

CONSTRUCTION CLAIMS RISK MITIGATION STRATEGIES

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Claims Management: Confluence of Theory and,
Practices and & Innovations**

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BACKGROUND

- Over the last 30 years, the construction industry has faced an increase in disputes, liability exposures, and claims
- It has become challenging to settle these claims in an efficient, economical, and timely manner (Barrie & Paulson, 1992)
- More than 83% of contractors claimed for one or more time extensions during 1992±94 in the UK
- According to Semple et al. in 1994, more than half of the claims made in Canadian construction projects resulted in an additional cost of at least 30% of the original contract value
- Additionally, about one-third of claims amounted to at least 60% of the original contract value.

BACKGROUND CONT'D

- In some instances, the value of the claims was almost as high as the value of the original contract
- The reasons for this problem are very complex and can be analyzed from social, industrial, and project perspectives

BASIS OF CLAIMS

- ICE Conditions of Contract outlines the basic terms of a contract for managing claims
- Standard contract forms like JCT, FIDIC, CCDC, and AIA establish a legal basis and primary claim provisions to manage claims
- Contracts have clauses for extending the contract period and allowing contractors to claim loss and expenses for unforeseen events
- These results in many disputes and claims improving the legal framework for claims has been a major focus of the industry for many years

BASIS OF CLAIMS CONT'D

- To reduce ambiguity and ensure a better understanding of contract terms and conditions in the future

REASONS FOR CLAIMS

- Contract specifications are unclear or difficult to implement
- The design is still being developed while contracts or subcontracts are being let
- One or more parties may not read or fully understand the subcontract, including both the general terms and the technical specifications
- During the tender process, parties often minimize costs and attempt to recover them through other means
- Businesses' commercial strategies may conflict with their contractual obligations.

CLAIMS MANAGEMENT PROCESS

- Recognition and identification of changes or the causes of claims;
- Notification to the engineer and the client;
- Systematic and accurate documentation;
- Analysis of time and cost impacts;

CONTRACTUAL DETERMINATION OF CONSTRUCTION CLAIMS

- Provision of an expert determinator
- The resident engineer administers significant aspects of the project that comprise certifying work, extensions of time, and other contractual aspects
- Architects carry out the same certification role
- Regardless of contract type, the expert will issue an interim decision about claims and is debatable under a wide range of dispute resolution mechanisms

DEFICIENCIES IN CLAIMS MANAGEMENT PRACTICE

- Lack of awareness and interpretation of contract terms and provisions
- Inadequate information and documentation
- Lack of effective claims management tools
- Inefficient claims negotiation
- Preparation and negotiation processes
- Low client involvement

