CONSTRUCTION CLAIM PROBLEMS IN MALAYSIA

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Abstract- The construction industry in Malaysia is large and it involves multidisciplinary participants. There is high frequency of disputes arising from construction contract claims. Even with the most expert understanding of construction contract clauses and the most equitable risk-allocation management, claims will continue to present problems if they are poorly managed in practice. This research presents the results of interview with 25 contractors and 19 consultants on the claim issues and problems in Malaysia construction industry. The main findings which indicate that the 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. The problems observed from this research could be used to solve or improve the contractors’ claim management system.

Keywords- Construction Claims, Claims.

I. INTRODUCTION

Considering the giant size of these projects, it is not surprising that the number of claims continues to increase. Construction claims are considered by many project participants to be one of the most disruptive and unpleasant events of a project (Ho, 2004). According to Vidogah and Ndekugri (1997), however, claims are becoming a way of life and, indeed, an indispensable part of modern contract systems. Claims are common in construction projects and can happen as a result of several reasons that can contribute to delaying a project and/or increasing its costs. Finishing a project on schedule is a difficult task to accomplish in the uncertain, complex, multiparty, and dynamic environment of construction projects (Issaka, 2006). To enhance the chances of success, contractors submitting claims must closely follow the steps stipulated in the contract conditions, provide a breakdown of alleged additional costs and time, and present sufficient documentation. On the other hand, project owners need to follow an overall comprehensive step-by-step procedure for tracking and managing the claims submitted by contractors (Peter, 2010).

Even though construction claims have considerable effects on the projects, they are not always given adequate considerations. From the project employers’ point of views, one of the problems is that they do not realize the required data in managing their claims and how important such data are (Tochaiwat, 2006). Construction claims and disputes 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 protected 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 (Enshassi, 2009). Construction claim management is the process to control the claims, defined as the seeking of consideration or change by one party in the construction project against another party. Because of the substantially increasing number of construction claims nowadays, the implementation of the effective construction claim management is needed (Tochaiwat, 2004)

II. PROBLEM STATEMENT

Inadequacies of supporting evidences, stemming from unaware project personnel as well as improperly designed documentation system, are also serious shortcomings causing a loss of chance to recover incurred damages. The management level needs to pay more attention to these aspects for having an effective claims management system (Surawongsin, 2002). Construction claims have such high impacts on construction projects’ cost and time that an effective claim management system in an employer’s organization deserves serious attention (Chovichien, 2006).

A need for an overall step-by-step procedure for claims analysis and administration is crucial for achieving proper resolutions and for preventing claims from developing into disputes. Although the process is general to a certain extent, each particular node can be further developed, depending on the peculiarities of each claim and project (David, 2005). Although the extensive studies on claim management theories and practices, the increasing incidence of claims and disputes imply that the current claims management principles and process are ineffective in meeting industry requirements. Because of the unpredictable nature of construction projects, it is also unrealistic to expect that claims can be avoided or resolved by a single principle or method. The improvement of construction claims management will be a long strategic task for the industry (Ren, 2003). 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 (Enshassi, 2009).

In Malaysia, Pertubuhan Arkitek Malaysia (PAM) Standard forms of contract 2006 and Public Works Department (PWD) Standard forms of contract 203A (2010) are the most common types of standard forms of contract being used in construction industry. PAM forms is the most popular standards forms of contract for private sector meanwhile PWD forms is widely being used in government’s projects. The latest version of PWD forms is PWD 203A (2010) and in the meantime the revised version for PAM form is PAM 2006. All standard forms of contract provide clauses for delay. Provision for EOT in PAM 2006 has been explained in Clause 24, meanwhile in PWD 203A (2010) it has been covered under Cause 44. All local Standard forms of contract has list out claim event that will entitled the contractor for the loss and expenses. However, there are no clear guidelines and explanation on what are the appropriate procedures as a guide for the claimant in substantiating their claim. As a result, many claim has been unsuccessful due to the reason such as the application is not in proper order, a lot of information that are supposed to be there but are not, and the quality of submission are not up to the standard.

The key to the problem is the management of the claims process, which includes proper identification, notification, examination, documentation, presentation and negotiation, within the sequence displayed in Figure 1.

III. AIM AND OBJECTIVE

This paper aims to identify the problems associated with the claim process experienced by the contractors and the areas related to claim process that can be effectively improved.

