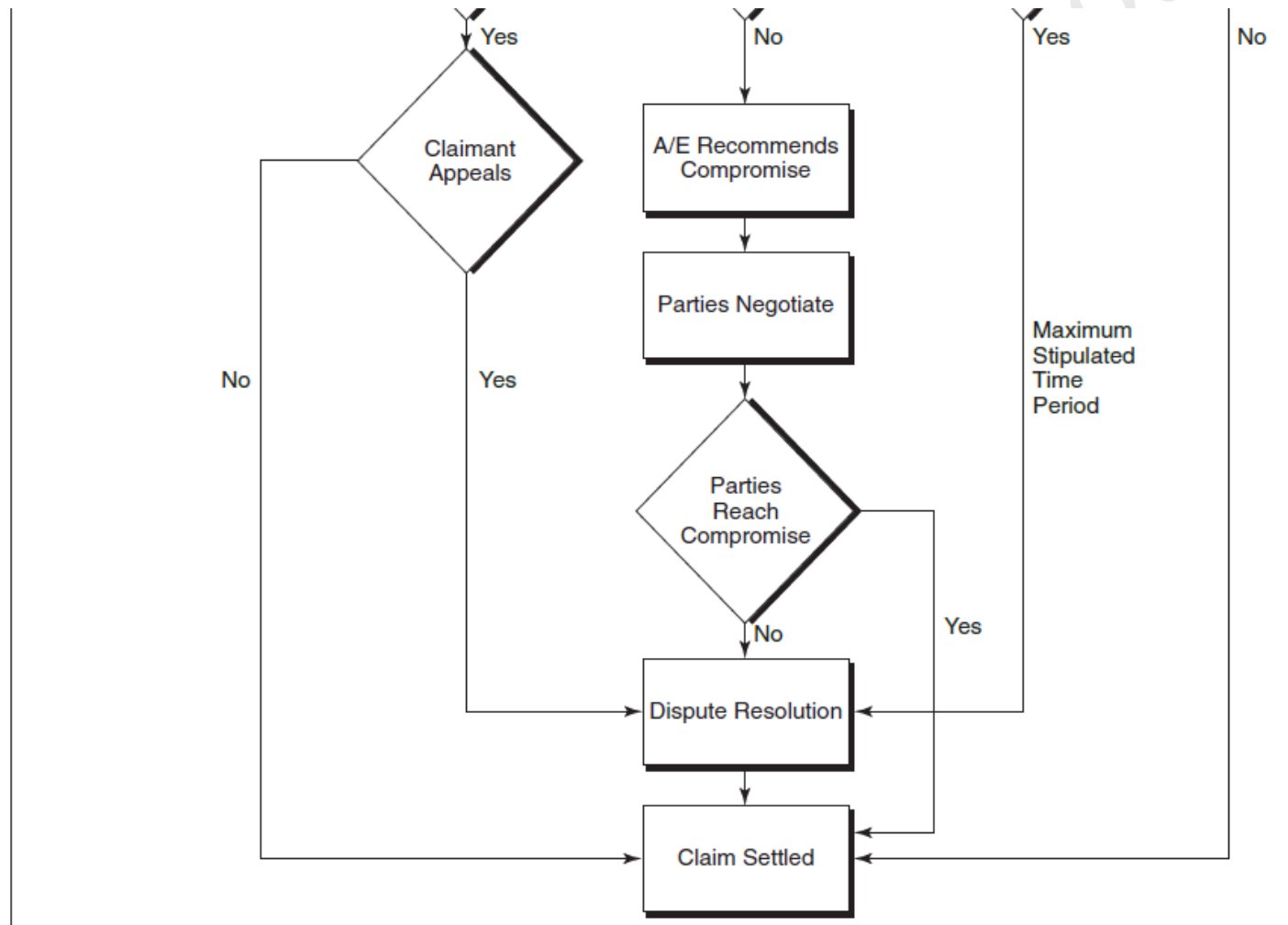
**FIDIC 2017 changed this process**



## Claims management process – Sample 2



## Claims management process – Sample 2



## Submittals – Diagram

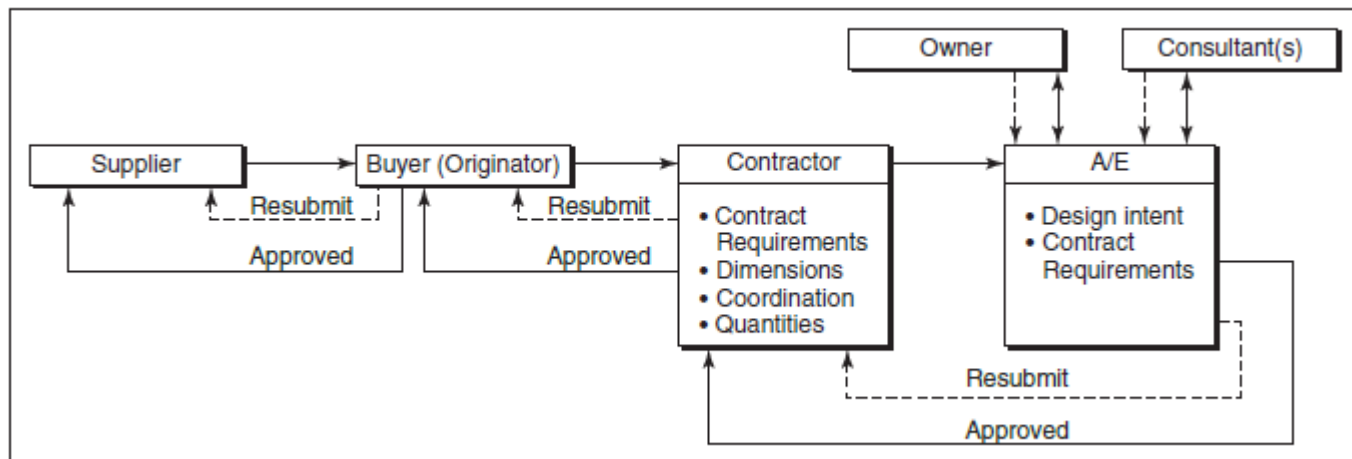


Diagram of Routing Submittals for Review and Approval

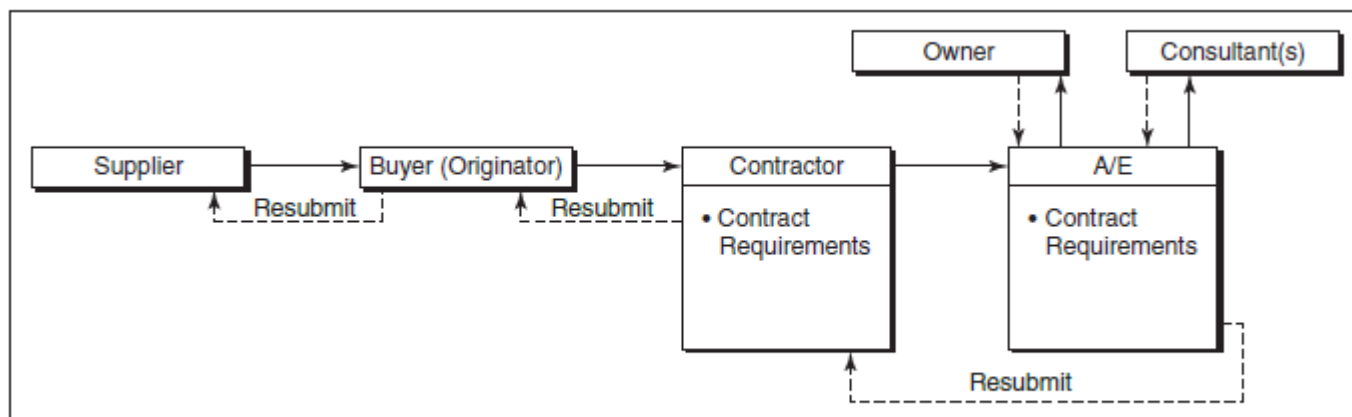


Diagram of Routing Informational Submittals

## Submittals – Stamps

|                                                                                                                                                                           |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contractor Review:</b>                                                                                                                                                 |
| Contractor has reviewed in accordance with contract requirements:                                                                                                         |
| <input type="checkbox"/> Approved<br><input type="checkbox"/> Approved as Noted<br><input type="checkbox"/> Revise/Resubmit<br><input type="checkbox"/> Rejected/Resubmit |
| By: _____ Date: _____                                                                                                                                                     |
| Contractor                                                                                                                                                                |

