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CONSTRUCTION ADMINISTRATION

Claims and Disputes

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Outline

- Reasons of claims and disputes
- Protests
- Potential claims
- Claims and disputes
- Alternative methods for dispute resolution

Reasons of disputes

- In the world of business, disputes are inevitable. One person may understand rights and obligations differently from another no matter how carefully a contract is written.
- This could lead to delayed shipments, complaints about the quality of the work, claims of non-performance of the terms of the contract and similar misunderstandings.

Reasons of disputes

- In any construction contract, it is almost inevitable that the written documents will not adequately address every single matter.
- There may be gaps, conflicts, or subtle ambiguities. This causes protests, claims and disputes.

Protests

- The term **Protest** as used here refers to disputes arising out of the issuance of a contract change order by the architect or engineer against the objections of the contractor

Potential claims

- The term **Potential Claim** applies to any differences arising out of the performance of the work that might reasonably lead to the later filing of a formal claim by the contractor if the difference can not be resolved in the field.

Claims and disputes

- The term **Claim** applies to differences that are developed during the life of the contract under protests and potential claims, and that are not yet resolved at the time the contractor returns the proposed final estimate of the amount of additional money or time asked for.

Claims and disputes

- In other words, a protest or potential claim does not become a claim until the contractor repeats its objections by notifying the architect, engineer or owner at the time the proposed final estimate.

Alternative methods for dispute resolution

A simplified summary of the principal methods available to the contractor for resolution of construction disputes is given below:

- Negotiation
- Mediation
- Arbitration
- Litigation

Negotiation

- Compared with the others, the only economically sound solution is to negotiate. Negotiation involves compromise, so it should be entered into with that in mind. Put up a good fight, do some hard bargaining, but be prepared to compromise.

Mediation

- Mediation is a process in which a trained third-party neutral attempts to assist the parties to a dispute in reaching an agreement that resolves the dispute. In other words, mediation is a particular form of settlement negotiation in which a trained third-party neutral intervenes by agreement of the parties in order to guide and facilitate the parties' negotiations toward an agreement that resolve the disputes.

Arbitration

- Arbitration is the voluntary submission of a dispute to one or more impartial persons for final and binding determination. It is private, informal, and is designed for quick, practical, inexpensive settlement. But at the same time, arbitration is an orderly proceeding, governed by the rules of procedure and standards of conduct that are prescribed by law.

Litigation

- Litigation means to apply to the court to resolve the dispute.