



مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

بخش ششم:

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

ارائه دهنده:

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What we will learn?

- ❑ Claim analysis and assessment
 - ❖ Suggested stages
 - ❖ Assessment of claims against contractors
 - ❖ Attorney's analysis



Introduction

- ❑ From a claims management perspective,

the **post-construction** primarily **focused** on closeout and resolution of cost, time, and quality management issues.

- ❑ In the event a dispute or claim results in litigation,

this phase can **extend for years** beyond project completion and owner occupancy.

- ❑ The CM's roles and responsibilities during this phase can **vary significantly** depending on the size and nature of potential claims and the CM's contract with the owner.

Claim Analysis and Assessment

(Suggested Stages)



Stages in analysis

❑ For various reasons,

contractors may not submit claims until the project construction is **complete**.

❖ This can be due to:

- ✓ **Specific contract provisions** that delay the dispute identification until final contract payment
- ✓ **Owner or contractor preference** to resolve issues at the end of the project
- ✓ **Contractor not wanting to expend resources** on developing a claim during the construction period, or
- ✓ **Difficulties projecting the impact** of certain issues during construction

Regardless of the reason, upon receiving a claim, the CM should confirm that the contractor has previously given proper contract notice of its intent to submit a claim.



Stages in analysis

1. Preliminary analysis
2. Schedule analysis
3. Damage analysis
4. Financial audits
5. Settlement negotiations
6. Formal disputes resolution
7. Litigation



Stages in analysis – Preliminary analysis

- ❑ A **complete claim document** presents the **quantification of the cost impact**, the **time extension request**, and **all supporting documentation**.
 - ❖ Usually, the **contract outlines** the **submission procedures** for claims.
 - ❖ In certain **government contracts**, claims may need to be certified by a **CM** who has **authority** to make such certification.
- ❑ **Proper data** to support **quantity calculations** are required, including:
 - ❖ Time records showing the extent of labor involved,
 - ❖ Equipment/machinery usage,
 - ❖ Wage rates,
 - ❖ Equipment rates,
 - ❖ Invoices for materials that are included in the fully documented claim.
 - ❖ Any time extension
 - ❖ Request should be fully described and presented in a form of schedule analysis.



Stages in analysis – Preliminary analysis

- a) Ensure that the contractor issued a proper contract notice
- b) Identify each issue
- c) Identify and evaluate contract language
- d) Establish issue files
- e) Analyze each issue
- f) Determine contractual entitlement
- g) Allocate costs to specific issues if possible to prioritize further analysis
- h) Request additional information, if necessary

Stages in analysis – Preliminary analysis

General Information			
Project County:	Pike	Project Designer:	Palmer Engineering
Item Number:	12-308.40	Project Contractor's Name:	Bizzack Construction, LLC
PCN:	030749	Resident Engineer's Name:	Paxton Weddington
Route:	US 119 - Pikeville-South Williamson Road		
Project Type and Length:	Lighting, Grade, Drain & Asphalt Surface, 2.994 miles		
Project Description:	Bridge Replacement		
File Name:		P_12-308-40_Pike_3-10.pdf	Change Order Total:
			12
			Original Project Cost: \$ 33,340,101.96
			Change Order Total: \$ 4,898,680.18
			Total Amount: \$ 38,238,782.14
Attendees:			CO % Increase: 14.69%
Joe Tackett, KYTC D12		Kevin Damron, KYTC D12	
Samuel Hale, KYTC D12		George Collins, KYTC D12	
Paxton Weddington, KYTC D12		Shawn Ray, KYTC D12	
Mary Westfall-Holbrook, KYTC D12		Ronald Stone, KYTC D12	
John Michael Johnson, KYTC D12			
David Lindmeyer, Palmer Engr.			
Brad Robson, Palmer Engr.			
Charles Allen, KYTC CO Design			
Boddy Borres, KYTC CO Design			
Wheeler Nevels, KYTC CO Maintenance			
Vibert Forsythe, KYTC CO Construction			
Categories			
Structures	Right-of-Way		
Geotechnical	Utilities		
Drainage	Pavement		
Environmental	Operations		
Erosion Control Plan (ECP)	Design		
Traffic	Construction		
Maintenance of Traffic (MOT)	Materials		
Notes:			
Category: Design		Sub-Topic: Omission	
Settlement platforms were needed on the project and was written in the geotechnical report but not in the Plans.			
Solution:			
Review plans for constructability.			
Category: Geotechnical		Sub-Topic: Top of Rock	
Structure at Pier 1 (SB) had loose rock when excavated to the suggested elevation. Had to use mass concrete to remedy the situation.			
Solution:			
A thorough investigation for geotechnical data for areas where structures are involved. More borings are suggested possibly when substructure is designed and footer dimensions are known.			

Example KYTC post-construction review fact sheet



Stages in analysis – Schedule analysis

- ❑ Post-construction delay claims can be **complicated to evaluate** if such **documentation was not properly maintained** by the CM during the project.

- ❖ CPM schedules are essential for determining project impact arising from **time-related problems**, such as delays, suspensions, or accelerations.

Failure to prepare or update the CPM properly during construction can be cause to invalidate its use in **substantiating a claim.**

In this case, the FSA methods should be used!



Stages in analysis – Schedule analysis

- a) Obtain baseline and update schedules
- b) Cross-check and revise (if necessary) as-planned, schedule updates, and as-built schedules
- c) Determine which activities were delayed and whether concurrent delays occurred.
- d) Identify periods of delay, disruption or acceleration
- e) Associate claim issues with the identified periods
- f) Perform a detailed delay analysis



Stages in analysis – Schedule analysis

Records needed for delay analysis talked in **delay analysis course**, however the following are the primary documents that should be maintained:

- Baseline schedule;
- Contemporaneous schedule updates, which are updated periodically and regularly during the life of the project;
- Contractor and subcontractor daily reports;
- Letters or e-mails documenting any delays or issues;
- Logs tracking all documents, including
 - RFIs (Requests for Information),
 - Submittals/transmittals,
 - Letters,
 - Shop drawings/coordination drawings, and
 - Contract changes and/or potential contract changes; and
- Meeting minutes from any meeting with the owner or subcontractors.



Stages in analysis – Schedule analysis

- ❑ The **CM should review** the contractor's submission to
 - ❖ confirm that the **analysis conforms to the methodology** prescribed by the contract
 - ❖ is **appropriate**
 - ❖ is based on **reliable project schedule updates**
 - ❖ is supported by **proper documentation**
 - ❖ schedule analysis accounts for **potential concurrent or offsetting delays**

Stages in analysis – Schedule analysis

If appropriate, the CM may recommend that the owner engage a specialist to evaluate the delay claim



Stages in analysis – Damage analysis

☐ Contractors expect both to perform

1. Changed work
2. Additional work

And to **receive** appropriately adjusted **compensation** and **schedule** as a result of the **changed and/or additional work** through change orders issued by the owner.

☐ Claims result when the parties are unable to reach an agreement on

1. Price and/or
2. Time

to perform **extra work**, including **costs and time** for

- i. Delays,
- ii. Acceleration,
- iii. Impact costs

experienced on the project.



Stages in analysis – Damage analysis

❑ In case of a **dispute** over the **amount** to be paid,

the amount sought is **often termed “damages.”**

The **party paying** for the added work, typically

1. **Owner** or its representative (when a **contractor initiates a claim**)
2. **Contractor** (when a **subcontractor initiates a claim**),

needs **detailed schedule** and **cost analyses**

to understand, negotiate, and justify extra contract time and costs.



Stages in analysis – Damage analysis

❑ Pricing of claims falls into two categories:

1. Forward pricing

where the **price and time** are **negotiated before** the work is done.

2. Post pricing,

where **pricing and time adjustments** are made **during or after** performance of the work.

❑ In applying either type, the pricing elements of the claim itself are the same and include

1. Direct cost of performing the changed work,
2. Impact and/or delayed performance costs (impacts on direct costs),
3. Project overhead costs,
4. Markups for overhead and profit.

Stages in analysis – Damage analysis: Forward pricing

- ❑ Many widely used standard form contracts provide for change orders to be agreed upon in writing before the work is performed.

- ❖ For example, *AIA-A201 § 7.2.1* states:

A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following: 1. The change in the Work; 2. The amount of the adjustment, if any, in the Contract Sum; and 3. The extent of the adjustment, if any, in the Contract Time.



Stages in analysis – Damage analysis: Forward pricing

❑ The AIA contract recognizes that **change orders** are often not agreed upon in **advance** of performing the work and provide for changed and added work to be **unilaterally directed**.

❖ In *AIA-A201 § 7.3.1*, the term for **unilaterally directed work** is a construction change directive, and the provision states

A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

Stages in analysis – Damage analysis: Forward pricing

□ Furthermore, *AIA-A201 § 7.3.2* goes on to state,

“A Construction Change Directive shall be used in the **absence of total agreement** on the terms of a Change Order.”

Stages in analysis – Damage analysis: Forward pricing

- ❑ In **forward pricing**, the **most convenient and acceptable method** of pricing is to
 1. **Estimate production rates** for the changed work,
 2. **Show crew compositions** and **expected crew hours** required to perform the **changed work**,
 3. **Determine** the **type of equipment** and **equipment hours** needed to support the crews.
 - ❖ **Material costs** should be
 - ✓ Listed separately
 - ✓ Substantiated with
 - ❖ Quotes,
 - ❖ Invoices, or
 - ❖ Price lists



Stages in analysis – Damage analysis: Forward pricing

❑ It could be **advantageous** to the **contractor** to **delay settlement** of **modified work** until all of the work has been **completed**. **WHY?**

- The contractor can be **less cost-conscious** in doing the work when using forward pricing.
- Some of the **risks contractually assigned** to the contractor are **shifted** to the **owners**.
- The contractor will have **actual cost data** with which to confront the owners.

(Actual cost data under this circumstance does not necessarily represent reasonable cost.)

BUT...There could be a problem as well...Let's see!



Stages in analysis – Damage analysis: Forward pricing

BUT...There could be a problem as well...Let's see!

❑ When a **Construction Change Directive** is issued,

the **contractor** **must perform** the work;

the **cost of that work** will be determined at a **later date**.