IV. METHODOLOGY

Within the scope and nature of this research, the semi-structured, in-depth interview will best serve the objective of the research in soliciting data from the respondents. The in-depth interview was drafted in a semi-structured form. These factors are taken into consideration in drafting the interview in semi-structured form for soliciting the data from the respondents. The respondents are professional contractors and consultant. Being professional, time is a crucial factor. Semi-structured interview will enable data collections session be made with focus and avoiding unnecessary time spending. The analysis gathered were from the data on construction claims, the types, reasons, problems and suggestion on how to improve. Sometimes, these branches of knowledge might be unfamiliar with the respondents, especially the legal matters. The respondents for this in-depth interview are professional contractors and consultants registered with Construction Industry Development Board Malaysia (CIDB) and the Institution of Royal Surveyor Malaysia (ISM) respectively. The respondents for interview consist of twenty five (25) contractors and nineteen (19) consultants that involved in the construction industry with minimum of ten (10) years of experience.

V. RESULTS

Current Issues in Claim Management

Claims are numerous and different. Claims can happen due to delays in construction or materials delivery, weather, owner changes, poor site management, differing site conditions, insufficient plans and specification, failure to disclose important information in the construction phase, work acceleration, schedule issues and weather. Perceptions of how claims arise may vary according to the views of owners, contractors, and consultants.

i. Design.

Defective design and/or specification was highlighted by many respondents as one of the most frequently reason for claims. Design defects include errors and omissions, as well as lack of coordination between the various aspects of design. These problems affect contractors directly, who normally may not have the legal right to file a claim directly with the designer.

ii. Change order.

Change order for extra work is one of the popular reasons for claim. The owner is responsible for the impact of a change order upon the contractor’s time and cost performance. However, not all changes in the work will affect the contract duration. The contractor is responsible for proving that the time impact is attributable to a change order issued by the owner. Proving the impact of changes is often difficult. Even though entitlement to compensation may be justified, the owner and contractor may not be able to settle a time adjustment. In another scenario, a new design is developed after part of the design has already been implemented. The design change would result in multiple change orders from the contractor. The change orders would include additional material, labour, supervision, and equipment costs. These
changes may have led to damages on other activities because the contractor was forced out of his plan and needed to learn the rework as the job moved along.

iii. Inclement weather

Even though a contractor is required to assume the risk of severe weather conditions during the project season and at the project location, delay caused by unusually severe weather is excusable under the standard construction contract. To be allowed an extension of time, the contractor is required to establish evidence that the severe weather deviated from the local climate significantly and that it caused delay in specific parts of the work. Disputable situations can arise when interpreting the days of unusually severe weather. In some cases, a consequence of bad weather, such as flood, could hinder the performance of work and the contractor may need time recovery from that delay, but negotiation at that time is always difficult.

iv. Conflict/dispute.

Claim can also arise as a matter of conflict between two parties, in most circumstances the contractor and the owner that is disputed and materialized as a claim after it originated as a request for change and/or an assertion of variation in contract conditions. Fundamental problem with claims is that they involve a high degree of “cognitive conflict” and strong underlying “conflicts of interest.” Cognitive conflict occurs when people interpret data relating to issues of facts differently. Cognitive conflicts arise from inadequate information, misinformation, different views on what is relevant, and differences in the approach and procedures used to assess claims and conflict. When parties use different information and assumptions to assess claims, or interpret information differently, they arrive at different results. Conflict of interest occurs where the respective interests of the parties are perfectly opposed and divergent because a particular decision may maximize the outcome and favour the interest of one of the parties while reducing the outcome for the other party.

v. Documentation

Poor documentation always contributes to the problems in claim process. The contractors need to have a good documentation and filing system. The use of daily records from the site team is very important, especially if these documents are signed by the consultant. These records are the “diary” of the project and that they would have made all the difference if they had been properly filled out. The absence of these records have been stated by many to have caused the head office team to lose contact with the events that happen on site and, therefore, have left the office team paralyzed in some claim situations that required support from daily events on site such as equipment present, number of labours, quantities of concrete poured for a certain structure, and so on.

vi. Contract Awareness

The site team in general lacks contractual awareness. It is not enough that the site managers would become contractually aware of their scope of work. Rather, the root of the problem lies in the site engineer who deals directly with the consultant. Numerous cases have been reported about site engineers who receive instructions from consultants and would not think twice about the contractual stance of these instructions. The result is significant loss of time and money.