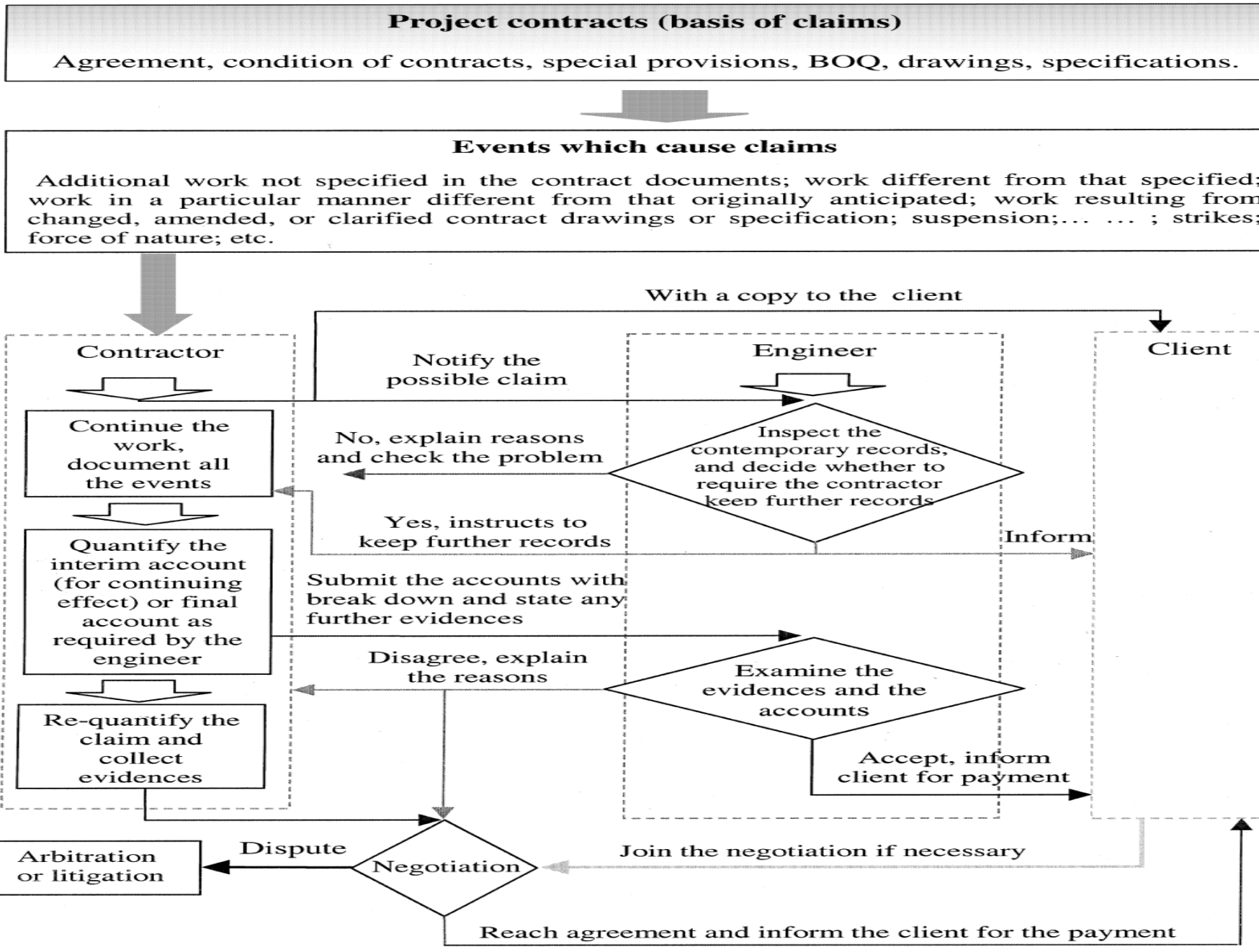


Figure 1 Claims management procedure (Adopted from FIDIC, 4th edition).

STRATEGIES FOR CONSTRUCTION CLAIMS RISK MITIGATION

- ❑ Maintain clear and defined lines of communication to prevent exploitation of statements, instructions or discussions by another party.
- ❑ Confirm that the whole team, not just those who negotiated the contract, understands contract provisions.
- ❑ Ensure that engineering works are free of mistakes, clear, unambiguous, and issued on time.
- ❑ The relevant design interfaces should be analyzed to prevent drawing issues from affecting progress on site.
- ❑ Regular photos must be taken to confidently demonstrate the availability of access..

STRATEGIES FOR CONSTRUCTION CLAIMS RISK MITIGATION CONT'D

- ❑ Ensure there are sufficient staff with appropriate skills and qualifications to deal with the type of claims arising
- ❑ Maintain good records, supported by other relevant documentation such as photos, test protocols, daily reports and invoices.

CRUCIAL STRATEGIES FOR RISK MITIGATION

- Third-Party Due Diligence
- Procurement Reviews
- Change Order Management
- Sturdy Compliance Program

CRUCIAL STRATEGIES FOR RISK MITIGATION CONT'D

- Fraud and Corruption Mitigation
- Labor Management
- Safety Management
- Project Coordination
- Documentation and Reporting
- Dispute Resolution Mechanisms

CONSTRUCTION DISPUTE RESOLUTION MECHANISMS

- Litigation
- Arbitration
- Mediation
- Mediation/Arbitration (Med/Arb)
- Mini Trials
- Early Neutral Evaluation (ENE)
- Adjudication
- Dispute Review Boards (DRBs)

CONCLUSION

- Construction projects with effective claims risk mitigation strategies would assist project stakeholders have their projects completed on time, within budget, and meet good quality standards.