



Project Controls and Documentation

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Overview

Project Controls

Notice and Claim Preservation

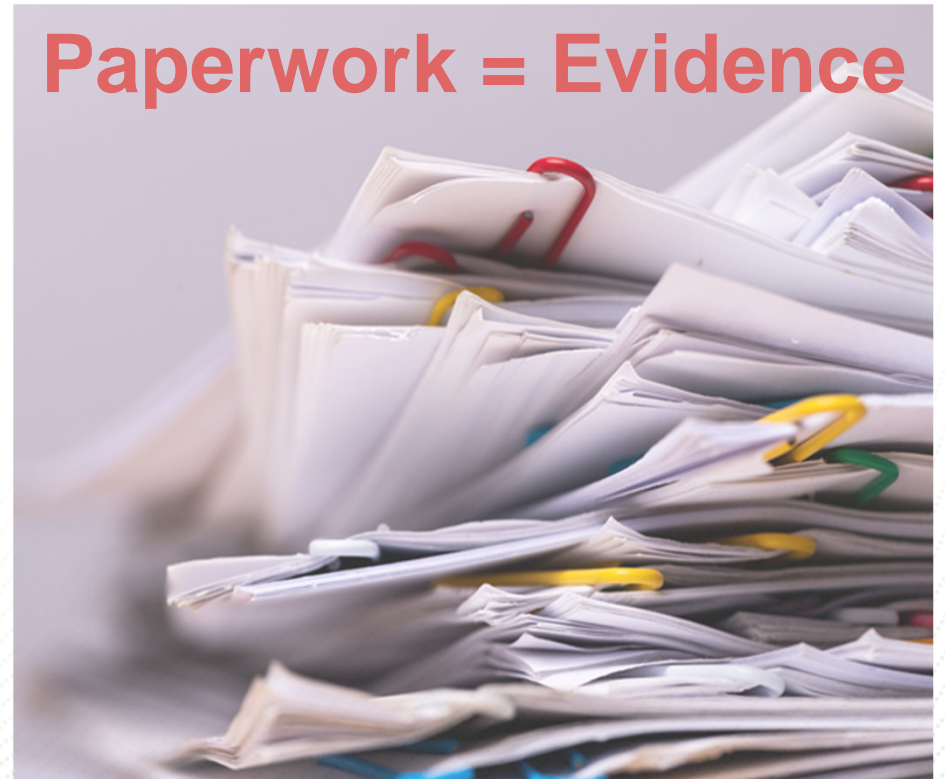
REAs and Claims

Best Practices

Document Control

- Contract and Amendments
- Bid Records, Prices, and Quotes
- Schedules and Updates
- Submittals and RFIs
- Job Diaries; Dailies
- Correspondence (Emails)
- Meeting Minutes
- Job Cost Reports

Paperwork = Evidence



Document Control

- Accurately record project events and compare it to the original plan
- Accurately record labor, materials, and equipment use
- Track bid/baseline schedule and compare to actual progress
- Track estimate versus actual costs



**BE ORGANIZED;
STAY ORGANIZED**

Document Control

- Confirm Schedule Truly Reflects Plan
 - Document changes
- Transfer Plan to Field Personnel
 - Meeting of key players, estimator, PM, superintendent and/or foreman
 - Understand work and contract requirements
 - Assign responsibility and completion dates
 - Know your roles, including where to report for safety, ethics, and environmental issues
- Move Bid to Budget
 - Document bid adjustments
 - Confirm baseline bid documents



Document Control – Practical Example



- Differing Site Condition
 - FAR 52.236-2, Type I DSC: “Subsurface or latent physical conditions at the site which differ materially from those indicated in the contract.”
 - Courts have held that contractors must **prove** they reasonably relied on the contract’s representations

How do you prove that?

