

€ TRAINING

Win-Win Claims Management and
Negotiating Win-Win Settlements



20 - 24 October 2019
Manama (Bahrain)
Crowne Plaza



Win-Win Claims Management and Negotiating Win-Win Settlements

REF: P9062 DATE: 20 - 24 October 2019 Venue: Manama (Bahrain) - Crowne Plaza Fee: 2500 Euro

Overview:

In this program you will learn about...

- This Program Can Save Your Organization Substantial Sums which would have been paid as Consultant Fees and Claims.
- Claims are Changes in Contract Works whose Liability, Cause or Impact have not been agreed between the Owner and the Contractor.
- The Claimant has the burden of proving the Liability, the Impact of this Liability Action and the Additional Costs suffered as a consequence.
- Calculating time impact and additional allowable costs is an important area where both the Claimant and the party analyzing the claim often lose large sums due to default caused by not understanding the calculation methods available and their acceptability as a reasonable way of doing the same.
- Also very important are the Concurrent Events and Mitigation responsibilities because of their impact on Allowable Additional Costs.
- **This Program provides you the training in how to:**
- Prepare, Quantify, Prove, Defend and Successfully Negotiate Claims.
- After attending the Participant will also be able to :
 - Objectively Preserve and Support the Relevant Facts.
 - Analyze Claims Submitted.
 - Negotiate and Settle Expeditiously Claims on the Contract.
- Contrary to popular belief among Contract and Engineering Professionals the Contractor is not entitled to Additional Payment just because an Owner Caused Delay or Default has Occurred on the Contract. **For Entitlement the Claimant Must Satisfactorily Prove ALL the Following:**
 - **Liability** : Legal Basis of Right.
 - **Causation** : Connection Between Change and Cost Increase.

 - **Damages** and Loss Caused.
 - Damages have been Mitigated.
- This program will show you how all above are Established, Analyzed and Argued during Negotiations or Legal Proceedings.

Program Content:

- Balanced Score-card for Claims Management & Settlement Professionals.
- Understanding Claims.
- The Right to Claim and Counter Claims.
- Win-Win Settlement Strategy.
- Systematic Analysis & Defence of Claims: Liability, Causation & Damage.
- Setting Up an Early Warning System for Potential Claim Identification.
- Understanding the Liability Concept in Law.
- Analyzing Liability Proof.
- Defending Against Liability Claim CHECKLIST.
- Collecting Evidence to Prove Liability CHECKLIST.
- Understanding Causation Proving Definite Link between Claim Event & Claimed Damage.
- Analyzing Causation Evidence Presented CHECKLIST.
- Owner's Defence against Causation Proof in Claim CHECKLIST.
- Collecting Causation Refutation Evidence during Project CHECKLIST.
- Understanding Legally Acceptable Methods for Calculating Damages in Claims.
- What damages are Claimable CHECKLIST.
- Mitigation Responsibility of the Claimant.
- Typical Methods of Inflating Claim Calculations and How to Identify them Detailed Procedures.
- Collecting Evidence to Establish, Analyze and Refute Inflated Claim Calculations.
- Understanding the Claims Resolution Process 99.99% of Claims Get Settled this Way.
- Negotiating Strategies for Claims.
- An Action Plan you can Implement to Minimize Unjustified Claims.

Topics Covered Include:

- Constructive Changes - Changes that could lead to a Potential Claim: Understanding the Increased Performance Requirements in case of:
 - Delays.
 - Acceleration.
 - Deceleration.
 - Interruptions.
 - Unit Price Manipulations.
 - Quantity Revisions.
 - Value Engineering Clause Changes.
 - Premium Time.
 - Owner Furnished Materials and Equipment.
 - Access to Site.
 - Working Conditions.
 - Quality of Workmanship.
 - Defective Work.
 - Weather Water.
 - Loss of Efficiency.
 - Discrepancies in Plans Specifications.
 - Drawing Errors.
 - Wasted Effort.
 - Escalation.
 - Emergency Work.
 - Out of Scope Changes.
 - Suspension of Work.
 - Termination for Breach.

- Termination for Convenience.
- Denial of Early Completion.
- Improper Rejection.
- Denial of Time Extension.
- Out of Sequence Work.
- Defective Specifications.
- Ambiguities.
- Idle Resources men and equipment.
- Failure to Approve Timely.
- Failure to Approve.
- Wrongful Rejection.
- Moving Resources.
- Design Errors.
- Revised Owner Requirements.
- Engineering Cost.
- Reengineering Costs.
- Failure to Pay.
- Improper Rejection.
- Out of Season Work..
- Causation.
 - Proof of Causation requires proof of the connection between the "change" and the "delay in completion and/or cost increase".
 - Checking Causation Evidence to Enable a Rebuttal of Contractor's Claim.
- Tools and Methods for Showing and/or Checking for Satisfactory "Causation" Proof :
- Schedules.
- Critical Path Method CPM.
- As-built Schedules.
- Expert Witness.
- Recovery of Claim Damages/Loss : A Claim Settlement is proper when it leaves the contractor and the owner in the same relative cost and profit or loss positions they would have occupied had there been no change. Profit on the unchanged work remains intact. The party liable for the change keeps the other party whole.
- Quantification Methods for Claims:
 - Lowest Possible Price.
 - Lowest Reasonable Price.
 - Reasonable Price.
 - Estimated Price.
 - Actual Cost.
 - Fair Market Value.
 - Contractor's Current Cost or Pricing Data.
 - Contractor's Tender Breakdown.
 - Formula Pricing vs Total Pricing.
 - Work Methods Used..

- Impact on Claimed Amount of:
 - Honest Mistakes and Errors.
 - Exercise of Discretion.
 - Deleted Work.
 - Contractor's Low Cost Innovations.
 - B.O.Q. Unbalanced Bid Items.
 - Overhead.
 - Profit.
 - Subcontractor's Works.
 - Specific Contractual Limitations on Recovery.
 - Special Damages.
 - Defective Performance.
 - Commercial Waste.
 - Claim Presentation Expenses.
 - Total Cost Approach.
 - Total Productivity Loss Approach.
 - Expert Witness Method.
- Preparing Analyzing the Claim Document: Skills in Putting the Claim Document Together as well as Pulling It Apart..
- Effective Presentation, Checklists, Getting Ideas.
- Steps in the Claim and Counter-Claim Preparation Process. Preparation and Analyzing: Quality Assurance in Preparation and Analyzing Plans. Establishing: Liability, Causation and Proving Damages.
- Effective Presentation of Claims and Counter Claims. Arbitration : Provisions and Procedures. Benefits and Economics of Negotiated Settlements, Win-Win Philosophy.
- Negotiated Settlement of the Claim: Each party has "expectations" linked directly to its own perception of one's and other's strong and weak points. You have the job to change the "expectations" of the other party - How Expectations can be Changed?
- Pre-Negotiation Planning : Detail requirements and analysis of the contractor's estimate. Contractor's cost and price data. Audit of Contractor's cost data. Preparing independent estimates. Sources for independent estimates. Establishing flexible negotiation strategies.
- Conducting Negotiations. Steps in Negotiation.
- Some Effective Negotiation Tactics and Tricks People Use : Consider using them, Countering them.