

# CONSTRUCTION AND THE LAW IN TEXAS

## Project Management as a Tool for Claim Resolution

Typically, contractors share one personality trait when it comes to their business operations – eternal optimism. Every new project brings an opportunity for success and profit. But, as many in this industry will admit, very few projects proceed without challenges and obstacles that must be overcome. The ability to improvise and adapt when obstacles arise provides a source and foundation for that optimism. Success in dealing with these obstacles builds on itself and becomes a source of confidence that is a tool in addressing difficult situations.

Another tool for dealing with challenges and obstacles that might otherwise develop into claims is simply having the right people assigned to a project. Addressing labor availability is a topic for another column. But, regardless of the individuals assigned to a project, effective training for field and project management personnel can ease the burden when dealing with challenges and overcoming obstacles. Similarly, when issues arise that may develop into claims, effective project management tools can assist in positioning your firm to successfully resolve the claim.

This column will address these project management tools from a practical perspective. A few key project management tools to assist in resolving issues before a problem becomes a dispute and before a claim becomes a lawsuit are as follows:

- Write everything down
- Present support for entitlement with the claim, and vice versa
- Accurately update and use the project schedule as a forward-looking tool
- Develop and adjust cost-coding as re-

quired to accurately capture and identify expenses

- Be careful and self-regulate/filter email communications before hitting “Send”

Effective project management as a tool for claim resolution goes far beyond “writing everything down”, although that simple advice cannot be given enough. Instruct your field superintendents and project managers to write everything down. Having good project records is the single most important tool that contractors can use to properly evaluate and resolve potential and actual claims. Keep in mind that every claim is not going to be resolved in your favor. To assume otherwise is irresponsible. Having thorough and accurate records that you have created will allow you to evaluate claims based on information inherently trustworthy to you. If your records indicate either an entitlement or a liability, the decision to move in the necessary direction for resolution will be easier because of the source and thoroughness of the information upon which you have relied in reaching a resolution.

Likewise, in addition to having written everything down, sharing comprehensive and contemporaneous project records with the other party to the negotiation or claim will allow for more effective evaluation. Cherry-picking only the best records for your position will weaken credibility and lessen the likelihood of a negotiated resolution if the other party has more complete records and can see that your package is lacking completeness. Providing comprehensive records in support or defense of a claim will facili-

tate quicker review and evaluation.

If, on the other hand, you are presented with a claim that lacks support, rather than simply responding with a denial due to insufficient information, responding with affirmative and countervailing project records may quickly resolve a claim, especially if the presenting party had concerns about the strength, thoroughness, or accuracy of the information supporting the claim before submitting it.

For progress related claims, having an accurate and frequently updated project schedule that is used as a forward-looking tool can help prevent conflicts and delays. Knowing the expectations and needs of a job, along with straightforward dialogue about resource availability and production, can help prevent delay and disruption claims from accruing. Also, in the event that a claim does arise, having accurate project schedules will assist greatly in the evaluation of such claims. From a project scheduling point of view, the accuracy and usefulness of the schedule is directly related to the accuracy of the source data. Schedules can be, and often are, manipulated. A schedule with the appropriate activities and accurate as-built updates with realistic target start and finish dates can help in both the performance and evaluation of claims.

Proper and detailed cost coding is equally important as a project management tool to address and resolve claims. If you are seeking additional compensation for scope changes or inefficiencies, or you are being directed to perform work on a time and material basis, then the accuracy and details of your job-cost reports will allow for proper and complete presentment of costs. For example, failing to accurately create codes for superintendence or project management by task, scope, or structure may result in lost time and unrecoverable expenses. As with scheduling, project managers should freely create and use break-out and sub-codes for record keeping. Further, from a business management and profitability analysis, being able to properly track and allocate costs is an essential tool that often starts with job-costing.

If you take away nothing else from this column, please take this: be careful with email and text messages. Many claims that may have otherwise been on their way to resolution have been unresolved or escalated because of poorly timed and worded electronic communications. Tone is often lost or misinterpreted in emails. Further, the immediacy of email makes it an easy medium for reactive and emo-



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tional communications that can create, rather than help eliminate, obstacles to claim resolution. Always self-regulate when using email, especially when communicating outside your own company. But internal communications can also prove problematic if claims escalate—so be careful there too. Instruct project managers to re-read and consider every email that is sent. A project manager may see a claim, or respond to a claim, and want to fire off an email that accuses the other party of inaccuracies and fabrications. But consider the effect of an email calling someone a liar as compared to an email requesting further support or backup documentation to facilitate a complete review. Be careful with email and think about what is in the email and its likely effect before sending. 📧