- Must be documented in your bid/proposal
 - Quantity estimates
 - Equipment
 - Descriptions of how work will be performed

Subcontracts

- Get subcontracts/purchase orders signed early:
 - Inclusions/exclusions are fresh in everyone's mind – draft them in your language, don't just attach sub quote
 - Make sure their documents do not attempt to override your subcontract
- Pass-through prime contract
 - Remember distinction between design-build and design-bid-build
- Know your subcontract/purchase order
 - Business judgment based on understanding
 - You can always relax terms, you cannot tighten them



Project Meetings

If you are responsible for meeting minutes:

- Use meetings as a tool
- Bring the team together for problem solving, not just reporting
- Ensure positions are clearly documented and updated each meeting
- Take opportunity to plan and prepare short interval schedules
- Invite participation and obtain buy-in
- Document buy-in

Project Meetings

If NOT responsible for meetings or minutes:

- Be sure to participate and speak up
 - Always read and [insist](#) on corrections to previous minutes
 - Don't let false or incorrect statements go uncorrected

Communications – Email & Letters

- Use it as a tool, but . . .
- Write every communication as if it will be read in a public forum
 - **INCLUDING TEXT MESSAGES**
- Stick to business
 - *One subject clearly identified on re: line*
- Establish when e-mails will suffice and when a letter is necessary
 - Ensure the other side is fully aware of your position
 - Silence may appear to be agreement
- Maintain communications on a project specific basis
 - *Have a central electronic file for all project participants*
 - **REQUIRE** project participants save documents and emails to shared file



Communications – Email & Letters

- Be thoughtful with language
 - Proceeding “at-risk” suggests you are willing to accept non-payment for the work
 - Also suggests you are proceeding without approval or direction (if so **STOP**)
 - Be clear when work is being performed under duress or protest
- Know when to accept responsibility (and when not to)
 - Maintain credibility, but do not capitulate
 - Falling on your sword will only stab you in the chest
 - Don’t negotiate against yourself
- Send confirming emails
 - Put verbal conversations into writing, create a record
- Keep contracting officials in the loop
 - If being directed to perform out of scope, make sure the KO knows and get buy in



Schedules

- Accurate baseline schedule
 - *Consider off-site critical activities, e.g., long lead procurement items*
- Review and update at least monthly or when there is schedule impact
- Document changes and reasons therefore
- If government will not accept schedule that show government-caused delay, maintain two contemporaneous schedules
 - Document “official” schedule does not reflect delays
 - Delineate between sub and owner delays
- Design phase must be included for D-B contracts with appropriate updating

Daily Reports

- Problems Encountered/Delays
 - Detail impacts to work – additional time, changes to plan/sequencing
- Extra Work
 - Create separate cost code for changed work
 - Detail out of scope work by the hour
- Environmental Conditions
 - Describe weather/environment and impact on work
 - Ensure compliance with weather specification
- Daily Work Force and Equipment Report
 - Timecards should be coded to equipment and job cost category
 - Safety meetings and any safety issues



Daily Reports

- Production Achieved by Location and Job Cost Category
 - *Necessary for measured mile*
- Time and date stamped photographs of progress
 - *Maintain reference log*
- Materials delivered to site
 - Important for Miller Act claims
- Note if it is the first or last day for any subs on site
 - Also important for Miller Act



Daily Reports

- Note any special visitors to the site
- Describe any verbal direction received from owner
- Review sub dailies
 - Important for pass through claims
 - Bad documentation by subcontractor may undermine claim



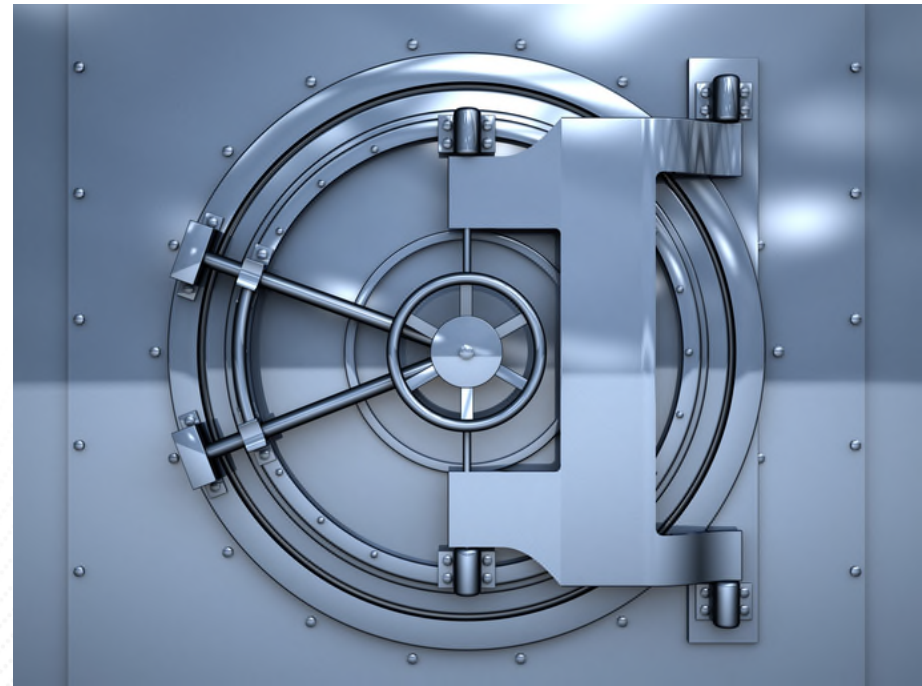
Dailies are often the main basis for entitlement when proving a request for equitable adjustment or claim!