Sample Contractor  
Submittal Stamp

|                                                                                                                                                                                                                                                                                           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>A/E Review:</b>                                                                                                                                                                                                                                                                        |
| Approval is for conformance with information given and design concept expressed in contract documents. Approval does not authorize changes to contract documents.                                                                                                                         |
| <input type="checkbox"/> Approved<br><input type="checkbox"/> Approved as Noted<br><input type="checkbox"/> Revise and Resubmit<br><input type="checkbox"/> Rejected/Resubmit<br><input type="checkbox"/> No Action Taken or Required<br><input type="checkbox"/> Not Required for Review |
| By: _____ Date: _____                                                                                                                                                                                                                                                                     |
| A/E Firm                                                                                                                                                                                                                                                                                  |

Sample A/E Submittal  
Stamp

## Submittals – Not required by the specifications

### Submittals Not Required by the Specifications

Occasionally, the contractor submits information to the A/E for review and approval when the submittal was not required by the specifications. The A/E should be careful in processing these because the review and approval of them may involve accepting more responsibility than the A/E intended. When an A/E receives a nonrequired submittal, all copies should be returned without review to the contractor, with an annotation that the submittal is “not required for review.”



## Submittals – Submittal log

CSI FORMS 12.1B AND 12.1C SUBMITTAL LOG FOR A/ES AND CONTRACTORS (Page 2)



Knowledge for Creating  
and Sustaining  
the Built Environment

**SUBMITTAL  
LOG (Contractor)**

Project: \_\_\_\_\_

Contractor Project Number: \_\_\_\_\_

Owner: \_\_\_\_\_

A/E: \_\_\_\_\_

[illegible]

## SUBMITTAL TRANSMITTAL

Project: \_\_\_\_\_ Date: \_\_\_\_\_  
A/E Project Number: \_\_\_\_\_

**TRANSMITTAL A** To (Contractor): \_\_\_\_\_ Date: \_\_\_\_\_ Submittal No. \_\_\_\_\_  
From (Subcontractor): \_\_\_\_\_ By: \_\_\_\_\_ ☐ Resubmission

| Qty. | Reference /<br>Number | Title / Description /<br>Manufacturer | Spec. Section Title and Paragraph /<br>Drawing Detail Reference |
|------|-----------------------|---------------------------------------|-----------------------------------------------------------------|
|      |                       |                                       |                                                                 |
|      |                       |                                       |                                                                 |
|      |                       |                                       |                                                                 |

- |                                                                            |                                                                                                                               |
|----------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Submitted for review and approval                 | <input type="checkbox"/> Substitution involved - Substitution request attached                                                |
| <input type="checkbox"/> Resubmitted for review and approval               | <input type="checkbox"/> If substitution involved, submission includes point-by-point comparative data or preliminary details |
| <input type="checkbox"/> Complies with contract requirements               | <input type="checkbox"/> Items included in submission will be ordered immediately upon receipt of approval                    |
| <input type="checkbox"/> Will be available to meet construction schedule   |                                                                                                                               |
| <input type="checkbox"/> A/E review time included in construction schedule |                                                                                                                               |

Other remarks on above submission: \_\_\_\_\_ ☐ One copy retained by sender

**TRANSMITTAL B** To (A/E): \_\_\_\_\_ Attn: \_\_\_\_\_ Date Rec'd by Contractor: \_\_\_\_\_  
From (Contractor): \_\_\_\_\_ By: \_\_\_\_\_ Date Trnsmt'd by Contractor: \_\_\_\_\_

- |                                            |                                              |
|--------------------------------------------|----------------------------------------------|
| <input type="checkbox"/> Approved          | <input type="checkbox"/> Revise / Resubmit   |
| <input type="checkbox"/> Approved as noted | <input type="checkbox"/> Rejected / Resubmit |

Other remarks on above submission: \_\_\_\_\_ ☐ One copy retained by sender

**TRANSMITTAL C** To (Contractor): \_\_\_\_\_ Attn: \_\_\_\_\_ Date Rec'd by A/E: \_\_\_\_\_  
From (A/E): \_\_\_\_\_ ☐ Other By: \_\_\_\_\_ Date Trnsmt'd by A/E: \_\_\_\_\_

- |                                                      |                                                                                                |
|------------------------------------------------------|------------------------------------------------------------------------------------------------|
| <input type="checkbox"/> Approved                    | <input type="checkbox"/> Provide file copy with corrections identified                         |
| <input type="checkbox"/> Approved as Noted           | <input type="checkbox"/> Reproducible copies only returned                                     |
| <input type="checkbox"/> Revise and Resubmit         |                                                                                                |
| <input type="checkbox"/> Rejected/Resubmit           | <input type="checkbox"/> Point-by-point comparative data required to complete approval process |
| <input type="checkbox"/> No Action Taken or Required |                                                                                                |
| <input type="checkbox"/> Not Required for Review     | <input type="checkbox"/> Submission Incomplete / Resubmit                                      |

Other remarks on above submission: \_\_\_\_\_ ☐ One copy retained by sender

**TRANSMITTAL D** To (Subcontractor): \_\_\_\_\_ Attn: \_\_\_\_\_ Date Rec'd by Contractor: \_\_\_\_\_  
From (Contractor): \_\_\_\_\_ By: \_\_\_\_\_ Date Trnsmt'd by Contractor: \_\_\_\_\_

Copies: ☐ Owner ☐ Consultants ☐ ☐ ☐ ☐ ☐ One copy retained by sender

## Formal record-keeping procedures and controls

*Apply best practices in enforcing, monitoring and tracking document contract compliance*

Advancement in construction technology make integrated project documentation solutions possible...