❖ The **contractor** assumes that **any and all costs** it incurs will be **compensable**,

❖ The **owner** will argue that **not all costs** were necessary or reasonable and/or some **costs were excessive**,

*thereby resulting in a **dispute**.*

So, why forward pricing is important?



Stages in analysis – Damage analysis: Forward pricing

So, why forward pricing is important?

- ❑ A **major benefit** of settling modifications **before performance** is that it encourages **prompt revision** of the **progress schedule**, thus **maintaining** accurate knowledge of
 1. **Sequencing** of the remaining work
 2. Final **contract price**
 3. Final **completion date**
 - ❖ The schedule then remains a **realistic tool** for determining the **impact of changes** on the **contractor's operations**.
 - ❖ An **up-to-date CPM** schedule is a **prerequisite** for **independent analysis** of the impact of **each future change**.

Stages in analysis – Damage analysis: Forward pricing

However, although forward pricing has certain advantages, most changes are not settled in time to avoid impacts to the follow-on work.

As a result, many forward-pricing proposals are withdrawn then **resubmitted** with actual costs.

Let's look at Post-Pricing!



Stages in analysis – Damage analysis: Post pricing

❑ In **post pricing**, the **costs** of performing the work should be **known**.

❑ The **difficulty** lies in **identifying and isolating**

❖ **Changes** and their **associated costs**, such as impact costs,

❖ **Costs** of the **base contract work**

Even when the contractor has **good cost records** with adequate descriptions of work performed,

discretely identifying and **isolating** all the costs associated with the **changed and added work** can be **difficult**.

However, the inability to discretely calculate the amount being sought does not necessarily preclude recovery.

❑ The **contractor** is **obligated** to provide the **best evidence of damages** possible and **detailed presentation** of damages.

Stages in analysis – Damage analysis: Post pricing

❑ For **post pricing**,

❖ On **force-account change orders**, the work is commonly **documented and verified daily** by both the **owner and the contractor**.

✓ On **large projects**, a **contractor may claim**

it **had to perform** force-account work

but **no owner's agent** could be located to **confirm**

1. **Need**

2. **Costs**

incurred for the **alleged work**.

*A contractor should be **cautious** in performing **additional work** that is **not approved**.*

Stages in analysis – Damage analysis: Proposal for pricing the claims

- a) Determine extended field costs (direct + project overhead costs)
- b) Determine office overhead costs
- c) Determine inefficiency or lost productivity costs
- d) Determine other categories of delay damages
- e) Prepare damage calculations for each issue

Remember how we calculated them in delay analysis course?

Stages in analysis – Damage analysis: Proposal for pricing the claims

Pricing elements and details

❑ The **basic elements** of the **change order/claim proposal** include:

• Summary

- Entitlement
- Amount of request
- Time extension
- Parties involved in the claim
- Reference to contract clauses and/or contract disputes act

• Narrative

- Growth in cost amount
- Growth in time
- Facts
- Entitlement

• Schedule analysis, if applicable

- Time impact analysis, as-planned vs. as-built, windows analysis, etc.

Stages in analysis – Damage analysis: Proposal for pricing the claims

Pricing elements and details

❑ The basic elements of the change order/claim proposal include:

• Pricing

○ Direct costs

- Labor (including all burdens)
- Supervision directly related to work
- Owned and rented equipment
- Permanent materials
- Job materials

○ Mark-up

- Jobsite overhead
- Home office overhead
- Profit
- Bond
- Insurance



Stages in analysis – Damage analysis: Proposal for pricing the claims

Pricing elements and details

❑ The basic elements of the change order/claim proposal include:

• Pricing

○ Impact costs

- Impact on other activities
- Delay costs (standby time, escalation)
- Acceleration costs (overtime and premium hours, disruption)
- Lost profit
- Lost productivity costs (disruption)
- Lost overhead



Stages in analysis – Financial audits

❑ Depending on the nature of the claim,

- ❖ The **damages analysis** may also require a **financial audit** of the contractor records to verify that actual costs are consistent with claimed costs.
 - ✓ This may also be required to verify equipment or home office overhead costs that are **not specifically tracked to the project**.

The CM should be able to conduct this analysis, or if appropriate, the CM may recommend that the owner engage a forensic accountant to evaluate the claim.



Stages in analysis – Settlement negotiations

- ❑ CM has an important role in **negotiations** between the owner and the contractor.
- ❑ Ultimately, the **owner has final say** regarding settlements,
but the **CM** takes an **active role** and should provide the owner with
 1. **Detailed information**
 2. **Realistic assessments** of contractor
 3. **Owner entitlements** for disputes and claims

Stages in analysis – Settlement negotiations

- a) Complete the analysis of each issue before commencing negotiations
- b) Meet with the other parties to negotiate settlement of each issue
- c) Use an independent mediator as appropriate to facilitate settlement
- d) Draft and execute the appropriate settlement documents



Stages in analysis – Settlement negotiations

- ❑ An **owner may choose** to have counsel involved or available **during the construction** phase,
*while others may **not involve counsel until the post-construction** phase after a claim or lawsuit is filed.*
 - ❖ The **CM** should be prepared to **discuss all aspects** of the disputes and claims with the **owner's counsel**.
- ❑ The **owner and its outside counsel** may choose to **engage outside experts** in forensic scheduling, accounting, and other technical matters.
 - ❖ The **CM** needs to interface with those experts to **discuss project details**.

*As the **dispute moves through the resolution process**, the **CMs primary role** in testifying is to **present facts**.*



Stages in analysis – Formal dispute resolution

❑ If negotiations are unsuccessful,

the **contract** may prescribe **specific administrative remedies** for the resolution of disputes.

- ❖ Therefore, the **contractor and owner** may be required to enter **ADR**, such as mediation, arbitration, or a dispute review board.
- ❖ The **CM** would likely be a **key witness** and provide **support** to the owner during **these proceedings**.

Stages in analysis – Formal dispute resolution

- a) Failed negotiation
- b) Seek appropriate legal advice
- c) ADR or litigation – ADR
 - a) Mediation
 - b) Dispute review board
 - c) Arbitration
 - d) Etc.



Sample of contractor's claims events

❑ 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



Sample of contractor's claims events in

(Post-Construct

☐ This table is prepared by Hosam Elkmhawy – FIDIC Yellow book

Time Management (Fidic Yellow Book)											
Clause /Sub Clause NO.	Clause /Sub Clause Name	Clause /Sub Clause Text	Time Bar / days								
			7	14	21	28	42	49	56	84	140
8.11	Prolonged Suspension	If the suspension under Sub-Clause 8.8 [Suspension of Work] has continued for more than 84 days , the Contractor may request the Engineer's permission to proceed. If the Engineer does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Engineer, treat the suspension as an omission under Clause 13 [Variations and Adjustments] of the affected part of the Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination under Sub-Clause 16.2 [Termination by Contractor].				28				84	
10.1	Taking Over of the Works and Sections	The Engineer shall, within 28 days , after receiving the Contractor's application: (a) issue the Taking-Over Certificate to the Contractor, stating the date on which the Works or Section were completed in accordance with the Contract, except for any minor outstanding work and defects which will not substantially affect the use of the Works or Section for their intended purpose (either until or whilst this work is completed and these defects are remedied); or (b) reject the application, giving reasons and specifying the work required to be done by the Contractor to enable the Taking-Over Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause. If the Engineer fails either to issue the Taking-Over Certificate or to reject the Contractor's application within the period of 28 days , and if the Works or Section (as the case may be) are substantially in accordance with the Contract, the Taking-Over Certificate shall be deemed to have been issued on the last day of that period.				28					
11.6	Further Tests	If the work of remedying of any defect or damage may affect the performance of the Works, the Engineer may require the repetition of any of the tests described in the Contract, including Tests on Completion and/or Tests after Completion. The requirement shall be made by notice within 28 days after the defect or damage is remedied.				28					
11.9	Performance Certificate	The Engineer shall issue the Performance Certificate within 28 days after the latest of the expiry dates of the Defects Notification Periods, or as soon thereafter as the Contractor has supplied all the Contractor's Documents and completed and tested all the Works, including remedying any defects. A copy of the Performance Certificate shall be issued to the Employer.				28					
11.11	Clearance of Site	If all these items have not been removed within 28 days after the Employer receives a copy of the Performance Certificate, the Employer may sell or otherwise dispose of any remaining items. The Employer shall be entitled to be paid the costs incurred in connection with, or attributable to, such sale or disposal and restoring the Site.				28					
14.2	Advance Payment	The Contractor shall ensure that the guarantee is valid and enforceable until the advance payment has been repaid, but its amount may be progressively reduced by the amount repaid by the Contractor as indicated in the Payment Certificates. If the terms of the guarantee specify its expiry date, and the advance payment has not been repaid by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the guarantee until the advance payment has been repaid.				28					
14.6	Issue of Interim Payment Certificates	No amount will be certified or paid until the Employer has received and approved the Performance Security. Thereafter, the Engineer shall, within 28 days after receiving a Statement and supporting documents, issue to the Employer an Interim Payment Certificate which shall state the amount which the Engineer fairly determines to be due, with supporting particulars.				28					
14.13	Issue of Final Payment Certificate	Within 28 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall issue, to the Employer, the Final Payment Certificate which shall state: If the Contractor has not applied for a Final Payment Certificate in accordance with Sub-Clause 14.11 [Application for Final Payment Certificate] and Sub-Clause 14.12 [Discharge], the Engineer shall request the Contractor to do so. If the Contractor fails to submit an application within a period of 28 days , the Engineer shall issue the Final Payment Certificate for such amount as he fairly determines to be due.				28					
15.2	Termination by Employer	to comply with a notice issued under Sub-Clause 7.5 [Rejection] or Sub-Clause 7.6 [Remedial Work], within 28 days after receiving it,				28					
15.5	Employer's Entitlement to Termination	The Employer shall be entitled to terminate the Contract, at any time for the Employer's convenience, by giving notice of such termination to the Contractor. The termination shall take effect 28 days after the later of the dates on which the Contractor receives this notice or the Employer returns the Performance Security. The Employer shall not terminate the Contract under this Sub-Clause in order to execute the Works himself or to arrange for the Works to be executed by another contractor.				28					
17.5	Intellectual and Industrial Property Rights	Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Sub-Clause.				28					