vii. Relationship

The contractors at many times would rather waive his contractual rights and suffer from losses than to risk losing relations with the consultant in times of conflict. The explanation for this phenomenon is that it is a common trait in the Malaysian culture to fear losing relations with the client, even if financial and time burdens are the price. There is a distinct difference between dealing with a Malaysian client and a foreign client in the sense that Malaysian clients are actually offended from contractual written notifications which involves more correspondences and minutes of meeting. The manager of that project relented to a great number of claims issues because he feared to lose relations with the consultant, who was very upset whenever a notification or reservation of rights was made.

viii. Late Payment

Late or non-payment of interim payment to contractors has been a major issue in the Malaysian construction industry. Late payment is the failure by the employer to pay the contractor within the time stated in the contract. It has affected the performance of contractors and has caused several of them not being able to complete the work on time thus causing delay in the completion of the project. In the worse scenario, they are forced to abandon their projects for lack of fund and some were on the brink of bankruptcy. In the PWD203A Form of Contract, it is stipulated that the period for honouring the certificate is 30 days from the date of the issuance of the certificate. Clause 30.1 of the PAM Form of Contract stated that the period of honouring certificate is within 21 days after the issuance of the certificate. Any payment made later than the stipulated time frame can be considered as late or delayed payment. Clients usually delayed or failed to pay the contractor when the latter does not receive his payment after 3 to 5 consecutive periods of interim certificate (3-5 months).

Problems in Claim Process

Problems in claim process are divided into 6 stages: identification, notification, examination, documentation, presentation and negotiation.

i. Identification Stage

Construction claim identification is “timely” and “accurate” detection of a construction claim. This is the first and critically important ingredient of the claim process. Identification of construction claims mainly affected by two things: recognition of the possible categories of claims causes, and direct
actions on site that initiate the claim. Awareness on the part of the contractor of work aspects that are susceptible to claims shall first exist, while the claim is only initiated when it is perceived by the contractor that a triggering action on the part of the owner or engineer has taken place. Project team should alert on the changes of work, claims and variation order instructions. They need to have knowledge and skills to assist with determining the appropriate actions to take. The earlier a claim is identified the more options are available to mitigate potential risk associated with it.

In the occurrence of a claim-triggering event, the contractors must make a careful analysis of the situation and weighs its options. The contractor may decide not to pursue the claim for many reasons. The grounds for the claim may be shaky, and the contractor may want to preserve good relations with the owner or may feel that the subject of the claim is of little significance and can be handled informally. Frequently, information on project activities is not readily accessible. The identification and subsequent retrieval of relevant information will be time consuming. It is advisable that the contractors have a systematic documentation of project activities to speed up the construction claim identification process. Some construction claims of excellent point are lost solely due to failure of identifying them. Thus, an awareness of job factors, which give rise to construction claims, is a skill that generally has to be specially acquired.

Early detection and acknowledgement of problems is an important step in tracking changes. Unresolved change orders typically become claims. The sooner changes are resolved, the less they impact the project’s schedule or budget. Field staff must be involved in recognizing and avoiding potential claims. Contractors must ensure that they, too, understand the importance of their role in the success of a project. When a dispute arises, the owner and the contractor should communicate and attempt to resolve the problem equitably and quickly.

It is not unusual for construction contracts to incorporate provisions requiring timely notification of claims as a strict prerequisite to obtaining additional compensation. Other considerations include the need to properly document developing claims to establish facts and preserve evidence, and the proactive identification of potential defences to such claims and possible avoidance strategies. In certain circumstances, it may also be practical to seek assistance from counsel or expert consultants at an early stage of the claims process.

A contractor’s key project personnel must take a proactive role in the early recognition of potential claims and disputes. These individuals should be in the best position to evaluate the progress of the work and identify any developing problems on the project. Beyond being familiar with the project itself, management personnel need to have a basic understanding of the terms and conditions of the contract documents. Lacking an adequate knowledge of the parameters of the contract documents, for example, a project manager may not recognize in a timely manner that the contractor is performing beyond its original scope of work and is entitled to seek additional compensation.

Failure to recognize a claim until the end of the project may expose the contractor to contractual defences, such as untimely notice. Beyond contractual issues, it may be extremely difficult to reconstruct the facts to support a claim at the end of the project. Consequently, project managers must be vigilant in identifying potential claims during the course of construction.

ii. Notification Stage

The identification of claims must be followed by a notification process. The owner or his 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. It is common for construction contracts to require a party to give timely notice of claims to the other. Most standard form contracts provide some mechanism to regulate the giving of such notices and the likely consequences that will arise if notices are not given as stipulated in the contract.