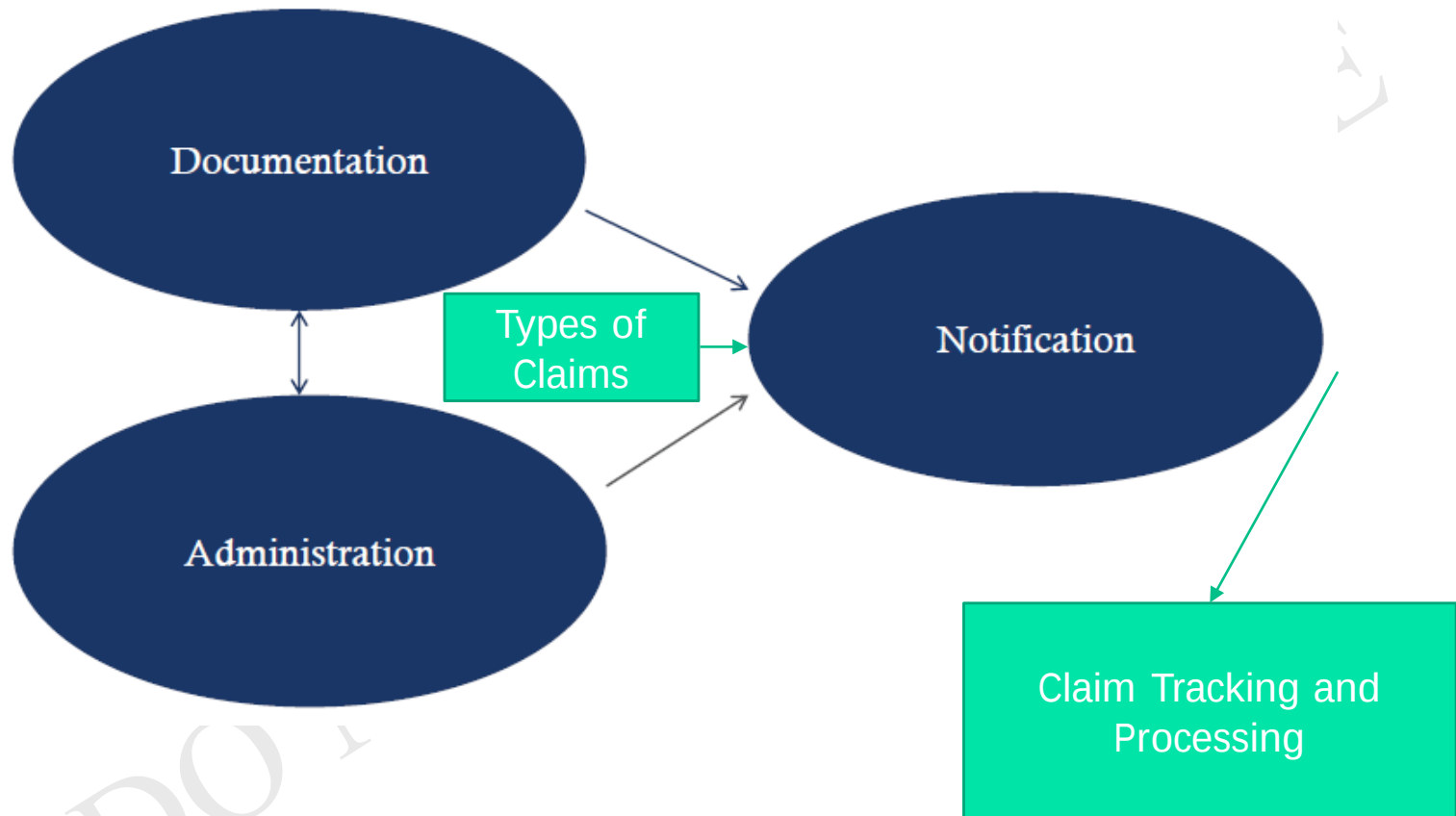
**BUT THE INDUSTRY IS NOT THERE YET 100%**

**EVEN WITHOUT TECHNOLOGY, IT IS NOT AN EXCUSE FOR FAILING TO MAINTAIN THE BASIC RECORD-KEEPING PROCEDURES**

# **Claims Management**

## **(Types of Claim)**

## Suggested terminology for claim management in Construction Phase



## 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** should be presented in a manner required by the contract and should be an **accurate and proper measure of the damages** claimed.**

## Claims for variations

- ❑ A **variation** is something that **changes the nature** of the project.
- ❑ This may consist of
  - ❖ **Additional** or **less** work,
  - ❖ A **change in the specification** for part of the work, or
  - ❖ In some cases a change to the **contractual basis** of the project such as the contract **price or period**.

*In most construction contracts, the **Employer** is **permitted** to make such changes, and this is **usually administered** by his **appointed agents** such as the **Engineer** under the **FIDIC** forms of contract.*

## Claims for variations

Most standard forms of contract place the **obligation** on the **Engineer** to  
**issue instructions** to vary the works

AND

most will specifically **prohibit** the **Contractor** from carrying out variations without  
**written instructions.**



## Claims for variations

- ❑ The FIDIC contract has this to say about the subject of variations.

### Sub-Clause 1.1.6.9

“Variation” means any change to the Works, which is instructed or approved as a variation order under Clause 13 [*Variations and Adjustments*].

### Sub-Clause 13.1 Right to Vary

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal.

The Contractor shall execute and be bound by each variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that the Contractor cannot readily obtain the Goods required for the Variation. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

Each variation may include:

- (a) changes to the quantities of any item of work included in the Contract (however, such changes do not necessarily constitute a Variation),
- (b) changes to the quality and other characteristics of any item of work,
- (c) changes to the levels, positions and/or dimensions of any part of the Works,
- (d) omission of any work unless it is to be carried out by others,
- (e) any additional work, Plant, Materials or services necessary for the Permanent Works, including any associated Tests on Completion, boreholes and other testing and exploratory work, or
- (f) changes to the sequence or timing of the execution of the Works.

The Contractor shall not make any alteration and/or modification of the Permanent Works, unless and until the Engineer instructs or approves the Variation.



## Claims for variations

- ❑ The **FIDIC** contract has this to say about the subject of variations.

### Sub-Clause 13.3 Variation Procedure

If the Engineer requests a proposal, prior to issuing a Variation, the Contractor shall respond in writing as soon as practicable, either by giving reasons why he cannot comply (if this is the case) or by submitting:

- (a) a description of the proposed work to be performed and a programme for its execution,
- (b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [*Programme*] and to the Time for Completion, and
- (c) the Contractor's proposal for evaluation of the Variation.

The Engineer shall, as soon as practicable after receiving such proposal (under Sub-Clause 13.2 [*Value Engineering*] or otherwise), respond with approval, disapproval or comments. The Contractor shall not delay any work while awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the Engineer to the Contractor, who shall acknowledge receipt.

Each variation shall be evaluated in accordance with Clause 12 [*Measurement and Evaluation*], unless the Engineer instructs or approves otherwise in accordance with This Clause.

## Claims for variations

- ☐ The provisions mentioned are **quite clear** as to the **authority of the Engineer** to
  1. Vary the works
  2. Procedures to be adopted
  
- ☐ **If** this **procedure is adhered** to,  
there would be **no reason to submit a claim** because
  1. Variation
  2. Entitlement to additional payment

*have **already been acknowledged.***

## Claims for variations

In reality, however, the Contractor may not be requested to **submit a proposal**,  
and

**instructions** for variations **may not be issued** under a formal variation order.

*Even **Construction Change Directive***

It is quite common for instructions to be **issued by**

1. Letter
2. Response to a request for information
3. Issue of revised drawings or
4. Way of a verbal instruction

Therefore, this should be predicted in the contract. Let's see!

## Claims for variations

- ❑ **Sub-Clause 3.3 of FIDIC** contemplates that this may be the case and provides the following:

Sub-Clause 3.3  
Instructions of  
the Engineer

The Engineer may issue to the Contractor (at any time) instructions and additional or modified Drawings which may be necessary for the execution of the Works and the remedying of any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Engineer, or from an assistant to whom the appropriate authority has been delegated under this Clause. If an instruction constitutes a variation, Clause 13 [*Variations and Adjustments*] shall apply.

**But, here there is question. Let's see!**

## Claims for variations

How does the Contractor therefore ensure that he is **compensated** properly in a case where he considers **comprises a variation**,

but

which has **not been instructed or approved** as a **variation order**?

Firstly, the **Contractor** should **acknowledge receipt** of the **instruction** and **confirm** that he considers the **instruction to be a variation** under the provisions of Sub-Clause 13.3 [*Variations and Adjustments*].

- ❖ The **Engineer may agree** with this and, if so, he should **issue a variation order as confirmation**.

**What if Engineer disagrees?**



## Claims for variations

If **no such confirmation** is forthcoming or if the **Engineer disagrees**, then

*Contractor's recourse under FIDIC is contained in the provisions of **Clause 20 [Claim, Disputes and Arbitration]**, which has this to say:*

**Sub-Clause 20.1 Contractor's Claims**

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

## Claims for variations

*Contractor's recourse under FIDIC is contained in the provisions of Clause 20 [Claim, Disputes and Arbitration], which has this to say:*

The remainder of this sub-clause deals with the **Engineer's obligations** and the result of the **Contractor's failure to comply with the provisions** of the sub-clause.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstances giving rise to the claim, or within such period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

## Claims for variations

This sub-clause thus provides that

if the **contractor considers** that an instruction given by the **Engineer** should be followed by a **variation order**

*then he should*

1. ***Give notice*** of the event or circumstances to the **engineer**
2. ***Proceed*** to submit a **fully detailed claim**.