Job Cost Reports

- Discrete, logical categories with subcategories
 - *Labor, equipment, material, subcontractor*
- Accurate coding to each category
- Accurate baseline budget
 - *Not necessarily bid, because of buy-outs and plug numbers*
- If you add cost categories to job cost report, get the word out to cost coders!

Document Preservation

- Once litigation/arbitration is reasonably anticipated, routine retention and destruction policies must be suspended
- “Litigation hold” required to preserve relevant information
- Especially important if there is turnover in the project team
 - Ensure project files and communications are retained and saved in central files



Project Controls Summary



- All projects require constant monitoring
- Just because your field people have not raised a red flag does not mean the project is on track
- Employ regular tracking and project cost and schedule analysis; no less than monthly
- Require field people to understand where the job is at, where it is going and where it is supposed to be both in cost and schedule terms
- Without project controls, used at regular intervals, you have lost control of the project

Overview

Project Controls

Notice and Claim Preservation

REAs and Claims

Best Practices

Preserving Claims – Changes

- Ensure project team does not proceed with changed work without written directive (a written change order is best)
- If the change order involves a delay or impact cost, insist on reservation and impact language that reserves rights
- Read the fine print – be wary of release language on modifications
 - Consider legal review of significant modifications
 - Propose alternate release language if reservation of rights is necessary
 - If Government refuses alternate language, request unilateral modification
 - Don't forget significance of time and delay issues

Preserving Claims

- Understand release and reservation language for contract changes and modifications
 - Do **NOT** sign contract modifications with release language if you have a related pending claim
 - Do **NOT** sign contract modifications that do not give enough time if you have a delay or inefficiency claim
 - Do **NOT** trust verbal assurances your claim will be preserved or is not covered by the modification
- Require adding reservation language to the modification prior to signing
- Unilateral modification may be best option

Preserving Claims – Delays

- Notice can come in many forms
- Notice must be delivered, even if the cause of the delay is unknown
- Delays can be caused by Owner, prime, subs, utilities, or permit authority. Regardless of source, submit notice. Determine source and impact, then update notice
- Delay by others: limited or lack of access to work area and causes remobilization or re-sequencing
- Weather delay: entails severe weather not normally anticipated at time of year (record rain/snow/cold). Compare to weather days in contract
- Delays push anticipated summer work into winter and cause inefficiencies, change of methods – such costs can be recovered
- Keep schedule updated and accurate – use schedule as a tool

Notice, Notice and More Notice

- Give the notice specified
- Notice is not an RFI, or meeting minutes, but emails are OK
- Notice must be timely – not at the end of the job
- Notice includes schedule impacts as well as known cost impact
- Notice may require continuous updates
- Don't let project team fall into complacency



**Timely notice can always be withdrawn,
but a missed notice cannot be recreated**

Key Takeaways – Notice

Confirm timeline for claims in your contract – do not rely on prior experience with Standard Specs

If contracting with the State, use a conservative timeline to measure the 90-day deadline

Negotiations or change order proposals do not change timeline

If attempting to negotiate without going to claim, get agreement in writing timeline is waived or postponed

Use date of discovery of issue if possible

If negotiations fail, confirm deadlines for restarting claim process

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Best Practices

What is a Request for Equitable Adjustment?

- Requests for time, money, or other actions
 - CPARs
- Considered part of contract administration
 - Preparation costs
- Best option if negotiations are possible
- No time limit for resolution
 - Must be submitted prior to contract close out
- Must be certified under DFAR 252.243-7002

**Request for
Equitable
Adjustment**



What is a Certified Claim?