Sample of contractor's claims events in

(Post-Construction)

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Time Management (Fidic Yellow Book)										
Clause /Sub Clause NO.	Clause /Sub Clause Name	Clause /Sub Clause Text	Time Bar / days							
			7	14	21	28	42	49	56	140
8.3	Programme	Unless the Engineer, within 21 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The Employer's Personnel shall be entitled to rely upon the programme when planning their activities.			21					
9.2	Delayed Tests	If the Tests on Completion are being unduly delayed by the Contractor, the Engineer may by notice require the Contractor to carry out the Tests within 21 days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Engineer. If the Contractor fails to carry out the Tests on Completion within the period of 21 days , the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. The Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor and the results of the Tests shall be accepted as accurate.			21					
14.7	Payment	the first instalment of the advance payment within 42 days after issuing the Letter of Acceptance or within 21 days after receiving the documents in accordance with Sub-Clause 4.2 [Performance Security] and Sub-Clause 14.2 [Advance Payment], whichever is later;			21		42			
16.1	Contractor's Entitlement to Suspend Work	If the Engineer fails to certify in accordance with Sub-Clause 14.6 [Issue of Interim Payment Certificates] or the Employer fails to comply with Sub-Clause 2.4 [Employer's Financial Arrangements] or Sub-Clause 14.7 [Payment], the Contractor may, after giving not less than 21 days' notice to the Employer, suspend work (or reduce the rate of work) unless and until the Contractor has received the Payment Certificate, reasonable evidence or payment, as the case may be and as described in the notice.			21					
1.1.3	Dates, Tests, Periods and Completion	"Base Date" means the date 28 days prior to the latest date for submission of the Tender.				28				
1.6	Contract Agreement	The Parties shall enter into a Contract Agreement within 28 days after the Contractor receives the Letter of Acceptance, unless they agree otherwise. The Contract Agreement shall be based upon the form annexed to the Particular Conditions. The Costs of stamp duties and similar charges (if any) imposed by law in connection with entry into the Contract Agreement shall be borne by the Employer.				28				
2.4	Employer's Financial Arrangements	The Employer shall submit, within 28 days after receiving any request from the Contractor, reasonable evidence that financial arrangements have been made and are being maintained which will enable the Employer to pay the Contract Price (as estimated at that time) in accordance with Clause 14 [Contract Price and Payment]. If the Employer intends to make any material change to his financial arrangements, the Employer shall give notice to the Contractor with detailed particulars.				28				
4.2	Performance Security	The Contractor shall deliver the Performance Security to the Employer within 28 days after receiving the Letter of Acceptance, and shall send a copy to the Engineer. The Performance Security shall be issued by an entity and from within a country (or other jurisdiction) approved by the Employer, and shall be in the form annexed to the Particular Conditions or in another form approved by the Employer. The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Works and remedied any defects. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Performance Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the Works have been completed and any defects have been remedied.				28				
4.4	Subcontractors	the Contractor shall give the Engineer not less than 28 days' notice of the intended date of the commencement of each Subcontractor's work, and of the commencement of such work on the Site.				28				
8.1	Payment for Plant and Materials in Event of Suspension	the work on Plant or delivery of Plant and/or Materials has been suspended for more than 28 days , and				28				



Sample of contractor's claims events in

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Time Management (Fidic Yellow Book)										
Clause /Sub Clause NO.	Clause /Sub Clause Name	Clause /Sub Clause Text	Time Bar / days							
			7	14	21	28	42	49	56	84
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 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.				28				
20.2	Appointment of the Dispute Adjudication Board	Disputes shall be adjudicated by a DAB in accordance with Sub-Clause 20.4 [Obtaining Dispute Adjudication Board's Decision]. The Parties shall jointly appoint a DAB by the date 28 days after a Party gives notice to the other Party of its intention to refer a dispute to a DAB in accordance with Sub-Clause 20.4.				28				
20.4	Obtaining Dispute Adjudication Board's Decision	If either Party is dissatisfied with the DAB's decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DAB fails to give its decision within the period of 84 days (or as otherwise approved) after receiving such reference or such payment, then either Party may, within 28 days after this period has expired, give notice to the other Party of its dissatisfaction. If the DAB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after it received the DAB's decision, then the decision shall become final and binding upon both Parties.				28				84
4.2	Performance Security	failure by the Contractor to pay the Employer an amount due, as either agreed by the Contractor or determined under Sub-Clause 2.5 [Employer's Claims] or Clause 20 [Claims, Disputes and Arbitration], within 42 days after this agreement or determination, failure by the Contractor to remedy a default within 42 days after receiving the Employer's notice requiring the default to be remedied, or					42			
14.4	Schedule of Payments	If the Contract does not include a Schedule of Payments, the Contractor shall submit non-binding estimates of the payments which he expects to become due during each quarterly period. The first estimate shall be submitted within 42 days after the Commencement Date. Revised estimates shall be submitted at quarterly intervals, until the Taking-Over Certificate has been issued for the Works.					42			
16.2	Termination by Contractor	the Contractor does not receive the reasonable evidence within 42 days after giving notice under Sub-Clause 16.1 [Contractor's Entitlement to Suspend Work] in respect of a failure to comply with Sub-Clause 2.4 [Employer's Financial Arrangements], the Contractor does not receive the amount due under an Interim Interim Payment Certificate within 42 days after the expiry of the time stated in Sub-Clause 14.7 [Payment] within which payment is to be made (except for deductions in accordance with Sub-Clause 2.5 [Employer's Claims]),					42			
20.1	Contractor's Claims	Within 42 days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other 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: Within 42 days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Engineer and approved by the Contractor, the Engineer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars, but shall nevertheless give his response on the principles of the claim within such time.					42			
20.3	Failure to Agree Dispute Adjudication Board	the Parties fail to agree upon the appointment of a replacement person within 42 days after the date on which the sole member or one of the three members declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,					42			
11.8	Adjustments for	"Ln", "En", "Mn", ... are the current cost indices or reference prices for period "n", expressed in the relevant currency of payment, each of which is applicable to the relevant tabulated cost element on the date 49 days prior to the last day of the period (to which the particular Payment Certificate relates); and						49		

Sample of contractor's claims events in

☐ This table is prepared by Hosam Elkmhawy – FIDIC Yellow book

Time Management (Fidic Yellow Book)										
Clause /Sub Clause NO.	Clause /Sub Clause Name	Clause /Sub Clause Text	Time Bar / days							
			7	14	21	28	42	49	56	84
4.21	Progress Reports	Unless otherwise stated in the Particular Conditions, monthly progress reports shall be prepared by the Contractor and submitted to the Engineer in six copies. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within 7 days after the last day of the period to which it relates.	7							
8.1	Commencement of Works	The Engineer shall give the Contractor not less than 7 days' notice of the Commencement Date. Unless otherwise stated in the Particular Conditions, the Commencement Date shall be within 42 days after the Contractor receives the Letter of Acceptance.	7				42			
19.6	Optional Termination, Payment and Release	If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Sub-Clause 19.2 [Notice of Force Majeure], or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Sub-Clause 16.3 [Cessation of Work and Removal of Contractor's Equipment].	7							84 140
9.1	Contractor's Obligations	The Contractor shall give to the Engineer not less than 21 days' notice of the date after which the Contractor will be ready to carry out each of the Tests on Completion . Unless otherwise agreed, Tests on Completion shall be carried out within 14 days after this date, on such day or days as the Engineer shall instruct.		14	21					
10.1	Taking Over of the Works and Sections	The Contractor may apply by notice to the Engineer for a Taking-Over Certificate not earlier than 14 days before the Works will, in the Contractor's opinion, be complete and ready for taking over. If the Works are divided into Sections , the Contractor may similarly apply for a Taking-Over Certificate for each Section .		14						
10.3	Interference with Tests on Completion	If the Contractor is prevented, for more than 14 days from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Employer shall be deemed to have taken over the Works or Section (as the case may be) on the date when the Tests on Completion would otherwise have been completed.		14						
		The Engineer shall then issue a Taking-Over Certificate accordingly, and the Contractor shall carry out the Tests on Completion as soon as practicable, before the expiry date of the Defects Notification Period. The Engineer shall require the Tests on Completion to be carried out by giving 14 days' notice and in accordance with the relevant provisions of the Contract.		14						
12.1	Procedure for Tests after Completion	The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works or Section have been taken over by the Employer. The Employer shall give to the Contractor 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within 14 days after this date, on the day or days determined by the Employer.		14	21					
		The Tests after Completion shall be carried out as soon as is reasonably practicable after the Works or Section have been taken over by the Employer. The Employer shall give to the Contractor 21 days' notice of the date after which the Tests after Completion will be carried out. Unless otherwise agreed, these Tests shall be carried out within 14 days after this date, on the day or days determined by the Employer.		14	21					
15.2	Termination by Employer	In any of these events or circumstances, the Employer may, upon giving 14 days' notice to the Contractor, terminate the Contract and expel the Contractor from the Site. However, in the case of sub-paragraph (e) or (f), the Employer may by notice terminate the Contract immediately.		14						
16.2	Termination by Contractor	In any of these events or circumstances, the Contractor may, upon giving 14 days' notice to the Employer, terminate the Contract. However, in the case of sub-paragraph (f) or (g), the Contractor may by notice terminate the Contract immediately.		14						
19.2	Notice of Force Majeure	If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.		14						
4.2	Performance Security	The Employer shall return the Performance Security to the Contractor within 21 days after receiving a copy of the Performance Certificate.			21					
4.16	Transport of Goods	The Contractor shall give the Engineer not less than 21 days' notice of the date on which any Plant or a major item of other Goods will be delivered to the Site.			21					
5.2	Contractor's Documents	Unless otherwise stated in the Employer's Requirements, each review period shall not exceed 21 days , calculated from the date on which the Engineer receives a Contractor's Document and the Contractor's notice. This notice shall state that the Contractor's Document is considered ready, both for review (and approval, if so specified) in accordance with this Sub-Clause and for use. The notice shall also state that the Contractor's Document complies with the Contract, or the extent to which it does not comply.			21					

