



Problems associated with the process of claim management in Palestine

Contractors' perspective

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Claim
management

61

Received July 2008
Revised August 2008
Accepted September 2008

Abstract

Purpose – During the past few years, only a limited number of construction projects in Palestine were completed on time; indeed many of these projects had been delayed for reasons believed to be outside the control of both the contractors and owners. Such delays have given rise to many claims and conflicts. The aim of this paper is to investigate this widespread phenomenon, and its associated problems, from the perspective of the local contractors.

Design/methodology/approach – The paper reports on a questionnaire-based research investigation targeting local contractors with a focus on critical problems associated with the process of claim management, starting with claim identification, through to claim notification, examination, documentation, presentation, and negotiation.

Findings – The paper presents the survey results and main findings which indicate that: lack of site staff awareness to proactively detect claims, inaccessibility or unavailability of relevant documents, and conflicts arising during owner/contractor negotiation are all critical problems associated with the process of claim management.

Originality/value – The outcome of this research will assist local contractors in understanding the critical problems associated with the process of claim management; thus minimizing the number of, and cost associated with, claims and conflicts.

Keywords Construction industry, Conflict management, Palestine

Paper type Research paper

Introduction

The construction sector is one of the main economic engine sectors supporting the Palestinian national economy. The expansion of this sector has led to the revival of the construction profession, and the promotion and encouragement of new investments. The sector has played a crucial role in extending job opportunities for the Palestinian labor force; its expansion has generated many jobs for skilled, semiskilled and unskilled workers. The absolute number of domestic construction laborers has increased from 12.8 thousands in 1970 to reach 40.3 thousands in 1996. Additionally, the share of this labor force in the total domestic employment numbers



Engineering, Construction and
Architectural Management
Vol. 16 No. 1, 2009
pp. 61-72
© Emerald Group Publishing Limited
0969-9988
DOI 10.1108/09699980910927895

has risen from 7.9 to 12 percent for the same period (PCBS, 2006; PEC DAR, 2007). Since the establishment of the Palestinian National Authority (PNA) in 1994, construction projects implemented by both public and private sectors have supported the development of numerous related industries. Its 33 percent share of the total local production is significant, and influences economic, social, educational and other professional sectors (Palestine Contractors Union (PCU), 2006).

It is common practice for the local Palestinian authorities which deal with different donor funds to implement the donors' regulations. In some cases, these regulations are difficult for contractors to implement due to their incompatibility with local construction standards. Recently, the local construction industry has experienced major changes in its methods and procedures; almost every aspect of the construction process has undergone broad and basic modifications. However, the industry continues to be characterized by the increasing number and cost of disputes between contractors and projects' owners. These disputes/claims have many causes, including the varied interpretations of the contract specifications, unpredictable and uncontrollable delays, and non-performance by various firms involved in the overall construction process. Needless to say, disputes over costs and claims jeopardize a contractor's profitability and the financial return for the owner (Alkalil and Alghafly, 1999; Al Moumani, 2000).

Construction claims and disputes can occur in both publicly and privately funded projects, and in projects with small, as well as large funding. In fact, no project can be considered shielded from a potential claim. Such claims can lead to significant financial damages. Therefore, all parties including the owner, designer and contractor should fully understand the claim process. Although both owners and contractors need to take concrete steps to ensure a claim never happens. They also need to be prepared and well-versed in how to identify, prepare, and defend a claim. For this reason, the claim management process should be clear and understood by all project parties, especially the contractor so that they know how to present claims in a way that ensures receiving their rights. The objective of this paper is to study the problems associated with the process of claim management, from the contractors' perspective, by analyzing the common procedure categories that are distributed into six groups or fields (i.e. claim identification, claim notifications, claim examination, claim documentation, claim presentation, and claim negotiation).