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 critical. 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. It is very hard to argue with someone who appears polite and sincere, helpful, and cooperative.

The parties involved in the construction project usually insert notice requirements in their contracts so that they are informed of any impending claims that may be made against them. This enables them to keep track of the various issues that arise under the contract, consider their financial implications and issue instructions. Timely notification of claims also gives the parties the greatest time possible to deal with these issues. Potential claims are most effectively tackled quickly, when the facts are still fresh in the minds of the parties and before positions have hardened.

At the beginning of the project, if contractors find any ambiguities in the drawings, contract or specification, they should send a notice to the client. If contractors can claim for extension of time or variation order, then they can plan it earlier. On behalf of the client, they should aware of work changes and progress during the project. It is check and balance process and this process should be looked in a positive way.

Sometimes, the requirement to notify also has some disadvantages. Issuing a formal notice at an early stage of the contract could serve to establish the
position of the parties at a time when informal discussions may have been sufficient to completely solve the issue. Also, a contractor who properly complies with the notification requirements may be unfairly branded as being claims-oriented or confrontational. This could in turn affect the relationship between the employer and the contractor during the life of the contract. Often construction contracts will require that notice of an intention to claim or notice seeking an extension of time be given within a certain number of days of the event giving rise to the default. These requirements could sometimes even be imposed by statute and can sometimes cause difficulties. A party may not be aware of the event giving rise to a claim until sometime after they occur. In contracts which require notice within a short period after the contractor should have become aware of those events, this could be potentially problematic. Also, in circumstances where an event or delay is continuing, or where the contractually prescribed time limit is short, it may not be possible to give the level of detail required within the prescribed period. Unfortunately, these problems cannot be easily tackled. However, experience suggests that provided a party has done its utmost to comply with any notice requirements, an arbitral tribunal or court is likely to be sympathetic to the party making a claim.

Many respondents urged that the claim notification need to be done as detail as possible. It should include the amount of work, the estimate cost and who should take the responsibility. Client should come out with formal notification and must be understood by all parties involved. Construction contracts generally require that notice be given in writing. The degree of detail required in the notices may sometimes be specified in individual contracts but at the very least a notice must contain such information as clearly outlines the purpose of the notice and what is required out of the other party. Problem always arise when instruction of work changes given by inexperience superintending offices and he do not have the authority and do not aware of the ongoing works.

Progress payments are always late. Changes cannot be processed without agreement on prices. Contractors or sub-contractors prices are difficult to obtain, especially if the real cost is out of all proportion to the work required. Documentation for regulatory approvals has a notorious habit of getting bogged down somewhere. Even progress meeting minutes, wherein everyone agreed to do certain things in a certain sequence, somehow fail to appear until the following meeting. So what starts out as a minor issue, something that might be resolved by early agreement at the time of the work, gradually grows out of all proportion and becomes the basis for a formal claim.

A claim notification should be made only after careful consideration, in a formal and objective manner, on precisely what contractual grounds, how much money is being sought and how that sum is arrived at, and the corresponding time extension to the contract, if appropriate.

iii. Examination Stage

Claim examination involves establishing the legal and factual grounds on which the claim is to be based. This should also involve the estimate of the potential recovery. Such issues have to be investigated by interviewing staff who worked on the project. The primary sources for claim examination could deal with project files, video footage, memos, etc., that must be used to prove the time and cost elements of the claim.

The contractor has a key task of substantiating each of the claims delivered to the client that is, defending it and proving the validity of its content. The items claimed by the contractor should fall under two major categories which is time and cost. In the first category, the contractor requests a modification of contract delivery dates and milestones to offset the delays that it did not cause. In the second category, the contractor asks for reimbursement to cover the following items: premium time, increased equipment cost which includes rental or ownership, increased financing costs, increased site overhead, increased home office overhead, and decreased labour productivity.

In assessing the documentation presented by the contractor, the engineer need to know how to judge whether established methods of analysis have been used in substantiating the contractor's claim. Such methods include: simulation of planned versus actual construction processes, planned versus updated CPM-based schedules, productivity and learning curve modelling techniques, engineering-economy related analyses, cost engineering models, among other possible established tools. Not many contractors know how to analyse claim using these method. After thoroughly analyzing all supporting claim documents, establishing the causal connection, developing the proper theory of entitlement, and arriving at a preliminary estimate of the contract damages, the contractors can begin the draft of a claims report.