Sample of contractor's claims events in (Post-Construct

- This table is prepared by Hosam Elkmhawy – FIDIC Yellow book

Time Management (Fidic Yellow Book)										
Clause /Sub Clause NO.	Clause /Sub Clause Name	Clause /Sub Clause Text	7	14	21	28	42	49	56	84
	Changes in Cost	If the Contractor fails to complete the Works within the Time for Completion, adjustment of prices thereafter shall be made using either (i) each index or price applicable on the date 49 days prior to the expiry of the Time for Completion of the Works, or (ii) the current index or price: whichever is more favourable to the Employer.						49		
14.7	Payment	the amount certified in each Interim Payment Certificate within 56 days after the Engineer receives the Statement and supporting documents; and the amount certified in the Final Payment Certificate within 56 days after the Employer receives this Payment Certificate.							56	
14.11	Application for Final Payment Certificate	Within 56 days after receiving the Performance Certificate, the Contractor shall submit, to the Engineer, six copies of a draft final statement with supporting documents showing in detail in a form approved by the Engineer;							56	
16.2	Termination by Contractor	the Engineer fails, within 56 days after receiving a Statement and supporting documents, to issue the relevant Payment Certificate,							56	
14.1	Statement at Completion	Within 84 days after receiving the Taking-Over Certificate for the Works, the Contractor shall submit to the Engineer six copies of a Statement at completion with supporting documents, in accordance with Sub-Clause 14.3 [Application for Interim Payment Certificates], showing:								84
20.4	Obtaining Dispute Adjudication Board's Decision	Within 84 days after receiving such reference or the advance payment referred to in Clause 6 of Appendix - General Conditions of Dispute Adjudication Agreement, whichever date is later, or within such other period as may be proposed by the DAB and approved by both Parties, the DAB shall give its decision, which shall be reasoned and shall state that it is given under this Sub-Clause.								84

Sample of contractor's claims events

❑ This table is prepared by Fatma Hussein – FIDIC Yellow book

Sub-Clause	Event Summary	Entitlement		
		EOT	Cost	Profit
1.9	Error in Employer's Requirements an experienced Contractor would not have discovered before Tender	✓	✓	✓
1.13	Employer delay in obtaining permit	✓	✓	✓
2.1	Delayed Access to the Site	✓	✓	✓
4.6	Instruction for unforeseeable extra cooperation with others	✓	✓	✓
4.7	Error in setting-out data an experienced contractor could not reasonably have discovered such error	✓	✓	✓
4.12	Unforeseeable physical conditions at Site	✓	✓	X
4.15	Changes to an access route	✓	✓	X
4.24	Fossils, coins, articles of value or antiquity, and structures and other remains or items of geological or archaeological interest found on the Site	✓	✓	X
7.4	Delay in tests due to Engineer/Employer	✓	✓	✓
7.6	Remedial work prior to Taking-Over due to Employer	✓	✓	✓

Sample of contractor's claims events in

❑ This table is prepared by Fatma Hussein – FIDIC Yellow book

8.4	(a) Variations, (b) a cause of delay giving an entitlement to EOT (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.	✓	X	X
8.5	Delays Caused by Authorities: (a) the Contractor has diligently followed the procedures laid down by the relevant legally constituted public authorities in the Country, (b) these authorities delay or disrupt the Contractor's work, and (c) the delay or disruption was Unforeseeable	✓	X	X

Sample of contractor's claims events in

❑ This table is prepared by Fatma Hussein – FIDIC Yellow book

8.90	Suspension instructed by Employer unless Contractor default	✓	✓	X
10.2	Employer taking over and/or using a part of the Works, other than such use as is specified in the Contract or agreed by the Contractor	✓	✓	✓
10.3	Delay in carrying out the Tests on Completion	✓	✓	✓
11.7	Delayed access after Taking-Over	X	✓	✓
11.8	Search for defects not Contractor's fault	X	✓	✓
12.2	Delay in Tests after Completion	X	✓	✓
12.4	Delay in access to remedy failure to pass Tests after Completion	X	✓	✓

Sample of contractor's claims events in

❑ This table is prepared by Fatma Hussein – FIDIC Yellow book

13.3	Engineer requests a proposal, prior to instructing a Variation.	X	✓	✓ + value Engineering if applicable
13.7	Changes in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Base Date, which affect the Contractor in the performance of obligations under the Contract.	✓	✓	X
14.8	Delayed Payment	the Contractor shall be entitled to receive financing charges compounded monthly on the amount unpaid during the period of delay		
16.1	Suspending work (or reducing the rate of work)	✓	✓	✓
16.2	Right to terminate occurred by Employer	✓	✓	✓
16.3 & 19.6	Works instructed after termination	X	✓	✓

Sample of contractor's claims events in

❑ This table is prepared by Fatma Hussein – FIDIC Yellow book

16.4	Termination for Employer's default	(a) return the Performance Security to the Contractor, (b) pay the Contractor in accordance with Sub-Clause 19.6 [Optional Termination, Payment and Release], and (c) pay to the Contractor the amount of any loss of profit or other loss or damage sustained by the Contractor as a result of this termination.		
17.4	Rectify loss/damage to Works due to Employer's Risks listed in Sub-Clause 17.3	✓	✓	✓
19.4	If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure pursuant to Sub-clause 19.1	✓	✓	X

Claim Analysis and Assessment

(Assessment of Claims Against Contractors)



Introduction

- ❑ An **owner** will also **consult** with the **CM** regarding **claims against the contractors**.
- ❑ The **CM** should be **prepared to advise** the **owner** as to the **potential claims** that may be **declared** by the contractor.
- ❑ The **CM** should **confirm** that **contractual notice provisions** are adhered to if the **owner** is asserting **claims against a contractor** for
 - ❖ Liquidated damages
 - ❖ Inspection and repair of non-conforming
 - ❖ Contract work performed by the owner, or
 - ❖ Other categories



Assessment of liquidated damages

- ❑ A stipulated amount of liquidated damages,

are **typically incorporated into contracts** to account for owner costs resulting from late completion of a project.

- ❑ If the **CM and owner** believe that the contractor is **responsible for delays**, they should **provide notice** to the contractor of **potential assessment** of liquidated damages.

- ❑ In assessing liquidated damages in the **post-construction phase**, **CM** should provide a **complete delay analysis** justifying the assessment.



Withholding of retainage

❑ The **CM** should **evaluate the potential cost** of

1. Incomplete punch-list work,
2. Non-conforming work,
3. Liquidated damages, or
4. Other delay costs

❑ The **CM** should **recommend** an **adequate amount to be withheld**,

to **protect the owner's interests** for these **potential claims** against the contractor.



Performance and payment bond claims

- ❑ To the extent that the **owner has claims against the contractor** for **non-conforming work or delays**,

CM should **advise** the owner regarding **performance bond requirements** and the need to **notify the contractor's surety**.

The CM's involvement may also be critical if a surety is attempting to resolve payment bond claims from the contractor's subcontractors or suppliers.

Claim Analysis and Assessment

(Attorney's Analysis)

How to write an attorney's analysis?

The IRAC Formula

IRAC (*Issue, Rule, Analysis, and Conclusion*) forms the fundamental building blocks of legal analysis. It is the process by which *all* lawyers think about *any* legal problem. The beauty of IRAC is that it allows you to reduce the complexities of the law to a simple equation.

- | | |
|------------|---|
| ISSUE | -> What <i>facts</i> and <i>circumstances</i> brought these parties to court? |
| RULE | -> What is the <i>governing law</i> for the issue? |
| ANALYSIS | -> Does the rule <i>apply</i> to these unique facts? |
| CONCLUSION | -> How does the <i>court's holding</i> modify the rule of law? |

We will teach this in an Advanced Level (Consulting Level)!

How to write an attorney's analysis?

12- How to Write attorney's analysis (Refer to article in this folder)

1. Write all issues

- What facts and circumstances brought these parties to court?

- نوشتن تمام سوالات و مشکلاتی که طرفین را به دادگاه آورده به ترتیب شماره

2. Alternatives (just for ethical issues)

- در مواردی که موضوعات مربوط به ethic است میتواند چندین حالت وجود داشته باشد و این مرحله بدون توجه به قوانین rules مطرح شده در شماره ۳ میباشد. باید برای هر issue که در شماره ۱ مطرح شد مواردی که امکان دارد اتفاق بیفتد (نتیجه گیری شود) را در زیر هر issue جداگانه می نویسیم.

3. Write rules

- What is the governing law for the issue?

- نوشتن قوانین مرتبط با هر مسئله که در شماره ۱ مطرح شده، با ذکر شماره مربوطه

4. Analysis

4.1. Analysis for ethical issues

- بررسی alternatives های مطرح شده در شماره ۲ برای هر issue در شماره ۱ با توجه به rules نوشته شده در شماره ۳ برای هر issue بدون اعلام نتیجه

4.2. Analysis for other issues

- بررسی هر issue مطرح شده در شماره ۱ با توجه به rules نوشته شده در شماره ۳ برای هر issue و اینکه آیا این مسئله در این قانون حاکم است یا خیر بدون نتیجه گیری

5. Conclusion

5.1. Conclusion for ethical issues

- انتخاب یکی از alternatives مطرح شده در شماره ۲ برای هر issue با توجه به آنالیز انجام شده در شماره ۴، ۱

5.2. Conclusion for other issues

- نتیجه نهایی و انتخاب position با توجه به آنالیز انجام شده در مورد ۴، ۲ برای هر issues در شماره ۱



Final Conclusion

Construction managers are key to managing and resolving potential disputes and claims on programs and projects.

While disputes and claims can threaten successful project delivery, they can also impact capital planning for future projects as well

Individuals and firms practicing and rendering construction management services should be knowledgeable and experienced in the technical disciplines and management areas.



مدیریت ادعاء و اختلافات در طول چرخه حیات پروژه

بخش هفتم:

نحوه تدوین کتابچه لایحه ادعا
(فرآیند + قالب + اجزاء + نمونه موردی + فرم)

ارائه دهنده:

سید محمدرضا علوی پور

(PhD, PMP, CMIT)

CMAA Authorized Trainer

دانشگاه Illinois Tech آمریکا



What we will learn?

