

# Analysis on the Claims of Domestic Contractors

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**Abstract:** In our country construction field engineering project claim is a weak link all the time. After visiting most of the construction sites, we found that the quality of personnel in construction enterprises is relatively backward. Most of them are not systematically trained, The claim was completely unknown to anyone, There is also a relative lack of contract management expertise. Of course, some contractors do not respond quickly to claims, That we can't handle claims very well, Missed the time limit for claims, Little evidence has been collected about the claim. To that end, In this paper, from the contractor's point of view, In view of the present situation of China's engineering claims, The factors of claim are analyzed. According to the text of construction contract and related construction regulations, The project claim is systematically demonstrated and the measures for the contractor's claim are put forward.

**Keywords:** Project item ; Contractor ; Claim Indemnity

## 1. Introduction

A claim for compensation for a construction project refers to the construction process of a construction project, A loss caused by a party to the contract as a result of failure to comply with the provisions of the contract or as a result of other non-self factors (such as force majeure, etc.), Compensation for time or expenses raised with the other party to the contract. In this paper, the basic form of the claim is demonstrated through the specific frame structure. In order to let both parties know what to pay for the claim, What should not be claimed for. To learn to adopt effective claim techniques, Reasonably defending one's own legitimate interests, Create a good construction atmosphere that obeys the law.

## 2. Main Factors of Formation of Domestic Engineering Claims

Engineering claims are divided into duration claims and cost claims according to their purpose. Time claim is a claim caused by delay, extension and failure to complete the contract on time. A claim for expenses is a claim for expenses incurred by the contractor in excess of the planned cost for some practical reason. The main influencing factors leading to these two claims are:

### 2.1. Contract factor

The implementation of the project shall be carried out in accordance with the terms of the contract after the signing of the project by both parties. Therefore, The engineering claims arising from contractual factors mainly include: Contract defects and contract changes.

Contract defect. It refers to the problems in the contract itself, but the dispute caused by the lack of attention or anticipation when the contract was signed at that time. For example: The terms of the contract are unclear, Failure to specify the responsibilities and interests of both parties; Contradictions in the execution of contracts; The contract did not foresee the actual problems.

Contract change refers to the owner in the process of implementation of the contract, For some reasons, the contents of the contract need to be corrected or improved. For example: The conditions of the contract are not in conformity with the form of organization of the project; The construction quantity of the project is increased; The construction structure of the project has been changed; Suspend construction or terminate the contract, etc.

### 2.2. Changes in laws, regulations and related policies

During the start of the project, there may be a series of changes in laws, regulations and related policies. As a result, construction delays and construction costs increase. For example, the contractor is putting in some kind of building material during the construction. The relevant departments of the State shall prohibit the use of this kind of material if it is found to be defective; In other words, contractors are using some imported materials from abroad, resulting in a sudden increase in import duties and so on.

### 2.3. Unforeseen factors in Engineering Construction

Because the construction time of the project is long, the task is complicated, the capital input is also quite uncer-

tain and so on. There are too many uncertain elements in the process of project construction. The main ones are:

Natural factors: Such as earthquakes, mudslides, typhoons, floods, continuous rain, persistent high temperature and so on.

Party factor: If the owner is in arrears, changes the construction drawings, fails to submit the design materials in time, etc.

Market factors: Such as the price of construction materials, construction machinery and equipment rental fee increases.

Supervision factor: If the issued instructions are not timely, carry out redundant inspection, etc.

Other factors: Such as the discovery of underground cultural relics, encountered underground urban pipelines, how to deal with the pollution caused during construction, and so on.

### 3. The Basis of Claim for Domestic Works

#### 3.1. Basic basis of claim

Because of the characteristics of the construction project itself and the complexity of the engineering environment, the reasons for the claim are also varied. But no matter what the cause of the claim, there should be strong and strong evidence to support it. This evidence directly affects the ultimate success of the claim. The evidence for the claim involves a wide range of information, including political, economic, technical, etc.

Construction site records, reports and correspondence: Supervisor's instruction, site construction log, correspondence with constructor and supervisor, construction meeting record, accident record, construction material usage record, weather condition record, completion record, etc.

Political and economic information: Major news reports such as war, strike, tax reform, wage adjustment, etc.

Financial statements for construction projects: Payroll for workers, purchase orders for machinery and equipment, procurement of engineering materials and certificates of entry and exit, records of payment and payment of works, statement of cash flow plan, financial statements, etc.