Claim management process

A claim arises when a party to a construction contract believes that, in some way, by act or omission, the other party has not fulfilled its part of the bargain. In other words, a claim arises when one party to the contract has suffered a detriment for which that party needs to be compensated by the other party (Kartam, 1999). A claim may be defined as the seeking of consideration, or change by one of the parties involved in the construction process (Arditi and Patel, 1989). Claims can also be described, in general terms, as the assertion of the right to money, property or remedy (Powell-Smith and Stephenson, 2000). Claims that represent a widespread phenomenon on construction projects in the Middle East can be very costly indeed. It has been reported that the total value of construction claims in the United Arab Emirates alone reached US\$4 billion in year 2004 (Al Bawaba, 2005). Zanelidin (2006) stated that claims in the United Arab Emirates appear to hinder the completion of the construction and cause delays in

delivering projects. Furthermore, the process of claims management itself faces a variety of obstacles. Hassanein and El Nemr (2008), for example, reported that claims management in the Egyptian construction sector suffers from the lack of proper notification procedures and poor documentation management.

The key objective of the claim management process is to resolve a certain problem in an effective and efficient way. Avoiding litigation and arbitration in claim settlement is a good practice that the successful contractors must keep in mind. Naturally, all project participants have a keen interest in avoiding and minimizing the problems that lead to claims. The key is, therefore, to anticipate and prevent problems in advance. If a problem has already surfaced, the chance of a claim is minimized if each party responds to the problem and resolves it before it gets out of hand. Sizeable claims harm both the owner and contractor. An owner may suffer loss of income, problems with funding or delayed occupancy; a contractor may face financial instability due to the loss of payments. Since it is far less costly to prevent claims than to litigate them, it is wise for anyone involved in the industry to become familiar with the claims management process (Bramble, 1990).

The identification of a claim situation is the first and perhaps most important phase of the entire claims management process. Most claim situations, however, arise out of subtle differences in field conditions, from job site delays or as a result of differences of contract interpretation. In these and in all other instances, a claim situation must be recognized and identified as soon as it occurs (Mitchell, 1998). This identification involves both “timely” and “accurate” detection of a construction claim. This is the first and critically important ingredient of the claim management process. For example, some construction claims of excellent merit could be lost solely due to the failure to identify them. Thus, an awareness of the job factors that give rise to construction claims is a skill that generally has to be specially acquired. Such learning not only sensitizes construction managers to potential construction claims, but also exposes company-wide problems to contract management (Easton, 1989).

The identification of claims must be followed by a notification. The owner or representative must be formally notified of a claim or a change order if the contractor intends to seek an equitable adjustment for additional time or costs. Such a notification allows both parties to verify conditions, to assemble facts, and to resolve disputes while the issues are fresh in their minds (Mitchell, 1998). A construction claim notification involves alerting the other party of a potential problem in a manner that is non-adversarial. Time limit requirements are very crucial, and the inclusion of a typical contract provision such as “shall be confirmed in writing as soon as practicable and no later than 20 days” (Sawyer and Gillot, 1990) is deemed essential. An initial letter of a claim notice to the other party should be short, clear, simple, conciliatory, and cooperative. It should indicate the problem and alert the other party of the potential increase in time or cost. This phase is followed by claim examination that involves establishing the legal and factual ground upon which the claim is to be based. This should also involve an estimate of the potential recovery sought. Such issues may have to be investigated by interviewing staff who worked on the project. The primary sources for claim examinations include project files, video, memos, etc., which must be used to prove the time and cost elements of the claim.

Claim documentation is a collection of the hard facts that give the actual history of the claim. A well-prepared defense quickly demolishes evidence and claim costs that

are not supported by accurate records. The documented facts are the glue that holds the legal framework together. Good documentation by both the owner and contractor is essential in avoiding unproductive confrontation. An open dialogue and the prompt attention to identified problems will avoid disputes; good documentation simply fosters cooperation. One of the most inexpensive and efficient methods of protecting against claims is the maintenance of a diary of the work undertaken (Hassanein and El Nemr, 2008). Documented evidence forms the best basis for a contractor's claim. A contractor should record all change orders affecting the contracted work, date of notice to precede, amount estimated, date of submission, time and amount requested, time and amount approved, and date of approval. The contractor should also maintain a record of the claims with their description, date of submission, time and amount requested, time and amount granted in the negotiated settlement, and the documented decision of the owner (Kartam, 1999).