- ☐ Front Cover
- ☐ Formatting of the Document
- ☐ General Process
- ☐ Table of Contents
- ☐ Executive Summary
- ☐ Claim Section I. Introduction (Statement of the Claim)
- ☐ Definitions, Abbreviations and Clarifications
- ☐ Claim Section II. Contract Representations
- ☐ Claim Section III. Contractor's Plan
- ☐ Claim Section IV. Actual Conditions
- ☐ Claim Section V. Impact of Actual Conditions
- ☐ Claim Section VI. Legal Entitlement
- ☐ Claim Section VII. Quantification of Claim
- ☐ Claim Section VIII. Formal Statement of Claim
- ☐ Claim Section IX. Appendix
- ☐ Helpful Forms



Preparing a claim

- ❑ There are a **variety of ways** to prepare a claim.
- ❑ **No format** will be **best in every instance**.
 - ❖ Yet, the format discussed in this session is the **one most often used**.
 - ❖ It is designed to
 - ✓ Address a variety of **different readers**,
 - ✓ Present the claim in a manner similar to how it would be proved in **court**
 - ✓ Permit **several people** to work on the **preparation effort**.

It is important to utilize project personnel who know what happened during construction.

What is the **overall goal** of the claim presentation?





Preparing a claim

- ☐ The **overall goal** of the claim presentation should be to **provide** the owner's executive and the project level personnel with **sufficient facts** to support
1. Entitlement
 2. Time
 3. Additional compensation
- requested.**

Front Cover

The front cover: Format

❑ A front cover of a claim document should contain the following as a **minimum requirement**:

1. The claimant's name
2. The project title
3. The claim title or brief description of the issue
4. The revision reference
5. The revision date



The front cover: Format

- ❑ Additionally, the following information may be either **desirable or necessary** according to the **particular situation**:

1. The claimant's company logo
2. The other party's name
3. A rendering of the project
4. The claim number
5. The document reference number
6. The author
7. The reviewer
8. Graphics to make it look attractive

The inclusion of a **document revision box** is useful because in many cases a claim document will go through **more than one version**, both at the **drafting stage** and as the **review, response and negotiations** proceed. Consequently, there may be **several versions** in existence, so it is important to keep a track on revisions during the drafting stage and to clearly **identify the appropriate revision** once the document has been finalised and issued. For this reason, it is also sensible to include the **revision number** in the **headers or footers** of **each page**.



The front cover: Sample

JOHNSON CONSTRUCTION GROUP

RED ROSE TOWER, NEWTOWN
CLAIM No. 6
for
An Extension to the Time for Completion and Additional Payment
in connection with
Delays Arising from the Electrical Transformer Room
Volume 1 of 2

Revision	Date	Submitted To	For	Prepared By	Reviewed By
0	19/04/13	Dawson-Wilkinson Partnership	The Engineer's Determination	C Woodward	S Thompson



The front cover: Checklist

Checklist – Front cover

1. Claimant's name
2. Project title
3. Claim title or brief description
4. Revision reference
5. Revision date
6. Company logo
7. The party's name
8. Rendering or picture of the project
9. Claim number
10. Volume number
11. Document reference number
12. Author
13. Reviewer
14. Attractive layout

Formatting of the Document



Formatting of the document: Font

The font should be such that it is easily readable, which generally means that artistic-type fonts should be avoided and that the font size should be either 11 or 12 point.

Formatting of the document: Page Layout

The page layout should be such that the left-hand side of the narrative does not 'disappear' when the document is bound. It is also a good idea to leave a reasonably sized right-hand margin so that there is space to make handwritten notes while reading or reviewing. I find that 25 mm (1 inch) margins are about right.

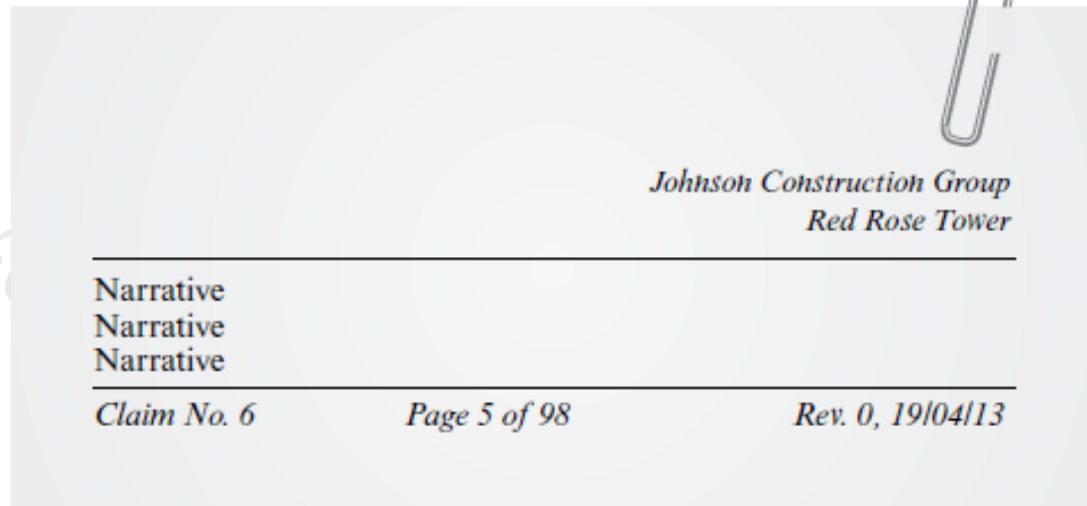
Prepared by Dr. DO NOT DISTRIBUTE

Formatting of the document: Line Spacing

Line spacing can also help for both ease of reading and again for the making of notes or highlighting certain passages for emphasis or for later attention. I find that 1.5 or 2.0 line spacing works well in this respect.

Formatting of the document: Headers and footer

Headers and footers may be used effectively, possibly to identify the company that 'owns' the document, the title of the document, the revision number, the date of the revision and the page numbers. The layout and fonts of headers and footers may be used effectively to enhance the appearance of the document.



Johnson Construction Group
Red Rose Tower

Narrative
Narrative
Narrative

Claim No. 6 *Page 5 of 98* *Rev. 0, 19/04/13*

Table of Contents

Table of contents: Purpose

Table of Contents

Purpose

The purpose of the Table of Contents section is to provide the reader with an index to the general topics included in the claim and show where to find them. All claims should, at the minimum, contain all the topics listed below. Some claims may have subtopic headings. Complex claims may have Sections I through IX for each claim issue.

The list of contents should appear on the first page following the front cover. While this should be fairly obvious, many documents omit this simple item with the result that the reviewer can spend needless time when trying to locate a particular section or item.

What is the **format** of the Table of Contents?

Table of contents: Format

<u>Section</u>	<u>Topic</u>	<u>Page</u>
I.	Introduction	
II.	Contract Representations	
III.	Contractor's Plan	
IV.	Actual Conditions	
V.	Impact of Actual Conditions	
VI.	Legal Entitlement	
VII.	Quantification Summary	
VIII.	Formal Statement of Claim	
IX.	Appendix	
	a.	
	b.	
	c.	
	d.	

Table of contents: Sample

CONTENTS

Section		Page
Section 1	Executive Summary	: 3
Section 2	Statement of Claim	: 5
Section 3	Definitions, Abbreviations and Clarifications	: 8
Section 4	The Contract Particulars	: 10
Section 5	The Method of Delay Analysis	: 15
Section 6	Details of the Claim for an Extension of the Time for Completion	: 20

Table of contents: Sample

Section 7	Details of the Claim for Additional Payment	: 30
Appendix A:	Exhibits	
Appendix B:	EOT 2 Baseline Programme	
Appendix C:	Revision C Drawings of the Transformer Room	
Appendix D:	Photographic Records Showing the Status of the Transformer Room at the Time the Alteration Work was Instructed	
Appendix E:	Extracts from the Contractor's Monthly Report for December 2012 Showing the Contractor's Progress Against the Baseline Programme	
Appendix F:	Revision D Drawings of the Transformer Room	
Appendix G:	Impacted As-Planned Programme	
Appendix H:	Extracts from the Contractor's Audited Accounts for 2010, 2011 and 2012	
Appendix I:	Cost Calculations	
Appendix J:	Supporting Information for the Cost Calculations	