## Claims for extensions of time

- ❑ Other than variations, the **most common reason** for the submission of a claim is for an **extension to the time** for completion of the works.
- ❑ It
  1. **Establishes** new completion date for the project and
  2. **Prevents** the engineer from deducting **liquidated damages or penalties** for delay
- ❑ An *award of an extension* of time may also, however,
  - ❖ **Entitle** the contractor to **additional payment** as **compensation** (for example increase in **overheads**) for a **longer period**
    - ✓ The latter case is referred to as a claim for **prolongation costs**.

## Claims for extensions of time

Most forms of contract include specific provisions with regard to extensions of time,

1. Circumstances under which they **may be granted**
2. Procedures to be followed by the parties in the event of an extension of time being warranted.



## Claims for extensions of time

❑ FIDIC is no exception and has this to say on the matter:

❑ This provision actually *require the contractor to submit a claim in order to start the procedure by which an extension of time may be awarded.*

Sub-Clause 8.4  
Extension of  
Time for  
Completion

The Contractor shall be entitled subject to Sub-Clause 20.1 [Contractor's Claims] to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 10.1 [Taking Over of the Works and Sections] is or will be delayed by any of the following causes:

- (a) a Variation (Unless an adjustment to the Time for Completion has been agreed under Sub-Clause 13.3 [Variation Procedure] or other substantial change in the quantity of an item of work included in the Contract,
- (b) a cause of delay giving an entitlement to extension of time under a Sub-Clause of these Conditions,
- (c) exceptionally adverse climatic conditions,
- (d) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- (e) Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's personnel, or the Employer's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer in accordance with Sub-Clause 20.1 [Contractor's Claims]. When determining each extension of time under Sub-Clause 20.1, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.



## Claims for extensions of time

*Sub-Clause 20.1 [Contractor's Claims]* outlines the following requirements for the submission of claims:

Sub-Clause 20.1  
Contractor's  
Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.



## Claims for extensions of time

### *Sub-Clause 20.1 [Contractor's Claims]*

outlines the following **requirements for the submission** of claims:

- ❑ The **remainder of this sub-clause** deals with the **Engineer's obligations** and the **result of the Contractor's failure** to comply with the provisions of the sub-clause.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstances giving rise to the claim, or within such period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

## Claims for additional payment due to prolongation

❑ EOT will **not automatically** result in an entitlement to **any additional payment** for **prolonged period**.

❑ If the contractor is also entitled to the compensation,

He should be obliged to **submit a claim** for the **additional payment**

❖ This is in **addition to the payment** for the **additional work**

✓ Additional work usually would be measured at the **rates and prices** contained in the **contract**.

## Claims for additional payment due to prolongation

- ❑ Again, under FIDIC, the Contractor's recourse is contained in the following provisions:

### Sub-Clause 20.1 Contractor's Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.



## Claims for additional payment due to prolongation

- ❑ Again, under FIDIC, the Contractor's recourse is contained in the following provisions:
- ❑ The remainder of this sub-clause deals with the Engineer's obligations and the result of the Contractor's failure to comply with the provisions of the sub-clause.

The Contractor shall keep contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstances giving rise to the claim, or within such period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

## Claims for additional payment due to prolongation

It is a common practice for contractors to link claims for prolongation costs to claims for extensions of time and to present both as one single claim.

While this **may be appropriate in straightforward circumstances**, consideration should be given to **dealing with the two subjects separately**. *Why?*

1. A claim for **EOT** often reviewed more quickly, whereas additional payment claims often, by their very nature, become **protracted** while *details of monetary calculations for prolongation are considered, discussed and negotiated.*
2. Likely that different personnel will examine the time and monetary issues.
3. While the Contractor may claim a certain number of days for an extension of time, Engineer may determine that a lesser time is warranted for compensation.

## Claims for additional payment due to prolongation

It is a common practice for contractors to link claims for prolongation costs to claims for extensions of time and to present both as one single claim.

If it is **decided to submit two separate claims**, **care must be taken** to comply with the time frames prescribed in the Contract for the submission of the prolongation costs.

**So, what is the better approach?**

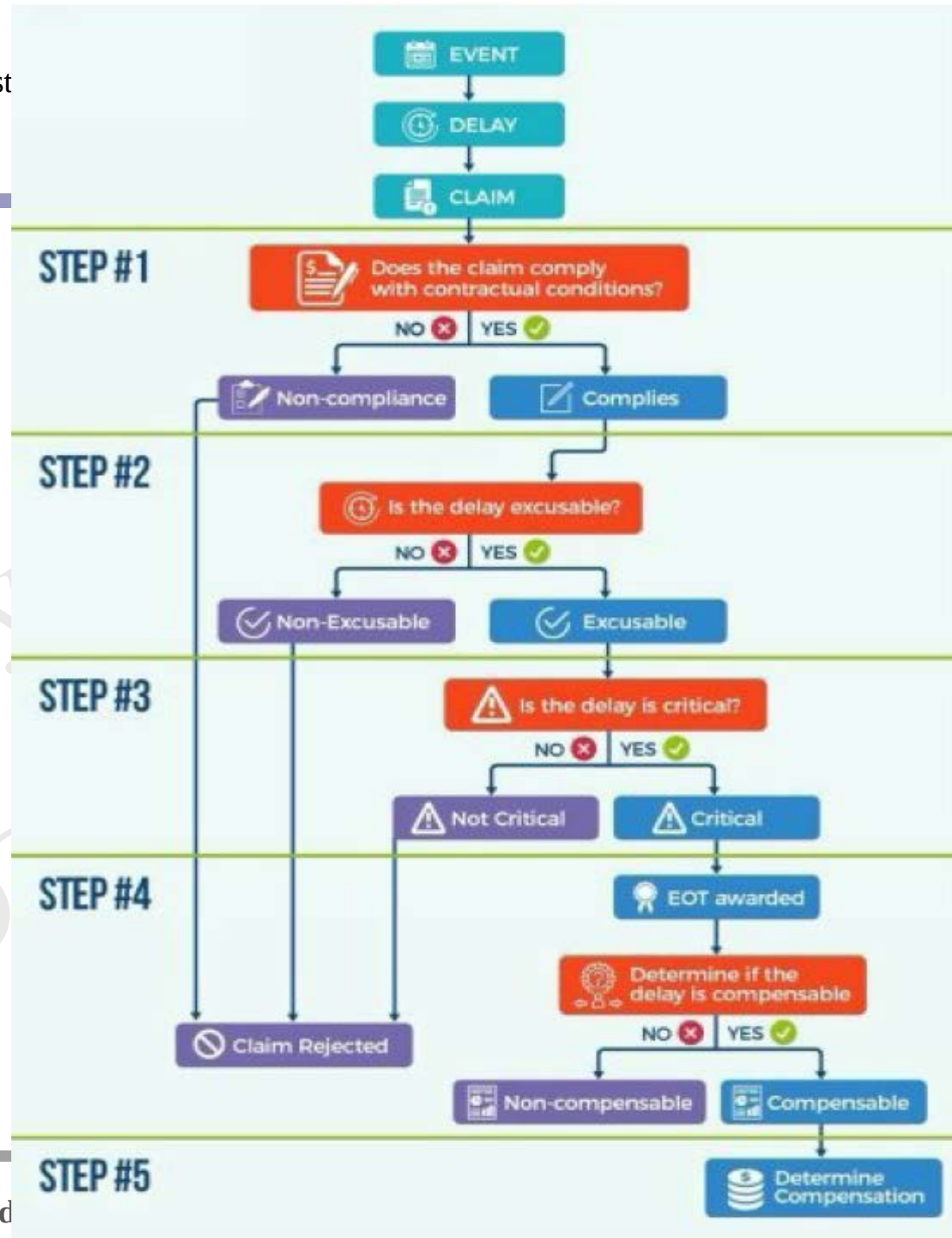
A sensible way of dealing with this is to submit both the extension of time claim and the claim for additional payment at the same time,

but

*as separate and discrete submissions.*

## Delay claims

- Construction Delay Analysis
- Simplified: A step-by-step guide for the analysis and formulation of delay claims (2020)