During examination of claim, the claim entitlement must be established. This, in turn, requires a comprehensive description of the actions or inactions of the project owner or others controlled by the project owner and proof the impact of those actions or inactions actually negatively impacted the project schedule. All this taken together establishes the fundamental connection, as without clear entitlement to damages the construction claim obviously will be an absolute failure. Entitlement may be derived from a contract clause, or the principals of law, which set forth the duties and responsibilities of the individual, such as implied warranty. Understanding of construction contract entitlement is one of the prerequisites to the preparation of a successful claim.
The process of quantification of claim is very important and need to be done as detail as possible. In quantifying the claim, contractors need to include both the direct costs and delays caused by the unanticipated events, and the cumulative impacts of such events. However, arguments are often generated about the rates of compensation, quantity of the impacts, and especially the composition of the cumulative effects of the claim event, such as loss of productivity, disruption and indirect costs. These items, by nature, are ambiguous and sensitive. Some of them are impossible to quantify with precision even with the best information available. Quantification of damages associated with construction claims is a diligent effort, as they are often intertwined between various aspects of the project, such as cost estimating, scheduling, sequencing and project management. The quantification, presentation and evaluation of construction damages should include the damage causes and effect, direct damages (labour / material / equipment / subcontract), extended project costs (general conditions / general requirements), expanded project costs, labour productivity loss and disruption, cost escalation and office overhead costs.

iv. Documentation Stage
Claim documentation is the collection of the hard facts that give the actual history of a construction claim. A well prepared defendant 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. If these are insufficient the claim will not succeed. Most documentation problems stem from, three basic conditions:

- Getting the proper amount and type of information.
- Getting this information to the appropriate individual.
- Delivering it while it is timely.

When these considerations are addressed properly, those responsible for problem resolution will be able to respond more effectively as project challenges arise.

The contractors should implement an organized program of documentation which permits them and the client or owner, to establish a baseline against which progress can be measured and the construction process controlled. Contractors must extensively document, on a continuing daily basis, all events relative to interferences, instructions to the contractors, changes to the work, impact by others and all issues which have an effect on the contractors no matter how minor. The objective here is to provide all the necessary documentation for developing a position both as the project unfolds as well as upon the completion of the work. The contractors’ most favourable approach to preserving its’ rights is by giving the owner appropriate notice to be followed up with details when the effect of potential impact events can be evaluated.

Site superintendents and field engineers should each prepare a daily log of job events with relevant site photos. On a daily basis the contractors’ field claim documentation person should review these daily logs and speak to these people to assure all problems encountered by the contractors are recorded. The contractor's cost control in the field should be recording costs charged to the various activities and particularly identify those events and costs which result from impact of the problem areas.

Inspection of the information relevant to the claim at all of the records and documentation must be done by the engineer or the owner's representative. The contractors may be asked to submit further records until the owner is satisfied with the level of details. Once all the relevant information has been documented, it becomes necessary to note if the subject of the claim has a continuous effect. If the effect on the program and budget can be directly assessed after the occurrence of the cause for a claim, there will then be no continuous effect. On the other hand, if the consequences resulting from the claim are not foreseeable or cannot be measured at the time the contractors notifies the owner, the claim in this case has a continuous effect.

Beyond maintaining good records of daily activities and of the project in general, the contractor must be both proactive and reactive in developing claim documentation. With respect to proactive documentation, the contractor should take immediate steps to create a record of potential claims as they arise. Where the contractor determines that it will be subject to unforeseen expense, delay, acceleration or disruption due to the fault of another, such concerns should be placed in writing and provided to all proper parties. If feasible, the contractor should also photograph and/or videotape problems on site, identify potential witnesses, and summarize the activities of other trades affecting its work. Strong documentation is one of the best defences for or against construction defect claims/expenses. It can support that contractors built a structure right in the first place, or sufficiently corrected an issue, a contractor’s cost control in the field should be recording costs charged to the various activities and particularly identify those events and costs which result from impact of the problem areas.

v. Presentation Stage
Once all the claim documentation has been prepared, the contractors can submit and present the claim for damages to the client. The objective of this stage is to formulate the demand for payment of damages from the responsible party.

A claim presentation should be logically built up, well organized, and factually convincing. Thus, a claim should be written in a format that emphasizes the fact that a contract requirement was breached. A
The contractor must then demonstrate the resulting harm was caused by the owner’s acts. A claim presentation is best separated into two, the entitlement and the quantum. The former section should have the legal and factual basis while the latter should provide the estimated recovery of the claim. To determine the contractor’s entitlement to construction labour productivity loss claims, a detailed assessment of contemporaneous man-hours and installed quantities, the timing of changes and impacting events, and an allocation of responsibility for the various causes of delay and disruption is often necessary. The quantum/damages calculations must also include manpower, quantity, and cost variance analyses, where the contractor’s responsibility for bid error and performance problems is determined in addition to the owner’s responsibility for compensable problems. Often, the claimed amounts are found to be overstated by the contractors.