Table of contents: Checklist

Checklist – Contents

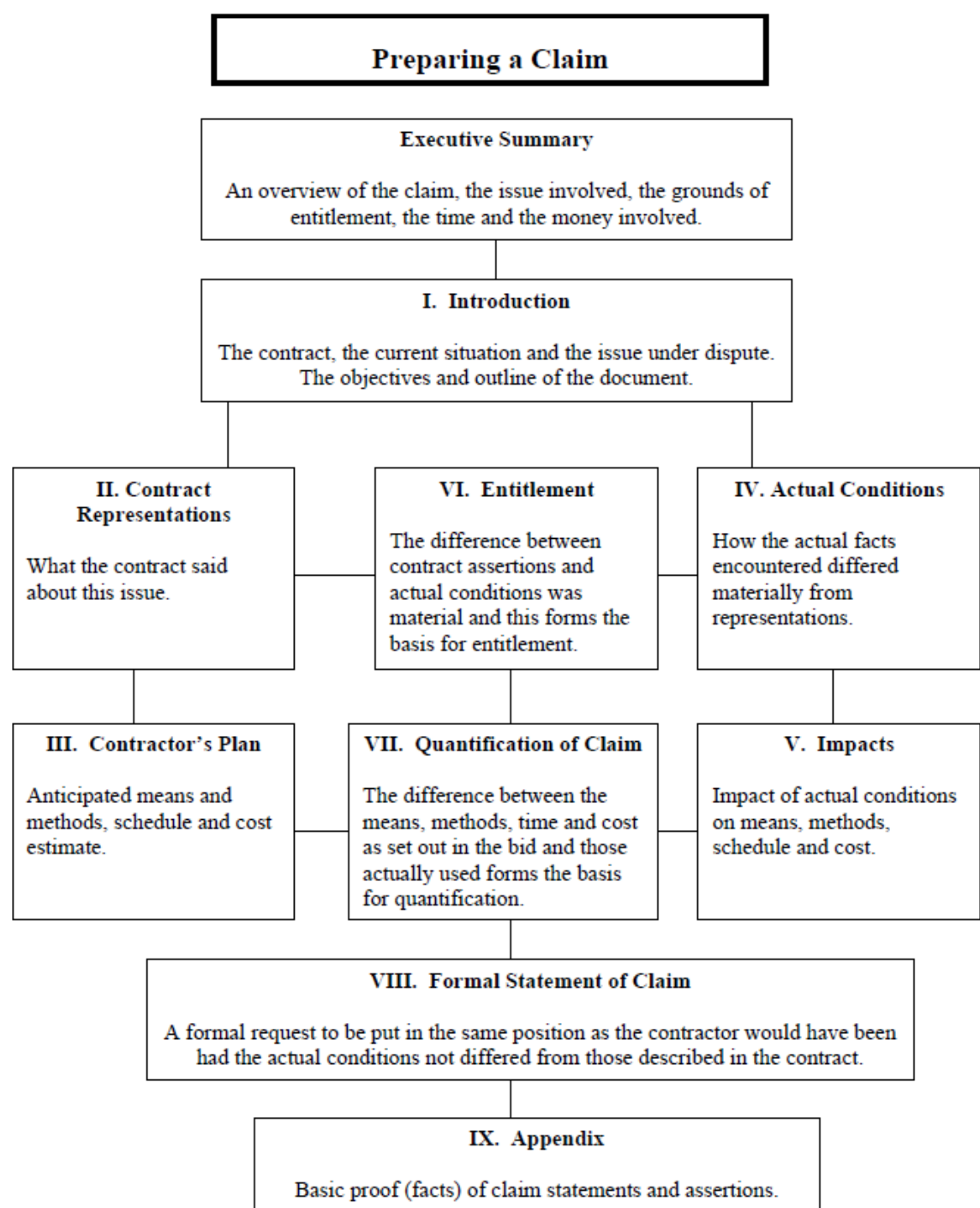
1. Section Numbers.
2. Section titles.
3. Page numbers.

The Contents could, of course, be expanded to include subsections. This is particularly useful if the document is lengthy or includes several heads of claim.

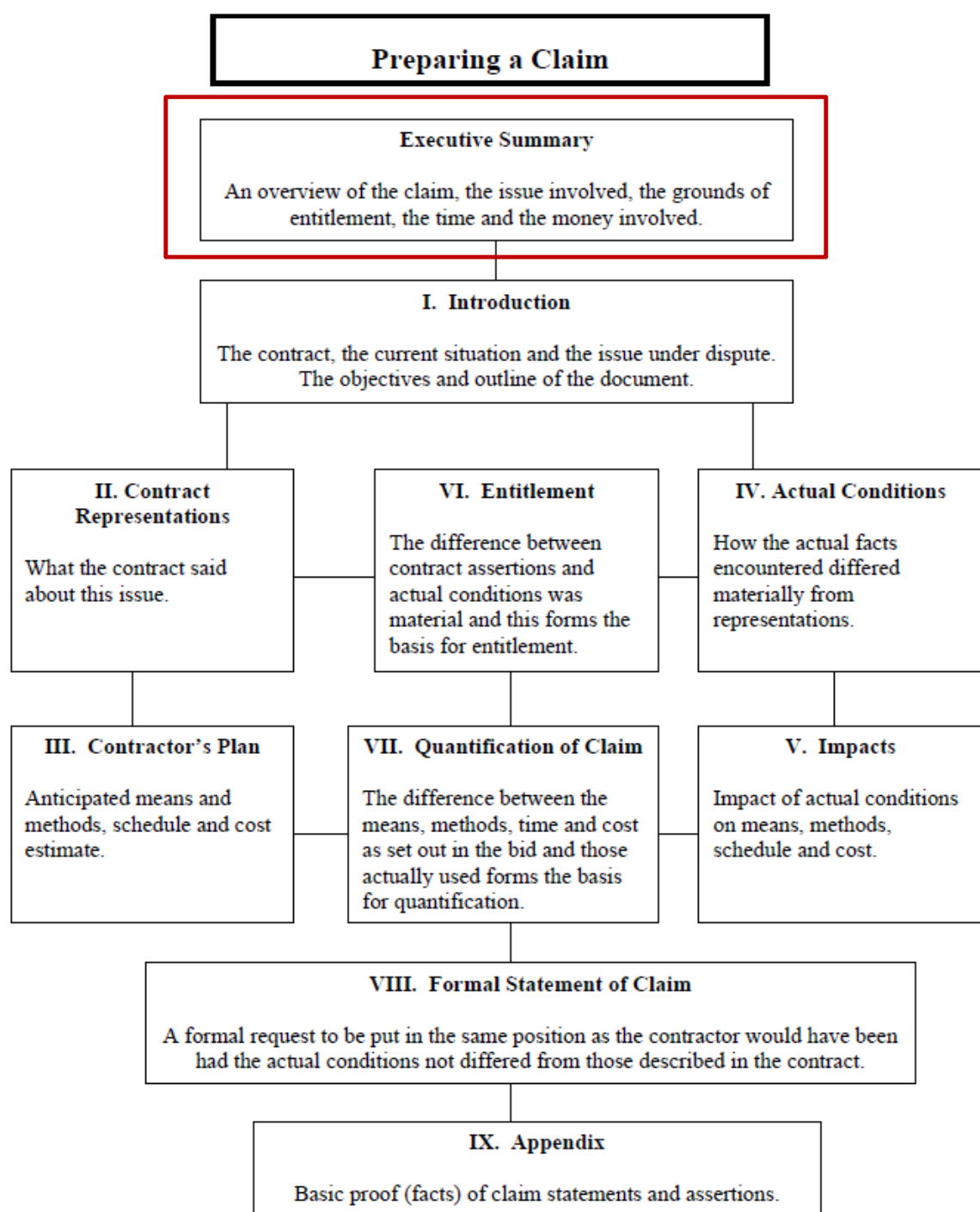
General Process

Preparing a claim

Executive Summary ☐ _____ ☐ _____ ☐ _____	I. Introduction ☐ _____ ☐ _____ ☐ _____	II. Contract Representations ☐ _____ ☐ _____ ☐ _____
III. CONTRACTOR'S PLAN ☐ _____ ☐ _____ ☐ _____	IV. Actual Conditions ☐ _____ ☐ _____ ☐ _____	V. Impact of Actual Conditions ☐ _____ ☐ _____ ☐ _____
VI. ENTITLEMENT ☐ _____ ☐ _____ ☐ _____	VII. QUANTIFICATION OF CLAIM ☐ _____ ☐ _____ ☐ _____	VIII. FORMAL STATEMENT OF CLAIM ☐ _____ ☐ _____ ☐ _____



Executive Summary



Executive summary: Purpose

Purpose

The purpose of the Executive Summary is to tell the owner's executive everything he or she needs to know – description of the project, what happened, what the contractor wants, and why the contractor is entitled to it. The reader should have a basic understanding of these points or questions by reading the summary without reading the body of the claim. The Executive Summary is the first level of the three levels of a good claim presentation: (1) *Summary*, (2) *Body of the Claim*, and (3) *Supporting Technical Arguments and Data* (Appendix).

The targeted reader is the executive administrator or other decision maker who is probably unfamiliar with the project and may be relying on subordinates for the details of the claim. The summary should leave the reader with the impression that if what the contractor presents is correct, it is the entitled to an adjustment in the contract price.

What are the **important points** about Executive Summary?

Executive summary: Important points

It should be obvious that the executive summary cannot be drafted until all the other sections have been completed. Somewhat illogically, therefore, in terms of how we proceed to draft the claim document, this needs to be the first part of the narrative and should follow immediately after the Contents page, but will be the last section to be written. As we will see later, if the various sections of the claim are approached in a logical manner, the executive summary may be fairly easily compiled from the introductions and conclusions of the individual sections. I find that it is good practice to leave the drafting of the executive summary until internal reviews have been carried out, because this ensures that it accurately reflects the final version that will be 'locked down' for submission.

What is the **format** of the Executive Summary?

Executive summary: Format

The format for this section is as follows:

1. Title

(a) Project

(b) Claim/Id

(c) Owner

(d) Contractor

(e) Date

1. Title

Project: ABC Power Substation Project

Claim ID: EOT & Cost Claim No. 03 – Transformer Room Design Change

Owner: National Electricity Authority

Contractor: XYZ Engineering and Construction Ltd.

Date: 16 December 2025

Executive summary: Format

2. Project Description (no more than one paragraph)

- (a) Parties
- (b) General Description
- (c) Description of elements of work that are the subjects of this claim. (Pictures)

2. Project Description

The ABC Power Substation Project is being executed under a lump-sum, FIDIC-based contract between the National Electricity Authority (the Owner) and XYZ Engineering and Construction Ltd. (the Contractor). The scope of work includes civil works, installation of electrical equipment, and commissioning of the substation facilities. This claim relates specifically to the construction of the Transformer Room, which is a critical facility required for installation and energization of the transformers.

Executive summary: Format

3. Event (What Happened) (Pictures-Graphics)

4. Proposal (What the Contractor Wants)

- (a) Money
- (b) Time
- (c) Reservation of rights, if any . . .

3. Event (What Happened)

The Contractor commenced construction of the Transformer Room in accordance with the approved Issued-For-Construction drawings. On 10 April 2024, after construction of the foundations and partial superstructure had already been completed, the Owner issued revised drawings requiring significant changes to the layout, dimensions, and structural configuration of the Transformer Room. The instruction required suspension of ongoing works, demolition of completed elements, redesign coordination, and resequencing of construction activities.

(Refer to photographs and drawings included in Appendix D.)

Executive summary: Format

3. Event (What Happened) (Pictures-Graphics)

4. Proposal (What the Contractor Wants)

(a) Money

(b) Time

(c) Reservation of rights, if any . . .