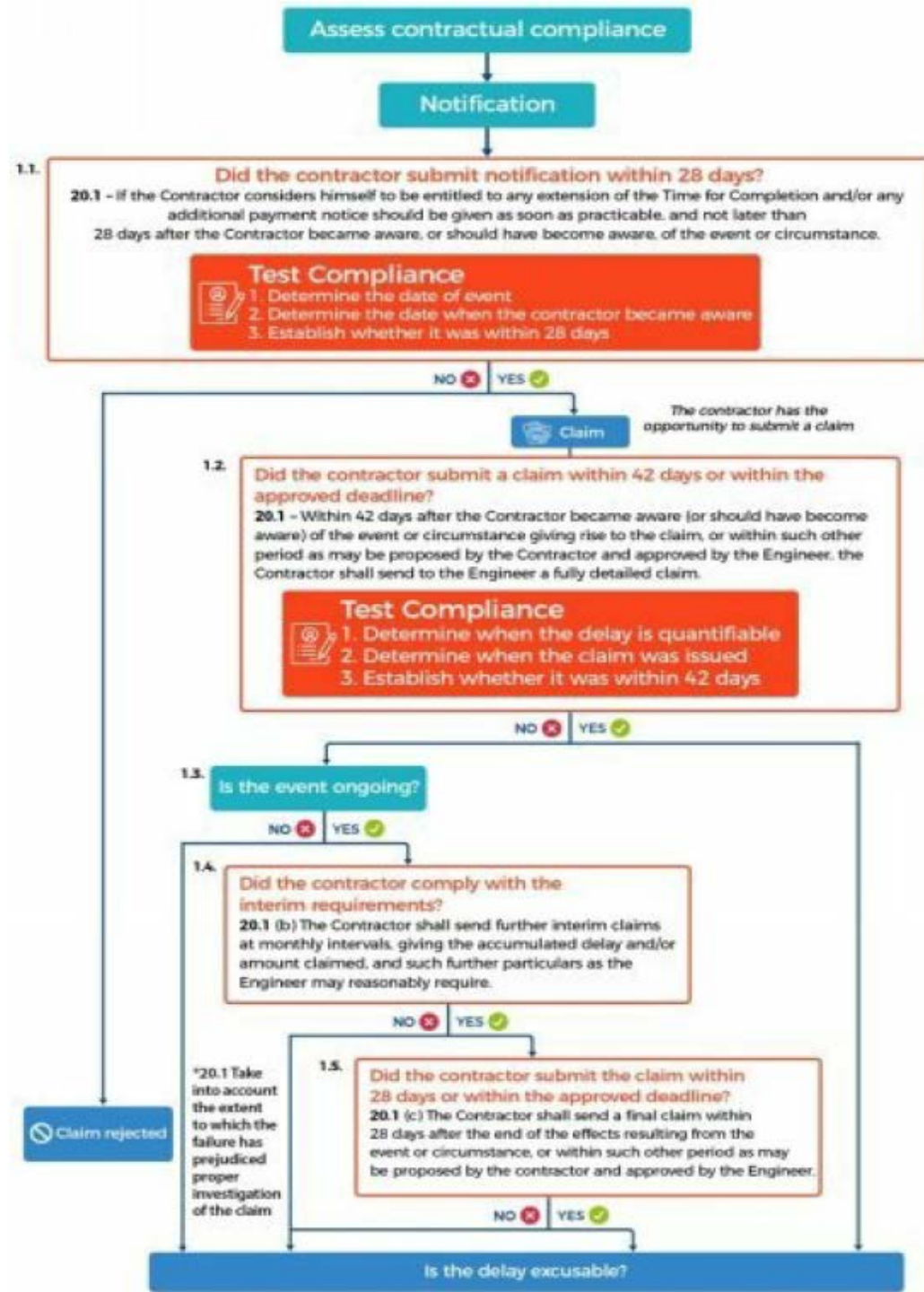


# Delay claims

## ❑ STEP 1

❖ THIS IS BASED ON FIDIC

❖ You should draw this based on your contract as well!



# Delay claims

## ❑ STEP 2

❖ THIS IS BASED ON FIDIC

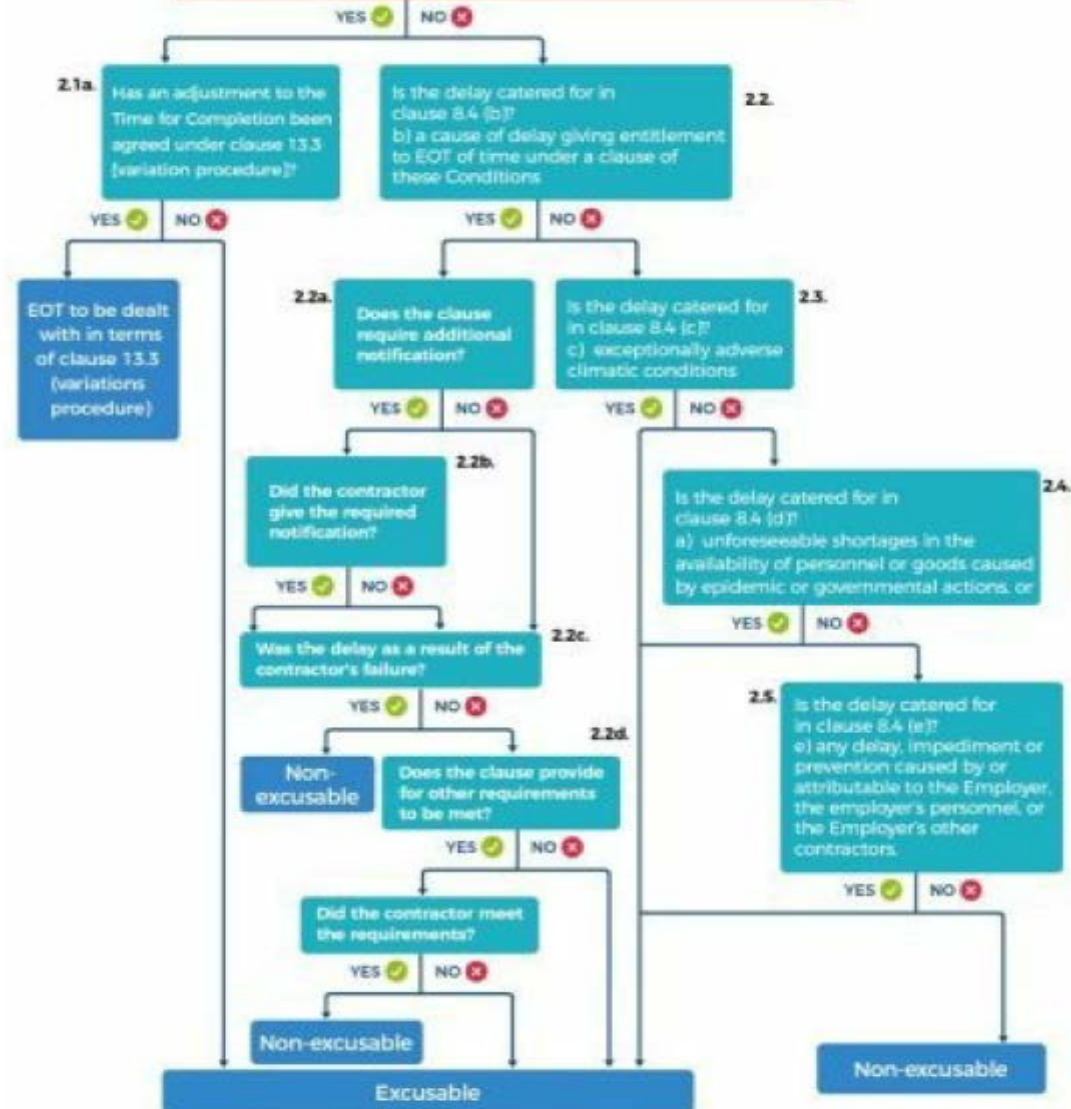
❖ You should draw this base on your contract as well!

