

# Avoid Claims with a Pre-Bid Analysis

Wednesday, June 1, 2016

In a best-case scenario, a construction claim will make the contractor financially whole again on the matter. In a worst-case scenario, the contractor goes out of business. Most claims conclude somewhere in between with all parties unhappy.

There are some commonalities among claims. They all put the claimant in a negative cash position. They all redirect company resources to working on the dispute rather than optimizing return on current backlog or chasing new backlog.



The best way to avoid a claim is to evaluate the project's potential for dispute at bid time, before turning in a proposal.

## EVALUATE THE CLIENT

Probably the first variable to evaluate when making a determination as to whether to bid a job is the client.

Consider the following with new clients:

- **Is this client litigious?** Other colleagues in the business may have had bad experiences with this client, or perhaps this agency has been on the news tangled up with other parties over legal matters.
- **Is this client financially secure?** Construction is an expensive business. Changes can be very costly. If there exists a significant and legitimate claim, know ahead of time that the client can afford it.
- **Who is the top executive for the client?** Find out who the executive would be should the matter ever go to mediation, arbitration or even to trial. Knowing the attitude of this person is critical. Whether they are friendly or adversarial toward contractors likely shapes the responses provided along the way during the negotiation of the dispute.
- **Does the client want this project?** The agency's heart may not be in the job if a third party (such as a state or federal government department) is mandating the project. Be wary of these jobs; the owner can be bitter, and it may affect a contractor's ability to be successful.

# EVALUATE THE PROJECT AND ITS 'RULES'

Review the project and its “rules” (i.e., the contract):

- **Contract terms.** With a new client or new contract, hire an attorney to perform a quick review of what pros and cons exist in the contract. At a minimum, the construction professional can review the contract for payment terms (pay when paid, pay if paid, paid net 30, paid on or about 25 days after receipt by owner, etc.), bonding requirements, insurance minimums, differing site conditions and overreaching indemnity clauses.
- **Subsurface conditions.** If the scope of work involves underground construction, it's vital to confirm whether there is a differing site conditions clause.
- **Weather issues.** Ensure that the weather permits the scope of work to be completed at that time of year. Temperature and precipitation claims are difficult.
- **Scheduling constraints.** Compressed schedules require additional cost in overtime, labor inefficiencies, or even contingencies for liquidated damages. If none of these is desirable, then perhaps this is not a project to bid.

## EVALUATE THE CLIENT'S PROJECT MANAGEMENT TEAM

Although bidding work to certain owners or general contractors may seem to be nearly fail safe, frequently project success is controlled by the staff at the project level.

Know the following about the management team:

- **Do they have experience in this type of work?** If this is a heavy engineering project like a dam or deep utilities, the project should be run by an engineer versus an architect. It often hurts the project when the client representative knows nothing of the work.
- **Is there a sense of urgency among the personnel?** Whenever a question is posed to the client, the time it takes to receive the answer is costing the contractor money. Bad, but prompt, direction from the client can be better than a protracted response.
- **Is the project management team experienced (via education or experience)?** Many of the challenges contractors face require field experience to fix. A good project has staff from a university and the school of hard knocks.
- **Is the project management team internal or external?** If the project management team is internal to the owner, there has been at least one level of decision-making removed from the process, which is probably good. The bad thing may be that decision-makers must take direct responsibility for issues and the absence of an external management team removes any buffer. If the project

management team is external, it is always good to know what may motivate them in their management of the contractor. They may be paid on a time and materials basis, which gives them no incentive to allow early completion of the project. Also, if their contract is a function of the contract value at the conclusion of the project, it is likely that change order resolution will be difficult.

The best way to avoid a claim is to never have one. Take the time to evaluate whether the project is prone to a claim before submitting the proposal.

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Read the original article in Construction Executive here:  
<http://constructionexec.com/article/avoid-claims-with-a-pre-bid-analysis>