Good and accurate records are a great help when negotiating change and disputes. Such records help the contractor prove their argument; they include: the project progress schedule, daily and weekly reports, change order log, photographs, and minutes of daily and weekly meetings (Bubshait and Manzanera, 1998). A document management system is a tool for the storage and retrieval of unstructured information including faxes, scanned images, or documents, drawing, word-processed documents, spreadsheets, data base reports, letters, specifications, or any kind of document (if required). They are good supporting evidence for the contractor's claim (Vidogah and Ndekugri, 1997).

The contract administration process provides the project parties with several opportunities to negotiate and resolve construction problems before they become claims. There are several procedures that are well suited to the review, consideration, and settlement of construction disputes. They include the change order process and determining the progress payment's schedule (Bramble and Callahan, 1992). Negotiation involves the two parties who agree to communicate with each other and make decisions. The parties reach an agreement that is a modification to the contract (Ahuja *et al.*, 1994). The claim negotiation plays an important role in resolving claims, preventing disputes, and keeping a harmonious relationship among project participants. Most project managers consider negotiation as the most time and energy consuming activity in claim management (Ren *et al.*, 2003). The most economical, practical, simplest and fastest method of settling claims is negotiation. In this process, the two parties involved discuss the problem and try to compromise on the claim (Riad *et al.*, 1991).

Methodology

In light of the above introduction, this paper employed a questionnaire targeting local contractors to investigate the problems associated with the process of claim management, starting with claim identification, through to claim notification, examination, documentation, presentation and negotiation. The questionnaire was based on an earlier research study conducted by Surawongsin (2002).

Registered and operating contractors in the Gaza Strip were randomly selected and targeted. The sample size was selected based on the calculated minimum sample size as explained below.

Equation (1) was used to determine the sample size of the unlimited population (Naoum, 1998; Odeh and Battaineh, 2002):

$$SS = \frac{Z^2 \times P \times (1 - P)}{C^2} \quad (1)$$

where:

SS = Sample size.

Z = Z value (e.g. value = 1.96 for 95 percent confidence level).

P = percentage picking a choice, expressed as a decimal (0.50 used for sample size needed).

C = margin of error (8 percent).

$$SS = \frac{1.96^2 \times 0.5 \times (1 - 0.5)}{0.08^2} = 150 \text{ contractors}$$

The correction for the finite population was calculated using equation (2):

$$SS_{\text{new}} = \frac{SS}{1 + \frac{SS-1}{POP}} \quad (2)$$

where POP (the theoretical population) = 139:

$$SS_{\text{new}} = \frac{150}{1 + \frac{150-1}{139}} = 72.3 \approx 73$$

Thus, the minimum required sample for this study is 73 contractors.

Based on the above, it was decided to randomly select and target a total of 100 contractors; 83 completed questionnaires were received. The selected contractors are classified under the first, second and third classes in various types of work areas, by the Palestinian Contracting Union (PCU). This classification is highly dependent on the value of executed projects. For example, first level class contractors are expected to have executed projects of value not less than US\$6 million during the last five years. Other main criteria for classification are related to company previous experience, capital availability, staffing and financial situation over the same period of time. The lists of contractors are published annually and the qualification of contractors is reviewed every two years by the National Committee for Contractors Classification. The targeted population of the contracting companies had a valid registration in the PCU in the following fields: building, roads, water and sewerage, electro-mechanics.

The participants were presented with a list of factors believed to influence the different steps of the claim management process. They were asked to rate their level of agreement with the extent to which each factor influences the process on a five-point Likert scale where the extreme points 1 and 5 represent little degree and very large degree of influence, respectively. To determine the ranking of the different factors, the "relative importance index" (RII) was adopted, transforming the five-point Likert scale to determine the ranking of each factor. This was made possible via equation (3):

$$RII = \frac{\sum_{i=1}^5 a_i x_i}{5 \times N} \quad (3)$$

where, a_i is a constant expressing the weight of the i th response; x_i is the frequency of the i th response of the total responses for each clause; i is the response category index when $i = 1, 2, 3, 4$ and 5 , respectively; N is the total number of respondents. The RII value ranged from 0 to 1 (Tam *et al.*, 2000).