4. Proposal (What the Contractor Wants)

(a) Money

The Contractor requests payment of additional costs incurred as a direct result of the instructed design changes, including prolongation costs, additional labor, equipment usage, site overheads, and rework costs.

(b) Time

The Contractor requests an Extension of Time of 45 calendar days to the Time for Completion due to the impact of the instructed changes on activities located on the critical path of the project programme.

(c) Reservation of Rights

The Contractor reserves the right to submit further claims should additional time or cost impacts arise from the same event or from related instructions.



Executive summary: Format

5. Entitlement

(a) Change in Contract

i. What was specified?

The Contract specified that the Transformer Room was to be constructed in accordance with the approved Issued-For-Construction drawings issued prior to commencement of the works.

ii. How was it changed?

The Owner instructed revised drawings that materially altered the design, layout, and structural requirements of the Transformer Room after construction had commenced.

5. Entitlement

(a) Change in Contract

- i. What was specified?
- ii. How was it changed?

(b) Differing Condition

- i. What was represented?
- ii. What was discovered?

(c) Delays in the Work

- i. What was the delay?
- ii. How did it impact the work?

(d) Breach of Warranty

- i. What was warranted?
- ii. What happened?

(e) Other

Executive summary: Format

(b) Differing Condition

i. What was represented?

The Contract documents represented that the original design of the Transformer Room was final and suitable for construction.

ii. What was discovered?

The Contractor discovered that the original design was revised due to Owner-initiated requirements, necessitating changes to completed and ongoing works.

5. Entitlement

(a) Change in Contract

- i. What was specified?
- ii. How was it changed?

(b) Differing Condition

- i. What was represented?
- ii. What was discovered?

(c) Delays in the Work

- i. What was the delay?
- ii. How did it impact the work?

(d) Breach of Warranty

- i. What was warranted?
- ii. What happened?

(e) Other

Executive summary: Format

(c) Delays in the Work

i. What was the delay?

The delay consisted of work suspension, demolition, redesign coordination, and resequencing of activities related to the Transformer Room.

ii. How did it impact the work?

The affected activities were on the critical path, resulting in a direct delay to the overall project completion date.

5. Entitlement

(a) Change in Contract

- i. What was specified?
- ii. How was it changed?

(b) Differing Condition

- i. What was represented?
- ii. What was discovered?

(c) Delays in the Work

- i. What was the delay?
- ii. How did it impact the work?

(d) Breach of Warranty

- i. What was warranted?
- ii. What happened?

(e) Other

Executive summary: Format

(d) Breach of Warranty

i. What was warranted?

The Owner warranted that the issued drawings were suitable and complete for construction.

ii. What happened?

Subsequent revisions demonstrated that the original drawings were not final, resulting in rework and delay.

5. Entitlement

(a) Change in Contract

- i. What was specified?
- ii. How was it changed?

(b) Differing Condition

- i. What was represented?
- ii. What was discovered?

(c) Delays in the Work

- i. What was the delay?
- ii. How did it impact the work?

(d) Breach of Warranty

- i. What was warranted?
- ii. What happened?

(e) Other

Executive summary: Format

(e) Other

The Contractor acted promptly, complied with all instructions, and implemented reasonable mitigation measures to minimize delay and cost impacts.

5. Entitlement

(a) Change in Contract

- i. What was specified?
- ii. How was it changed?

(b) Differing Condition

- i. What was represented?
- ii. What was discovered?

(c) Delays in the Work

- i. What was the delay?
- ii. How did it impact the work?

(d) Breach of Warranty

- i. What was warranted?
- ii. What happened?

(e) Other

Executive summary: Format

6. Summary

Briefly restate what happened and how it affected the contractor with respect to means and methods, and schedule costs.

6. Summary

In summary, the Owner's instruction to revise the Transformer Room design after commencement of construction constituted a change to the Contract and disrupted the Contractor's planned means and methods. These events caused unavoidable delays and additional costs that were beyond the Contractor's control. Accordingly, the Contractor is entitled to an Extension of Time and additional payment in accordance with the Contract.

Please note:

A claim is easier to read and more persuasive if visuals such as graphs, charts, etc., are used.

Let's see an example...

Executive summary: Sample

SECTION 1 EXECUTIVE SUMMARY

1. A Contract was entered into between Jason Leonard Developments (hereinafter called 'the Employer' or 'JLD') and Johnson Construction Group (hereinafter called 'the Contractor' or 'JCG') for the construction of a mixed-use, 16-storey building known as Red Rose Tower which includes heating, ventilating and air-conditioning systems throughout. The building is designed to a high technical specification, particularly with regard to energy conservation, and a sophisticated building-management system is included.
2. The Contractor asserts that delays arising out of a redesign of the Electrical Transformer Room caused a delay for which he is entitled to an extension of the Time for Completion.
3. The Contractor also considers that he is entitled to additional payment to compensate him for the additional time that he was obliged to remain on site and to provide contributions to his head-office running costs.
4. The Contractor has completed a delay analysis to demonstrate the extension of time to which he considers himself entitled, a detailed explanation of which is included herein under Section 5. This explains that the latest as-planned programme has been used to create an impacted as-planned programme in order to demonstrate the effect of the delay event on the Time for Completion.

5. Section 6 herein demonstrates the following:
- The requirements of the National Electricity Company resulted in the Engineer being obliged to instruct the Contractor to carry out alterations to the already constructed Electrical Transformer Room to revise the layout in order to meet these requirements.
 - The instruction for this work was issued to the Contractor at a time when the work affected the programmed dates for installation and commissioning of the electrical transformers, the subsequent power-on date and the start of the testing and commissioning activities.
 - The Contractor took various steps to minimise the time taken to carry out the alteration work and also mitigated the delay by completing the testing and commissioning activity within a reduced duration from that which was planned.
 - The Contractor has demonstrated the effect of the delay by producing a delay analysis which demonstrates that the instructed work caused a delay to the completion of the project of 30 days, resulting in a revised completion date of 11 March 2013.
 - The Contractor has demonstrated that there were no Contractor-caused delays concurrent with this delay event.
 - The Contractor's entitlement to an extension of the Time for Completion is contained in the following clauses:
 - Sub-Clause 1.9 [*Delayed Drawings or Instructions*]
 - Sub-Clause 4.7 [*Setting Out*]
 - Sub-Clause 8.4 [*Extension of Time for Completion*]
 - Sub-Clause 8.5 [*Delays Caused by Authorities*]
 - The Contractor has complied with the provisions of Sub-Clause 20.1 [*Contractor's Claims*] with regard to the issue of a notice of claim and the submission of his claim and detailed particulars to a fair and reasonable extent.
 - The reasons entitling the Contractor to an extension of the Time for Completion for the delay have negated the Employer's entitlement to the payment of delay damages.
6. Section 7 herein demonstrates the following:
- The Contractor's entitlement to additional payment is contained in the following clauses:
 - Sub-Clause 1.9 [*Delayed Drawings or Instructions*]
 - Sub-Clause 4.7 [*Setting Out*]
 - The Contractor has complied with the provisions of Sub-Clause 20.1 [*Contractor's Claims*] to a fair and reasonable extent.

Executive summary: Sample

- c. The additional payment to which the Contractor is entitled consists of:
 - i. Site Establishment Costs
 - ii. Contractual Costs
 - iii. Head-Office Overheads and Profit
 - iv. Finance Costs
 - v. Reasonable Profit
- d. Substantiation of the costs has been provided by way of documents included herein under Appendix J.
- 7. The Contractor therefore claims an extension of the Time for Completion to 11 March 2013 for the delay event included in this claim and requests the Engineer, as is required by the Contract, to make a fair determination of such.
- 8. The Contractor also claims that, pursuant to the Contract and to common law, he should be awarded an additional payment of £331,045 to compensate him for additional costs expended throughout the period of prolongation, plus reasonable profit, and he similarly requests the Engineer to make a fair determination in this respect in accordance with the Contract.