#### 3.2. Legal basis for the claim

First, the contract Law of the people's Republic of China, the Ministry of Law on engineering claims for detailed provisions.

Second, international practice, such as FIDIC terms in the terms of the contract to specify the rights and obligations of both parties, risk-bearing.

Third, the project construction contract documents, including bidding documents, owners' requirements, contract agreement, and so on.

### 4. Calculation Method of Engineering Claim

For the contractor's claim, it is mainly divided into duration claim and cost claim. Therefore, the calculation method of engineering claim includes the calculation method of duration claim and the calculation method of cost claim.

#### 4.1. Calculation method of claim for time limit

The calculation methods of claim for time limit mainly include network chart analysis method, proportional calculation method, relative unit method, average calculation method and so on.

##### 4.1.1. Network chart analysis

Use the network diagram of the schedule to analyze key routes. In the course of construction, the reasons for the claim for compensation arising from the contractor, the employer, the force majeure and other factors will be classified. At the same time, a variety of factors for different combinations. If the delayed work is critical, the delay is the approval delay. If the delayed work is on a non-critical route, But because the extension of the work exceeded the time difference limit, it became a key task. The difference between delay time and time difference can be claimed. If delayed work is considered non-critical, there is no possibility of a duration claim.

##### 4.1.2. Method of calculating proportion

In the construction process, the construction period of single project, unit project and sub-project is often affected by disturbance events. For example, owners delay the provision of design drawings, delay the provision of venues and other conditions. These factors will directly cause the delay and interruption of the duration, and even affect the whole duration. However, if part of the construction can be satisfied, the time limit should be calculated according to the proportional method. The formulas are:

Duration claim value = additional quantity price / original contract total price x original contract total time limit.

##### 4.1.3. Relative unit method

The change of the project will definitely cause the change of labor force, in which case, the number of days claimed can be calculated by using the method of labor quantity relative to unit.

##### 4.1.4. Mean value calculation method

In the process of construction, several factors cause delay to the construction period, which results in various impact results. The claim value of the time limit is calculated according to the average value of the results.

#### 4.2. Calculation method of claim for expenses

##### 4.2.1. Total cost method

Also known as total cost. It means to convert the total price contract into a cost plus fee contract, which is to calculate the claim value on the basis of the contractor's additional cost plus surcharges such as management fees and interest. In a relatively rigorous sense, The total cost method is not an appropriate method of calculation. Because some cost increase and decrease amount is very difficult to calculate accurately, but in the actual engineering project, this kind of calculation method is quite possibility, the operation is relatively strong.

#### 4.2.2. Revision of the total cost method

On the basis of calculating the total cost, the actual cost and bidding price of each single project are considered flexibly, and some unreasonable factors are eliminated to make the total cost more reasonable.

#### 4.2.3. Subdivision

The claim value is calculated from labor cost, material cost, construction equipment usage fee, guarantee fee, management fee, interest, profit and so on. Compared with the total cost method, itemized method is more complicated and more difficult to deal with, but it can reflect the actual claim value and be accepted by the general people. It is more scientific and reasonable.

### 5. Measures to Improve the Level of Claims

#### 5.1. Strengthen legal consciousness, report to build according to law, construction according to law

Strictly enforce the Land Administration Law of the people's Republic of China and the Urban Planning Law of the people's Republic of China. The project must establish planning consciousness, the whole project is a one-time planning, step by step implementation, to ensure that the entire construction process does not detour or less detours. At the same time, all projects must be completed before the start of planning permits, construction permits to start.

#### 5.2. Establish consultation mechanism to create a good and harmonious construction environment

For the construction projects with more investment, large specifications, long construction time and many construction steps, the various units participating in the

project have various characteristics. The claim is a systems engineering. It is necessary to deal with the relationship between negotiation and construction schedule, to deal with the claims, and to create a good construction environment.

#### 5.3. Carry out education on claim knowledge

Both parties to the contract should propagate claims and actively carry out the education of claim ideology. Enhance the claim awareness of both parties, so that both parties can see the benefits of claims to the business. To enable both parties to realize that claims are an important means of improving the level of contract management. Claim for compensation can make the risk of construction more quickly transfer, which is conducive to the steady development of the construction industry in China.

#### 5.4. Attention should be paid to the training of professional talents

In order to make the whole field more professional and powerful, every link in the field of construction engineering in our country needs the participation of professional talents. Besides the course of architecture major, we can cultivate students' knowledge of contract management and construction law and so on. Let students fully understand the issues related to the claim, so that it better depth into it.

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