The survey instrument was pilot-tested to measure its validity and reliability. The pilot study was conducted by distributing the questionnaire to two panels of experts having experience in the construction field to assess the questionnaire validity and provide constructive feedback. The first panel, consisting of twenty experts (owners, consultants, contractors), was asked to verify the validity of the questionnaire content and its relevance to the research objective. The second panel, consisting of two experts in statistics, was asked to confirm that the instrument used was valid statistically, and that the questionnaire design was well enough for the purpose of this research. Experts' comments and suggestions were accordingly incorporated to ensure the validity and reliability of the questionnaire.

Results

This section presents the problems associated with the claim management process in the local construction industry. It concentrates on claim identification, notification, examination, documentation, presentation and negotiation.

Problems associated with claim identification

The first imperative task that not only the good claimants but the prudent contractors also have to pay attention to is claim identification. As illustrated in Table I, in relation to problems associated with claim identification, the top-ranked problems are: "lack of awareness of site staff to detect a claim", "insufficient skilled personnel for detecting a claim", and "inaccessibility of documents used for identifying a claim".

It is not unexpected that matters relating to awareness and skills of staff are raised to be the most severe problem in the claim identification process. The inaccessibility of documents is crucial for claim identifications. This inaccessibility usually stems from document unavailability. Contractors, therefore, should organize and check project documents to verify contract conditions. Site staff are expected to comprehensively understand contract provisions as agreed and signed by the contracting parties. When the problem occurs, it therefore has to initially refer to the

Problems associated with claim identification	RII	Rank
Lack of awareness of site staff to detect a claim	0.723	1
Insufficient skilled personnel for detecting a claim	0.720	2
Inaccessibility of documents used for identifying a claim	0.711	3
Unclear procedures in claim identification	0.672	4
Unclear line of responsibility as to who should detect a claim	0.666	5
Inadequate time due to high workload	0.590	6
Difficulties in detecting any problems during the work due to high workload	0.569	7
Poor communication between site and Head Office	0.512	8
Inadequate contract knowledge by site staff	0.512	8
Average of relative index =	0.63	

Table I.
Perceived severity of
problems associated with
claim identification

relevant contract clause. The lack of awareness and skills of site personnel could cause a loss of chance in the right to allege a claim.

Problems associated with claim notification

Claim notification is the second step following claim identification. Notifying the other party about the claim is required by general contract provisions. The notification period of time is prescribed in the signed contract to alert the other party about the claim. As shown in Table II the order ranks suggests that the most serious problems during claim notification are “inaccessibility of documents to be attached along with the notice”, “unclear procedures in notice preparation”, and “unclear responsibility to prepare the notice”.

Time limit is a crucial aspect in notifying a valid claim. Having accurate site records is also another critical issue facing local contractors that directly stems from employing inexperienced and low skilled staff. Unclear procedures in notice preparation and unclear responsibilities to prepare notice are the other important problems associated with claim notification. Therefore, the procedures and the responsibility should be clear in preparing the notice for a claim. In addition, site staff should be aware about their responsibility according to general contract provisions.

Problems associated with claim examination

Claim examination is another important step in the claim management process. Claim evaluation is considered a success key in winning a claim. The analysis of the contractors’ responses, summarized in Table III, for the problems associated with claim examination the order of ranks suggests that the most severe problems are “unavailability of record used to analyze and estimate the potential recovery”, “unclear lines of responsibility as to who should evaluate the damage and quantify amount of recovery”, and “lack of legal/contract knowledge to establish the base on which the claim stands”.

Thus, respondents indicated that record availability is important in analyzing and estimating the expenses of claims. For this process, the contractor needs to be aware of the necessity of checking the required files and estimating cost reports to prove their claim’s cost by presenting accurate documents to the owner. Therefore, it is advisable for the contractor to examine claims recovery and support it by providing accurate formal documents. Most respondents appear to have no experts capable of examining, analyzing and evaluating the amount of recovery. Expertise in construction

Problems associated with claim notification	RII	Rank
Inaccessibility of documents needed for attaching along with notice	0.78	1
Unclear procedures in notice preparation	0.67	2
Unclear lines of responsibility as to who should prepare the notice	0.67	3
Queries back from the other parties due to notice ambiguity	0.58	4
Prescribed time in the contract is too short	0.56	5
No standard form used for preparing the notice	0.55	6
Inadequate time to thoroughly prepare the notice due to high workload	0.50	7
Poor communication/instruction to proceed with submitting the notice	0.47	8
Average of relative index =	0.60	