2.1. Is the delay excusable?

Is the delay catered for in clause 8.4 (a)?

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion is or will be delayed by any of the following causes:

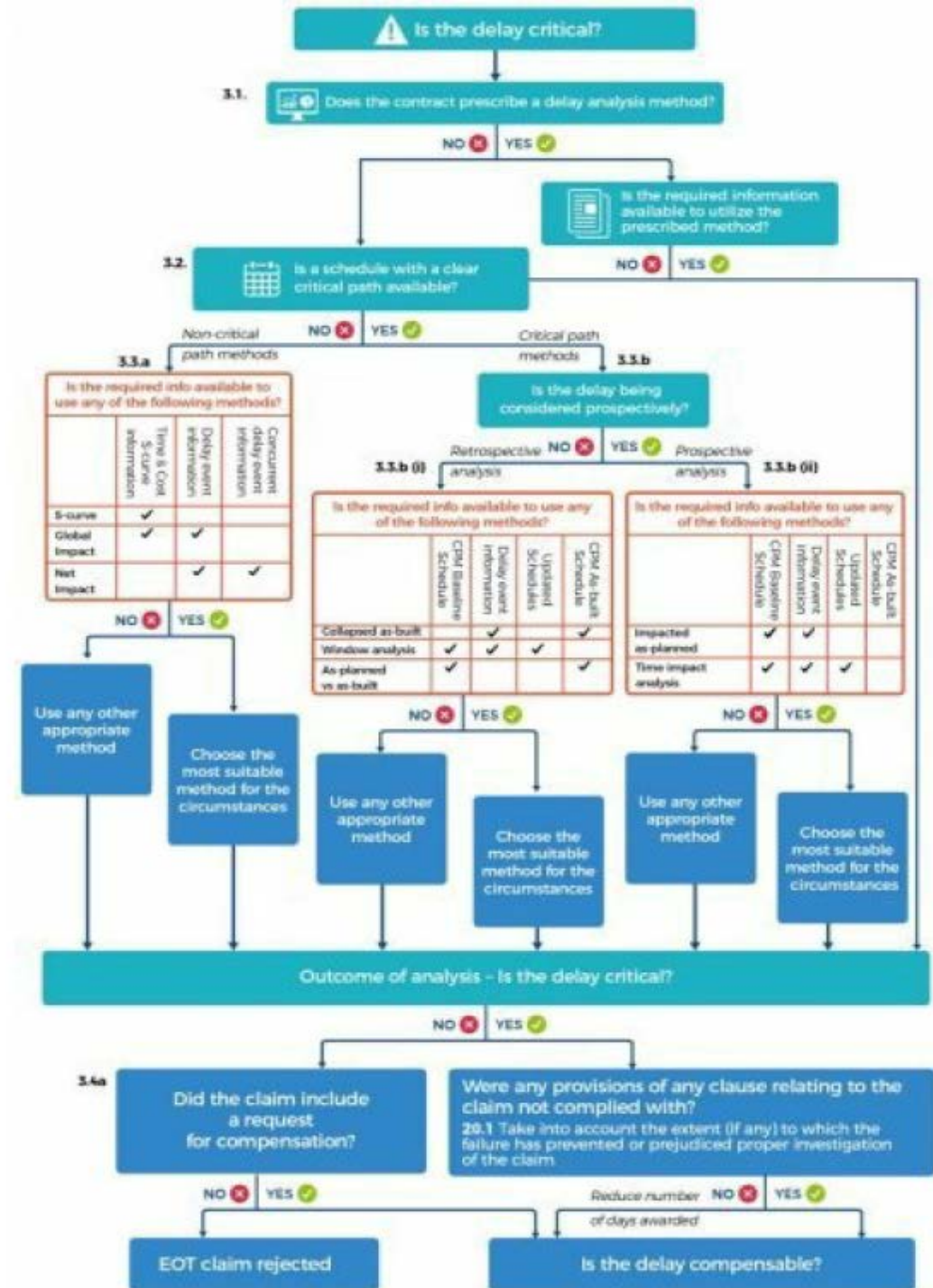
a Variation (unless an adjustment to the Time for Completion has been agreed under clause 13.3 [Variation Procedure]) or other substantial change in the quantity of an item of work included in the Contract



# Delay claims

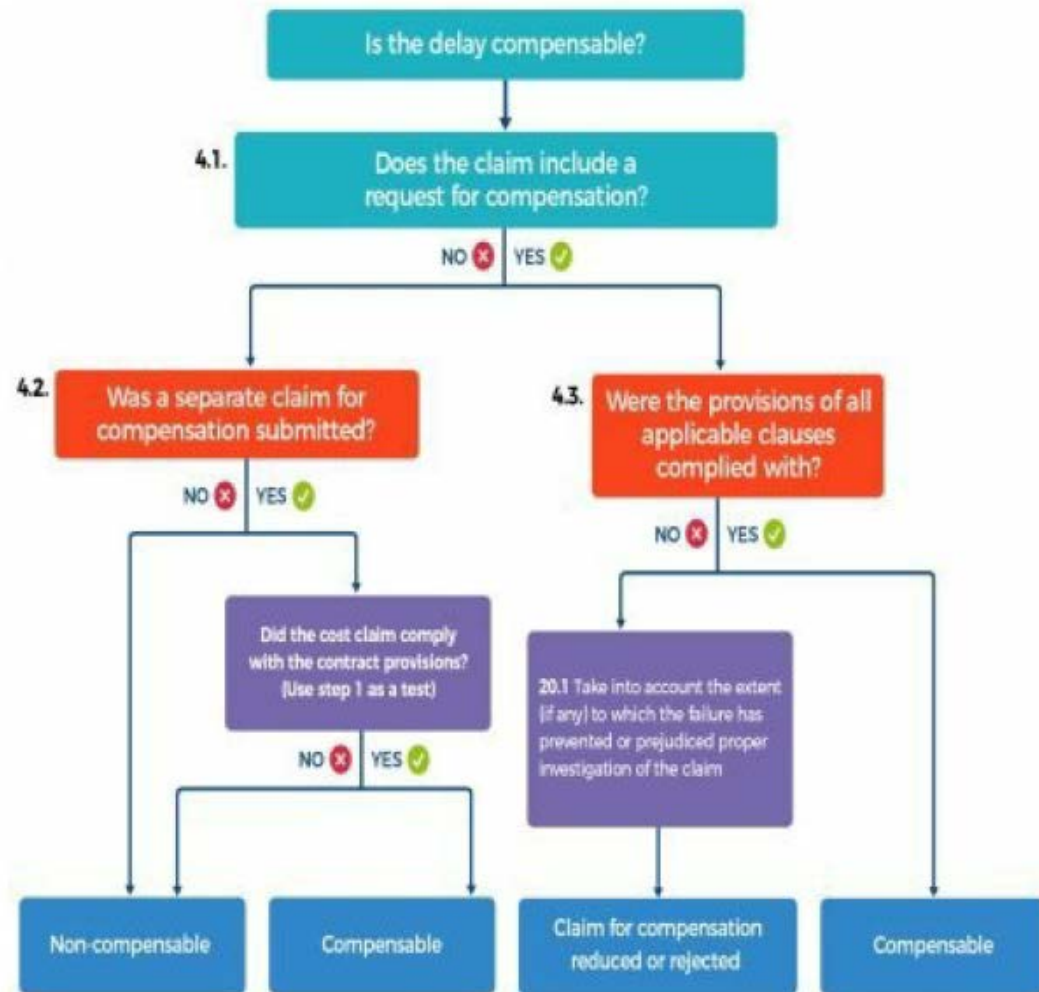
## STEP 3

- ❖ THIS IS BASED ON FIDIC
- ❖ You should draw this based on your contract as well!