Certified Claim



- FAR 52.233-1
 - Written demand for a sum certain, the adjustment of contract terms, or other relief
- Certification for claims above \$100,000
 - **“I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor.”**
 - Signed by someone authorized to bind the contractor
- Considered the initiation of litigation

Timing for a Certified Claim

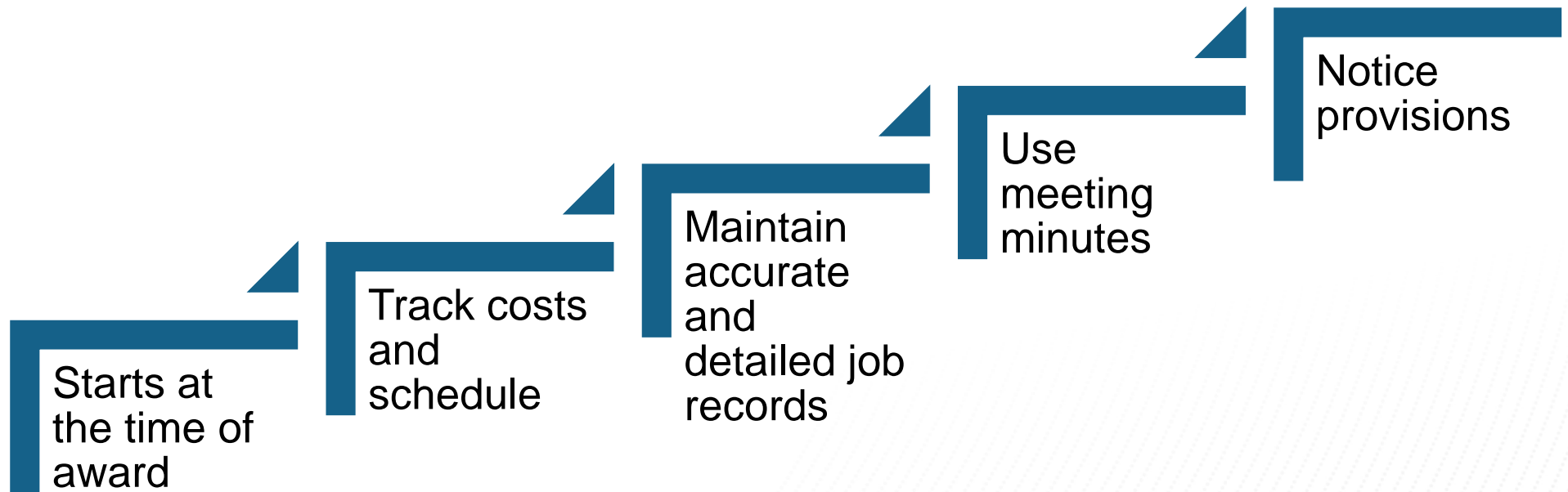
- Must be submitted to the Contracting Officer within six years after the accrual of the claim
- Contracting Officer must issue a written decision
 - For claims less than \$100,000, within 60 days
 - For claims more than \$100,000, within 60 days must either decide the claim or notify the contractor of the date by which the decision will be made
- Interest begins to run from the date the Contracting Officer receives the claim
- Performance must continue



REA v. Claim

- **REA**
 - Best option during contract performance
 - Not meant to be adversarial – allows opportunities for negotiation
 - BUT no timeframe for resolution
- **Claims**
 - Can be used to consolidate REAs that remain unresolved
 - Converting REA to claim allows inclusion of preparation costs
 - Requires Government to respond in 60 days, but resolution is not required in that time
 - Interest
 - Only option if contract is closed

Preparing the Claim



Preparing the Claim

- Include a narrative that describes the bases for the request
 - Factual history
 - Entitlement
 - Evidence
- Prepare a cost summary that breaks down each cost element
 - Direct costs
 - Delay costs
 - Mark ups
 - Claim preparation



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Best Practices

Avoiding Claims



ADOPT CLAIMS RESOLUTION MENTALITY

- Expect projects will encounter problems that result in additional time and/or money
- Claims can be a losing battle for everyone
- They can slow or stop project payments
- They result in legal and consulting fees

Legal advice and counseling during a project can help to prevent claims and ensure claims are able to be successful

Best Practices

- When submitting bids or proposals in response to procurements (including change orders), include a time frame for pricing
- Negotiate price adjustment clauses into contracts and subcontracts
- Provide timely notice of price adjustments or other impacts that affect contract price or time
- Document and follow up at each stage of negotiations
 - Take notes, confirm conversations, circulate meeting minutes
- Remember to be the “squeaky wheel”
- The Owner is your customer and contracting partner

The Owner is not your friend!

Questions?



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