Table II.
Perceived severity of
problems associated with
claim notification

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Table III.
Perceived severity of
problems associated with
claim examination

Problems associated with claim examination	RII	Rank
Unavailability of records used to analyze and estimate the potential recovery	0.83	1
Unclear lines of responsibility as who should evaluate the amount of recovery	0.78	2
Lack of legal/contract to establish the base on which the claim stands	0.76	3
Unclear procedures for claim examination	0.75	4
No standard formula used for evaluating the impacts and calculating damages	0.73	5
Unrealistic formula used for calculating damages	0.67	6
Poor communication for gathering the required information to analyze a claim	0.61	7
Inadequate time to thoroughly perform examination due to high workload	0.55	8
Insufficient computerized machine to facilitate the calculation	0.45	9
Average of relative index =	0.68	

management would definitely assist the contractor in this crucial step of claim examination. The findings, as shown in Table III, reveal that lacking knowledge about legal and contractual matters may affect the contractor's ability to establish the appropriate base needed for substantiating the claim.

Problems associated with claim documentation

Claim documentation focuses on the record keeping system of the contractor. An effective documentation will substantiate the alleged claim and improve the likelihood of winning such a claim. The quality of claim documentation depends very much on the experience and skills of site staff. The results shown in Table IV suggest that not all information/instructions generated during project execution are kept in writing. The local construction industry appears to be notorious for consistently not documenting procedures and transactions.

Oral instructions given by the owner and the inaccessibility of documents when required are ranked in the second and third positions, respectively. The contractor needs to ensure that the owner gives their instructions in the form of written requests to the contractor. This would provide support (if needed) to the contractor's claims.

Table IV.
Perceived severity of
problems associated with
claim documentation

Problems associated with claim documentation	RII	Rank
Some information/instruction is not kept in writing	0.80	1
Oral instruction by owner	0.79	2
Inaccessibility of documents when required	0.77	3
Inaccurate recorded information	0.74	4
Ineffective record-keeping system	0.71	5
No standard form used to record the data during construction	0.70	6
Overdue in retrieving the needed document	0.70	7
No computerized documentation system	0.54	8
High cost associated with retrieving required information	0.52	9
Average of relative index =	0.70	

Once again, the responding contractors identified accessing documents when required as a recurring problem encountered in claim documentation. This indicates the ineffective document management system employed by local contractors.

Overall, the problem of claim documentation stems from the lack of appreciation by site staff of the importance of record keeping. This results in poor quality of site records which in turn impacts on the contractor's ability to recover the compensation in making the claim. Recording new instructions during project execution may still be overlooked by site staff that proves to be costly in due course.

Problems associated with claim presentation

Claim presentation is another crucial step requiring serious attention to successfully complete the claim management process. Table V suggests that the most crucial problems in preparing a claim submission are: "inaccessibility of relevant documents to submit along with the claim", "insufficient skilled staff for preparing a claim submission", and "unclear responsible person to prepare full report of claim presentation".

Documentation is still the major problem in claim presentation requiring particular effective means to resolve. The respondents revealed that some documents are still ineffectively kept because on-site staff do not realize the importance of recording such documents. Most respondents agreed that it was impossible to submit the relevant document during the claims presentation, especially where the contractor needs to support their claims with attached accurate formal documentation. Presenting a claim requires a knowledgeable, skilled and seasoned person to effectively organize the full detailed claim submission. Contractors face difficulties in identifying and hiring staff skilled in preparing a claim submission. This issue affects the claim presentation process, possibly causing the owner to reject the claim.

Respondents highlighted the fact that there is no specific person, unit or department being responsible for dealing with construction claims. They agreed that one of main problems associated with this part of the process is having no specialist person, in the firm, to prepare claim reports. In most local construction firms, the manager or owner takes this responsibility by default. Also, in most cases, this person may not be well-qualified or expert in claim preparation and/or contract conditions. Therefore, it is imperative to recruit a specialist in claim management to deal effectively with the relevant issues.