## ❑ STEP 4

- ❖ THIS IS BASED ON FIDIC
- ❖ You should draw this based on your contract as well!



## Acceleration and disruption claims

### ***ACCELERATION***

- ❑ It could be that the **Employer** has **prevailed** upon the Contractor to **accelerate the work** to
1. Mitigate delays caused for which the employer is **allocated the risk** (**recovery schedule provided**), or
  2. Complete the project earlier than the time for completion provided for in the contract (**accelerated schedule provided**)

**What costs would be incurred to the contractor?**

## Acceleration and disruption claims

### ***ACCELERATION***

❑ In such circumstances, the Contractor will **incur additional costs** and consequently be entitled to **additional payment** for the following:

- ❖ **Extended working hours**, resulting in additional costs of labor due to **overtime payments**
- ❖ **Increased plant and labor**, resulting in additional **mobilization and demobilization costs**
- ❖ **Increased plant and labor**, causing **loss of efficiency** as a result of **too many workforce** operating at **once**
- ❖ **Loss of production** caused by
  1. Working **out of sequence**, or
  2. Working **on more than the optimum number** of workforce

## Acceleration and disruption claims

### ***DISRUPTION***

- ❑ While **acts of the Employer** may **not always cause delay**,  
they **may cause disruption** to the **Contractor's planned method** of working,  
*leading to*
1. *Loss of efficiency or*
  2. *Additional costs incurred in order to **mitigate the effects** of the disruption.*

## Acceleration and disruption claims

In the case of **FIDIC**, the same claim provisions apply as in the previous examples as follows:

Sub-Clause  
20.1  
Contractor's  
Claims

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Engineer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than 28 days after the Contractor became aware, or should have become aware, of the event or circumstance.



## Acceleration and disruption claims

In the case of **FIDIC**, the same claim provisions apply as in the previous examples as follows:

If the Contractor fails to give notice of a claim within such period of 28 days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Sub-Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Engineer. Without admitting the Employer's liability, the Engineer may, after receiving any notice under this Sub-Clause, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Engineer to inspect all these records, and shall (if instructed) submit copies to the Engineer.



## Acceleration and disruption claims

In the case of **FIDIC**, the same claim provisions apply as in the previous examples as follows:

- ❑ The remainder of this sub-clause deals with the Engineer's obligations and the result of the Contractor's failure to comply with the provisions of the sub-clause.

Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstances giving rise to the claim, or within such period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require, and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.

## Acceleration and disruption claims

Essentially, claims for acceleration or disruption are recoverable,

*but*

the matter of **proving the quantum** of such a claim will be central to the **question** as to whether or not the claiming party will in **fact recover**.

*Records in such a situation will be essential to the success.*

## Claims for damages under law

### ❑ Many forms of contract

include specific **circumstances** that entitle the Contractor to make a **claim** for **additional time** and/or **payment**.

❖ **FIDIC** is quite **comprehensive** about this and the conditions include the following **circumstances** under which the **Contractor** may make such a claim:

|                    |                                                                                                                                                          |
|--------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------|
| Sub-Clause 1.9     | Delayed Drawings or Instructions                                                                                                                         |
| Sub-Clause 2.1     | Right of Access to the Site                                                                                                                              |
| Sub-Clause 4.7     | Setting Out                                                                                                                                              |
| Sub-Clause 4.12    | Unforeseeable Physical Conditions                                                                                                                        |
| Sub-Clause 4.24    | Fossils                                                                                                                                                  |
| Sub-Clause 7.4     | Testing                                                                                                                                                  |
| Sub-Clause 8.4 (a) | Variations                                                                                                                                               |
| Sub-Clause 8.4 (c) | Exceptionally Adverse Climatic Conditions                                                                                                                |
| Sub-Clause 8.4 (d) | Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions                                             |
| Sub-Clause 8.4 (e) | Any delay, impediment or prevention caused by or attributable to the Employer, the Employer's personnel, or the Employer's other contractors on the Site |
| Sub-Clause 8.5     | Delays Caused by Authorities                                                                                                                             |
| Sub-Clause 10.3    | Interference with Tests on Completion                                                                                                                    |
| Sub-Clause 13.7    | Adjustments for Changes in Legislation                                                                                                                   |
| Sub-Clause 13.8    | Adjustments for Changes in Costs                                                                                                                         |
| Sub-Clause 16.1    | Contractor's Entitlement to Suspend Work                                                                                                                 |
| Sub-Clause 17.4    | Consequences of Employer's Risks                                                                                                                         |
| Sub-Clause 19.4    | Consequences of Force Majeure                                                                                                                            |

Should circumstances arise that fall outside those specified in the Contract, it would be necessary to make a **claim for damages under law**.

## Claims for damages under law

- ❑ In this case, a claim may be submitted based on the **law of prevention**.
  - ❖ Simply put, the **prevention principle** is that each party has an **obligation to positively enable** the other to perform his obligations under the Contract and **not to take advantage** of the circumstances.
  - ✓ Should the **Employer** or his agents **prevent** the **Contractor** from performing his **obligations properly**, then the **Employer has committed a breach of contract** and Contractor, under many *legal jurisdictions*, has entitlement **under law** to adequate compensation.

Let's see an example!

## Claims for damages under law

### Example:

- ❑ If we consider a scenario whereby the **Employer** had moved equipment into the **room** that was to be **divided into two** and
- ❑ It was **not possible for the Contractor** to **commence the work immediately** on receipt of the instruction (change order),

*This would be considered as an **act of prevention** which would **delay the start** of the additional work until such time as the **employer removed** the equipment.*

- ❑ This, in turn, would **affect** both the extension of time and the additional payment for prolongation to which the Contractor would be **entitled**.

## Interim and final claims

- ❑ **Some contracts** ask for claims to be submitted when only a claim is matured.

If the claim is continuing, the Contractor shall supplement the information required above in a timely manner.

The Contractor shall provide to the Resident Engineer full and final documentation to support the claim no later than 60 calendar days following the date the claim has been fully matured. A claim fully matures when all the direct damages (money and/or time) resulting from the claim issue can be reasonably quantified. The possibility of impact damages should not delay the submittal of full and final documentation of claims for direct damages.

So, what to do for a claim that may not have ended or may not be possible to ascertain **during the time that is allowed!**

## Interim and final claims

❑ In some cases the event which **gives rise to the claim**

1. May **not have ended** or
2. May **not be possible to ascertain** the **final effects** of the event  
when the **prescribed period** for the submission of the claim **has expired**.

*An example of such may be where a **variation instruction** includes an item that is **subject to special order** and **manufacture and delivery periods** have **not been finalized** at the time when the claim is due to be submitted.*

## Interim and final claims

### ❑ As with notices,

**Employer and his agents** need to be made **aware of the effects** to

1. **Enable them** to plan for the **financial and time implications** on the project  
and
2. **Continue** to consider **mitigation measures**.

*Consequently, many forms of contract require the claimant to provide **interim**  
**information** on the **predicted effects** at **regular intervals**.*

## Interim and final claims

***Sub-Clause 20.1 [Contractor's Claims]*** from FIDIC stipulates the following in this regard:

'Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstances giving rise to the claim, or within such period as may be proposed by the Contractor and approved by the Engineer, the Contractor shall send to the Engineer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- (a) this fully detailed claim shall be considered as interim;
- (b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Engineer may reasonably require; and
- (c) the Contractor shall send a final claim within 28 days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Engineer.'