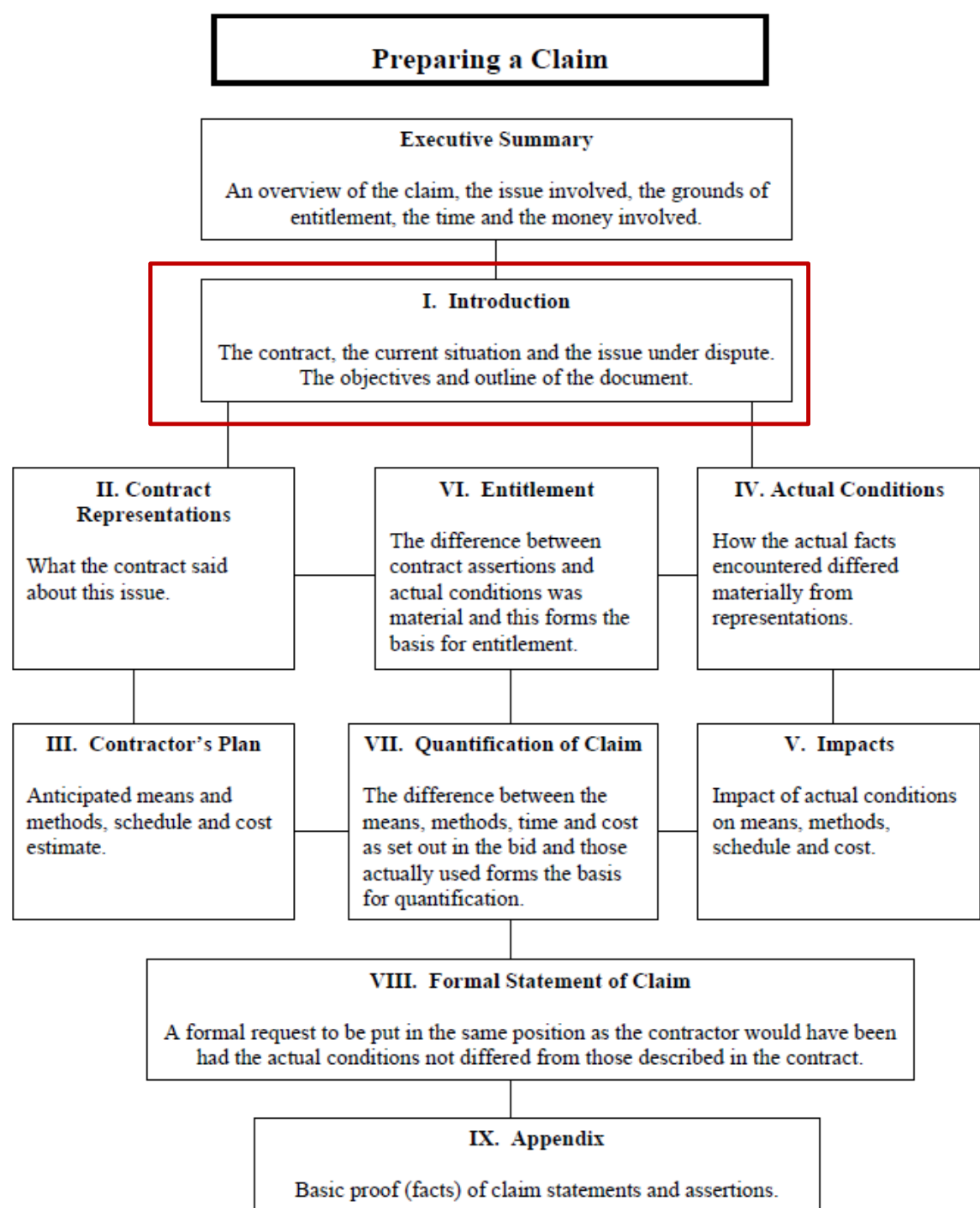
Executive summary: Checklist

Checklist – Executive summary

1. Contains a summary of all the Sections.
2. Includes any last-minute changes and revisions to the main narrative.

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Claim Section I. Introduction



Claim Section I. Introduction: Purpose

Purpose

The purpose of the Introduction section is to provide the reader with a general background sufficient enough to mentally prepare him to understand and accept the presentation that is to follow. Generally, the Introduction should be no longer than four pages.

What are the **important points** about Introduction or Statement of Claim?

Claim Section I. Introduction: Important Points

Care must be taken not to just repeat the contents of the executive summary within the statement of claim. The two sections are included for separate purposes. The executive summary should provide the reviewer with a condensed version of the full claim, and the statement of claim should briefly set the scene for the remainder of the document by providing brief details of the contract, the project, the nature of the claim and the circumstances giving rise to the claim. Cause, effect and entitlement should also be touched on here and we should also set out both the Contractor's and the Employer's obligations with regard to the administration of the claim. This section should also state the quantum of the claim and whether the claim is an interim or a final submission. It should also be stated whether the document is a resubmission or a revision to the claim.

What is the **format** of the Introduction or Statement of the Claim?

Claim Section I. Introduction: Format

- | | |
|--|---|
| <p>1. Contracting Parties</p> <p>2. The Bid</p> <ul style="list-style-type: none">a. Advertisement dateb. Bid datec. Award dated. Contract amounte. Next highest competing bid or bids | <p>3. The Project</p> <ul style="list-style-type: none">a. Description of projectb. Location of projectc. Geographic and climatological considerationsd. Design and construction management engineerse. List of major elements of work <p>4. The Claim</p> <ul style="list-style-type: none">a. Description of element or elements of work pertinent to claimb. Brief statement as to what representations in the contract were relied on by the contractor at the time of the bid that are pertinent to the claim |
|--|---|

Let's see an example...

Claim Section I. Introduction: Sample

SECTION 2 STATEMENT OF CLAIM

Description of Claim

1. A Contract agreement (hereinafter called 'the Contract') was entered into on 16 December 2010 between Jason Leonard Developments (hereinafter called 'the Employer' or 'JLD') and Johnson Construction Group (hereinafter called 'the Contractor' or 'JCG') for the construction of a mixed-use, 16-storey building known as Red Rose Tower (hereinafter called 'the Project').
2. The Project includes an Electrical Transformer Room on the ground floor in which the transformers were to be located. In January 2013, it became apparent that the Electrical Transformer Room, which had already been constructed by the Contractor in accordance with the issued-for-construction drawings, did not comply with the requirements of the local electricity authority. The Employer was obliged to redesign the area in question and, consequently, the Contractor was instructed by the Engineer to carry out demolition and alteration works and to reconstruct substantial elements of the room. The time taken for consultation, redesign and for the construction works to be carried out delayed the installation of the transformers and thus the power-on date.
3. The Project is designed to a high technical specification and includes air-conditioning throughout and a sophisticated building-management system to reduce energy consumption. The delay in the provision of 'clean' electrical power by way of the main electricity connection delayed the testing and commissioning of the mechanical, electrical and building-management systems and, consequently, the final completion of the project.
4. The Contract provides that in circumstances where the Employer instructs a Variation to the Contract, or where delays are caused

by the late issue of drawings and/or instructions, or by public authorities, the Engineer is obliged to determine the amount of the extension of the Time for Completion of the Works. This claim therefore comprises the Contractor's detailed claim and supporting particulars, to enable the Engineer to determine the extension of the Time for Completion of the Works.

5. Due to the delay to the Time for Completion, the Contractor has also been obliged to maintain his site establishment for a period longer than contemplated had the Contract been performed as originally envisaged and has consequently incurred additional costs in doing so. The Contractor therefore considers that he is entitled to an award of an additional payment to enable him to recover such costs. This claim therefore also contains the Contractor's claim for additional costs for prolongation associated with the extension of the Time for Completion and includes supporting particulars to enable the Engineer to determine the amount of the additional payment.
6. The Contractor hereby claims an extension of the Time for Completion until 11 March 2013 and an additional payment of £331,045 for prolongation costs that have been incurred due to the extension of time.
7. The events giving rise to the extension of the Time for Completion of the Works have been finalised and this claim is therefore the Contractor's entire claim for this event.

Claim Section I. Introduction: Checklist

Checklist – Statement of claim

1. Brief details of the Contract
2. Details of the parties
3. Brief details and description of the Project
4. Brief details of the events giving rise to the claim
5. Brief details of entitlement
6. Details of the Contract procedure for claim submissions and determination
7. Amount(s) claimed
8. States whether a final or interim claim

**Before going to the next section
We need to talk about something important**

Definitions, Abbreviations and Clarifications

Definitions, Abbreviations and Clarifications

You will probably have noticed that one of the first things to be stated in any form of contract is a list of definitions. Such a list defines the meanings of certain names or phrases used in the Contract. It is therefore good practice to provide consistency between the claim document and the Contract by using the same names and phrases in the claim as are used in the Contract. For example, if the Contract refers to the 'Time for Completion' as does FIDIC, then it may be confusing to refer to the 'completion date'. It is good practice to repeat such contractual definitions in the claim. While a good claim document will maintain wording consistent with the contractual language and avoid the use of abbreviations, acronyms and project-specific references, it is quite probable that the use of certain project-specific abbreviations, acronyms and definitions will become inevitable through references included in the drawings and specifications, or from usage in correspondence, reports and the like. It is therefore also important to include definitions of such terms at this point, so that a person who is unfamiliar with the project is made aware of their meaning.

Let's see an example...

Definitions, Abbreviations and Clarifications: Sample

SECTION 3 DEFINITIONS, ABBREVIATIONS AND CLARIFICATIONS

Introduction

1. This Section includes a list of definitions, abbreviations and clarifications included in both the Contract and this claim document.
2. This Section also explains the format and arrangement of the claim document.

Definitions

1. 'Employer' or 'JLD' means Jason Leonard Developments.
2. 'Contractor' or 'JCG' means Johnson Construction Group.
3. 'Engineer' or 'DWP' means Dawson-Wilkinson Partnership, the consultants appointed by the Employer to act as the Engineer under the Contract.
4. 'Corrie Design and Engineering' or 'CDE' means the Employer's designers of the Project.
5. 'National Electricity Company' or 'NEC' means the local authority providing electrical power to the Project.

Definitions, Abbreviations and Clarifications: Sample

6. 'Contract' means the Contract Agreement, the Letter of Acceptance, the Letter of Tender, the Conditions, the Specification, the Drawings, the Schedules, and the further documents that are listed in the Contract Agreement.
7. 'FIDIC' means the Fédération Internationale des Ingénieurs-Conseils, the International Federation of Consulting Engineers.
8. 'Time for Completion' means the time for completing the Works or a Section (as the case may be) under Sub-Clause 8.2 [*Time for Completion*], as stated in the Appendix to Tender [with any extension under Sub-Clause 8.4 [*Extension of Time for Completion*]], calculated from the Commencement Date.
9. 'Day' means a calendar day and 'year' means 365 days.
10. 'Contract Price' means the price defined in Sub-Clause 14.1 [*The Contract Price*], and includes adjustments in accordance with the Contract.
11. 'Cost' means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.
12. 'Contractor's Equipment' means all apparatus, machinery, vehicles and other things required for the execution and completion of the Works and the remedying of any defects. However, Contractor's Equipment excludes Temporary Works, Employer's Equipment (if any), Plant, Materials and any other things intended to form or forming part of the Permanent Works.
13. 'Works' mean the Permanent Works and the Temporary Works, or either of them as appropriate.
14. 'Site' means the places where the Permanent Works are to be executed and to which Plant and Materials are to be delivered and any other places as may be specified in the Contract as forming part of the Site.
15. 'Variation' means any change to the Works that is instructed or approved as a Variation under Clause 13 [*Variations and Adjustments*].

Definitions, Abbreviations and Clarifications: Sample

Format and Arrangement of the Claim Document

1. Quotations from project documents and other sources are shown in quotation marks and italics '*thus*'.
2. Where references are made to project records and other documents in this narrative, the relevant document is included herein in Appendix A for verification. For ease of reference, the documents included in Appendix A are presented in chronological order and are cross-referenced with footnotes, thus.¹

¹ Example of footnote cross-reference

Definitions, Abbreviations and Clarifications: Checklist

Checklist – Definitions, abbreviations and clarifications

1. Introduction – the purpose of this Section
2. Definitions and abbreviations of the parties
3. Contractual definitions
4. Method of dealing with quotations
5. Method of dealing with cross-references
6. Arrangement of the claim document

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