Problems associated with claim presentation	RII	Rank
Inaccessibility of relevant documents to submit along with the claim	0.79	1
Insufficient staff skilled in preparing a claim submission	0.77	2
Unclear responsible person to prepare full report of claim presentation	0.71	3
Unclear procedures in preparation of claim presentation	0.70	4
No standard format of a claim submission	0.62	5
Inadequate time to thoroughly prepare due to high workload	0.52	6
Poor communication in presenting a claim	0.51	7
Average of relative index =	0.66	

Table V.
Perceived severity of
problems associated with
claim presentation

Problems associated with claim negotiation

As illustrated in Table VI, the main problems associated with claim negotiation are “conflicts arising during negotiation”, “poor negotiation skills”, and “insufficient evidence to convince other parties”. It is believed that these three problems are somehow intrinsically linked; lack of negotiation skills will impact on the ability of the contractor to convince the owner, and hence conflicts may arise. The level of skill and experience needed in this step cannot be over-emphasized as it would lead to the success or failure of the claim.

In the local construction industry, the problem associated with not having experienced construction personnel with high level of negotiation skills is not unexpected. Most contracting companies do not have a dedicated unit or individual who is responsible for managing the claims. Commonly, the task to negotiate is normally assigned to the “in-charge” project manager or site engineer, who may not be skilled negotiators. Clearly, there is a need to enhance staff negotiation skills to avoid facing difficulties and potential conflicts arising during negotiation with the client. Failing to do so may result in losing the claim.

The responding contractors ranked “insufficient evidence to convince other parties” in the third place. They stated that strong evidence is usually needed for presentation during this stage in order to support the claim and to convince the owner. In many cases, the contractor loses their claim as a result of the lack of documentation of evidence thus affecting the contractors position during claim negotiation. In some cases, the negotiation process could result in an adversarial relationship developing between the contractor and the owner as result of unsatisfactory claims preparation. The contractor becomes the weakest party because the owner, as result of the adversarial relationship, may reject the claim with very little consideration given to the contractor’s situation. Having mutual respect and keeping negotiations in the framework of sustaining a good relationship between the two parties should be a priority during claim negotiation.

Conclusion

This paper aimed at studying the problems associated with the process of claim management from a contractor’s view point, by analyzing common procedure categories, distributed into six groups or fields (claim identification, claim notifications, claim examination, claim documentation, claim presentation and claim negotiation). The study findings highlight the need for site staff who are capable of detecting a claim during project execution. This capability must be coupled with a good documentation system that would allow easy accessibility to project records

Problems associated with claim negotiation	RII	Rank
Conflicts arising during negotiation	0.83	1
Poor negotiation skills	0.82	2
Insufficient evidence to convince other parties	0.80	3
Adversarial relationship with other parties	0.74	4
Difficult to settle without any litigation or arbitration	0.69	5
Inadequate time due to high workload	0.54	6
Average of relative index =	0.74	

Table VI.
Perceived severity of
problems associated with
claim negotiation

when needed to support the submitted claim. Thus, keeping relevant project information should be viewed as an integral part of project monitoring and reporting. It also appears that a uniform and transparent procedure should be put in place whereby contractor's staff would be able to follow to properly prepare the claim. This procedure should emphasize the importance of linking the claim to cost recovery so as not to disadvantage the contractor. In sum, it could be argued that staff awareness, training in how to document and submit a well-supported claim, and negotiations with clients are becoming a necessity to the local industry, not an option.

From the study, it is advisable that local contractors recruit project manager(s) who have appropriate experience in construction project implementation and construction claim knowledge. Further, owners and contractors should hold training programs in construction claims management to increase their employees awareness of this issue. Contractors are recommended to keep an accurate and appropriate documentation records. Such documentation can assist in supporting, presenting and proving the contractor's claims. It is also advisable that the owners should inform the contractors about the claims procedure process, and hold regular meetings to discuss any claims issue presented by the contractors. Finally, contractors and owners should focus on negotiating all claims' issues because it is the most economical and shortest way for the two parties to sort out their differences.

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