## Interim and final claims

❑ The requirements mentioned are quite specific in that

1. **Contractor** is obliged to send monthly updates until the **final effects** of the circumstances of the claim **can be ascertained**.
2. Such **interim updates** should be based upon the **Contractor's best estimate** from the information to hand at the time the update is prepared.
3. In such a case, **each submission** should be **clearly designated** as an interim or final claim

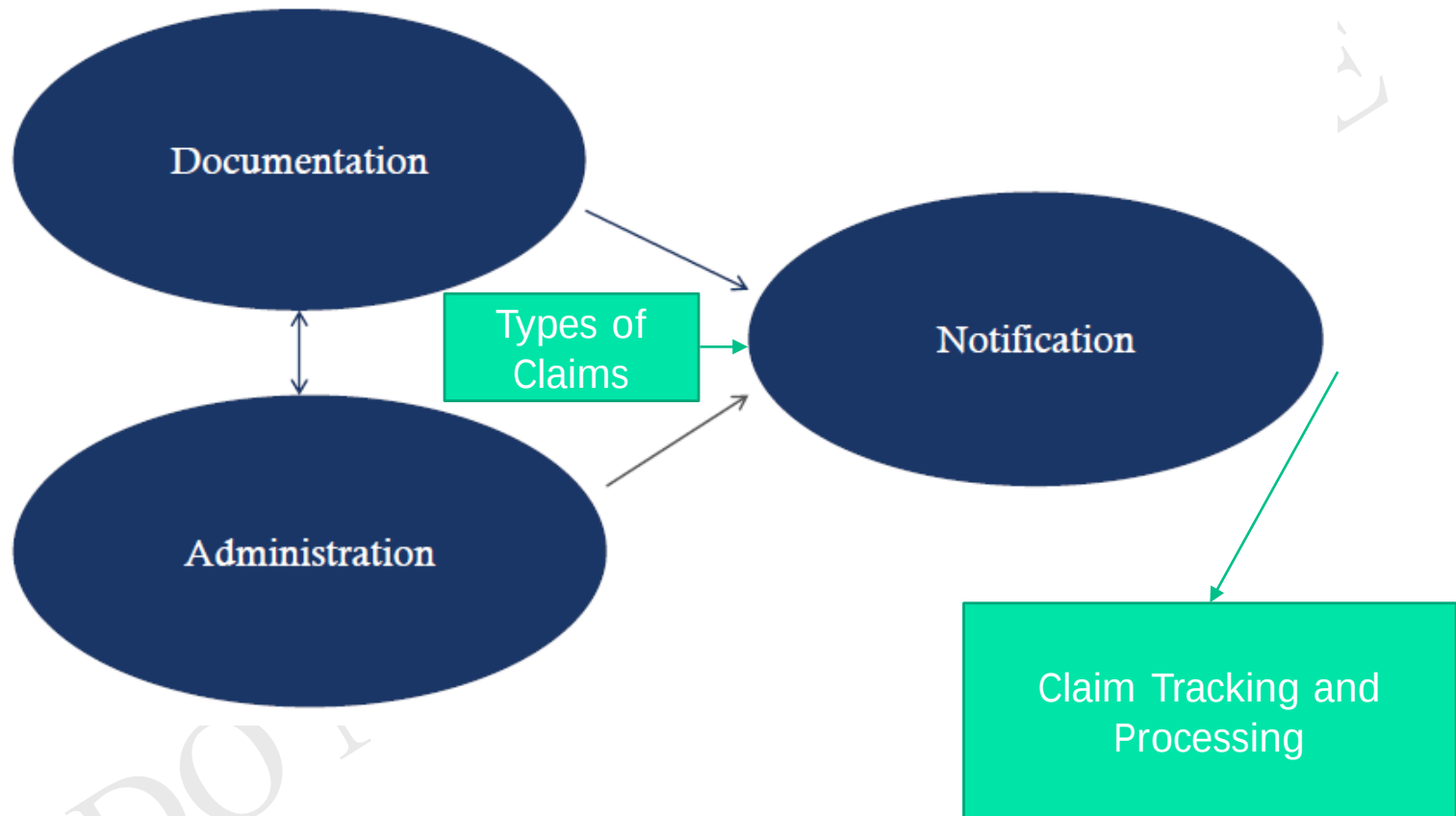
in much the same way as are applications for interim progress payments and final accounts.

*If a claim is based on several events, then **interim claims** should be submitted **until all the events** in question are closed out with the full effects demonstrated.*

# **Claims Management**

## **(Claim and Dispute Notification)**

## Suggested terminology for claim management in Construction Phase



## Claim notice requirements and best practices

- ❑ **Proper claims management** begins with **identification** of a claim.
- ❑ The **contractor** must be able to **recognize and identify** a **claim situation** when it **first develops**,  
*not after it has become a controversy.*
- ❑ **Identification** goes **hand-in-hand** with **notification**.
  - ❖ Most public and private contracts **contain clauses** requiring **notification** of
    - ✓ Differing site conditions
    - ✓ Changes
    - ✓ Delays within a stated period of time before equitable adjustments can be pursued

*But, what should be included in the notices?*

## Claim notice requirements and best practices

### ❑ Substance of notice

*The notice should include:*

- ❖ A **notice** need **not be a long** or detailed document because  
its **sole purpose** is to **draw the attention** of the Engineer to the fact that  
something has happened that  
may give the **Contractor entitlement** to make a **claim**.
- ❖ It should however **do the following**:
  1. **State clearly** that it is a **notice**.
  2. **Provide details** of the **event** or circumstance and the **date** of its **occurrence**.
  3. **State** the **contractual** or legal **provisions**, which provide **entitlement** to the claim.
  4. **State** whether the **Contractor intends** to claim for an extension of **time**, additional **payment** or **both**.
  5. **Request** the **Engineer to advise** of any **records** that he requires to be kept.

## Claim notice requirements and best practices

### Strict compliance: The law, not the exception

#### ❑ Important note

It should be remembered that a notice is not a claim, and

1. **Temptation to go into detail** or to attempt to quantify the claim at this stage is **unnecessary**, and
2. Going into claim may cause an **unwelcome response**  
which attempts to **reject the claim before** it has  
been properly considered, prepared and submitted.

*Such a situation is a waste of time and effort for both parties and is also likely to  
lead to ill feeling and animosity.*

## Claim notice requirements and best practices

### Strict compliance: The law, not the exception

#### ❑ Time limitations

- ❖ Limitation for a notice
- ❖ Limitation to submit a supplementary documents
- ❖ Limitation to response
- ❖ Limitation to appeal
- ❖ Limitation for final decision

#### ❖ AIA A201

##### § 13.7 Time Limit on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work.

## Claim notice requirements and best practices

### Contents of the contracting officer's final decision

#### ❑ Engineer's decision

##### *Under Federal contracts:*

- ❖ A contracting officer must issue a decision on any submitted claim **within 60 days** of receipt of a contractor's **written request** for a final decision.
- ❖ For claims exceeding \$100,000, the contracting officer must either
  - (1) **Issue a decision**
  - (2) **Notify** the contractor of **when the decision** will be issued, **within 60 days** of the contracting officer's receipt of the **certified claim**.

*The contracting officer's final decision must be in writing, and the contracting officer must send a copy of the final decision to the contractor by certified mail or by any other method of submission providing evidence of receipt.*

## Claim notice requirements and best practices

### Contents of the contracting officer's final decision

#### ❑ Announcement of engineer's decision and alternatives for an appeal

- ❖ If the contracting officer denies the claim,

*he or she is required to give the contractor **notice** of the contractor's appeal rights.*

- ❖ This notice usually contains the following language:

This is the final decision of the Contracting Officer. You may appeal this decision to the agency board of contract appeals. If you decide to appeal, you must, within 90 days from the date you receive this decision, mail or otherwise furnish written notice to the agency board of contract appeals and provide a copy to the Contracting Officer from whose decision this appeal is taken. The notice shall indicate that an appeal is intended, reference this decision, and identify the contract by number.

# **Claims Management**

**(Claim and Dispute Tracking and Processing)**

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