The contractor is then to submit the final amount of time and/or money claimed within a period specified in the contract from the end of the effects resulting from the occurrence of the cause for the claim. The claim should be presented in a clear and a logical manner, preferably including an introduction providing details of the parties involved in the claim and all relevant dates and information such as summary of claim, underlying facts, entitlement analysis, quantum calculation analysis, factual support for claim and any other relevant information. A review of project records and documents, as well as the definition of scope outlined in the contract, is necessary to establish the facts surrounding the claim and to develop strategy for preparation as well as resolution. In claim submission, contractors usually fail to attach the relevant document to support their claim. The claim should be presented in a clear and a logical manner, preferably including:

- An introduction providing details of the parties involved in the claim and all relevant dates and information.
- A description of the claim events as they occurred and the effects they had.
- An analysis of the facts showing the grounds upon which the claim was based with reference to the relevant provisions and clauses of the contract.
- A description and reference to the steps already taken by the Contractor such as notices given.
- A calculation of the cost impact based on a breakdown of actual direct and indirect costs incurred.
- A determination of the claimed extension of time based on an analysis of critical and non-critical delays.

It is very important for the contractors to have an experience person in presenting the claim to the client. Site staff must be aware of the claim process. They should know how to present the claim and defend it. Presentation skills are critical to the speedy and efficient resolution of construction disputes. Contractors should attempt to put forward individuals to present contracts and claims who are diplomatic, show some degree of flexibility and also some facility for the English language.

vi. **Negotiation Stage**

Negotiation involves the two parties who agree to communicate with each other and make decisions. The claim negotiation plays an important role in resolving claims, preventing disputes, and keeping a harmonious relationship among project participants. A structured and proper negotiation preparation includes ascertaining that all information is current and complete, minimizing the scope of negotiation earlier so that insignificant points should not precipitate a violent argument and disrupt progress, knowing one’s weaknesses and trying to utilize weak points by conceding them in return from the other party, foreseeing problems and anticipating the opposition’s next move. To benefit from this stage, a construction contractor needs experts that have skills for negotiation.

When confronted with construction claims, negotiation is always the preferred method for owners and contractors. The growing scale and complexity of the building process increase the number of construction claims. Therefore, negotiation plays an important role in resolving claims, preventing disputes, and keeping an amicable relationship between owners and contractors. However, not every negotiation can achieve the expected outcome. Certainly, almost all negotiations provide participants with opportunities either to take risks or to behave conservatively. Risks refer to the positive or negative influence of individual. During construction claim negotiations, negotiators adopt different negotiating behaviours, which may have favourable or unfavourable negotiation outcomes.

At this point, the owner has to check and decide who is responsible in part for the occurrence of the cause for the claim. The owner is usually bound by the actions of the engineer on site. That is why the engineer has to make sure that any action he takes is consistent with the terms of the contract. If any of the engineer’s actions prove to be inconsistent with the contract terms, the contractor may become entitled to the appropriate compensation, which will then have to be paid by the owner. The engineer sometimes is reluctant to admit mistakes such as defects in the design or not having accounted for existing conditions. As a solution to such situations, he might issue site instructions or indicate remarks on the contractor’s submittals in an attempt to correct or complete the design. The owner however has to decide if the engineer was responsible. Eventually, it is the owner who will pay any extra amount, and it is the owner’s project that may be delayed if the claim
involves a request for a time extension. The party responsible for settling the claim and giving the final decision should be clearly specified in the contract. Negotiation plays an important role in the final stage of claim process, preventing disputes, and keeping a harmonious relationship between project participants. However, claims negotiations are commonly inefficient due to the diversity of intellectual background, many variables involved, complex interactions, and inadequate negotiation knowledge of project participants. Good claims negotiation can reduce tremendous time and effort of human resources.

CONCLUSION

This paper is meant to gather detailed information on construction claim related to the contractors. To ensure the replies come from reliable sources and viable information were collected, only experienced respondents were selected, namely those with 10 years experience and more. The in-depth interview questions were drafted with the purpose of getting detail information on various aspects relevant to the research. The data gathered exposes the understanding of respondents over construction claim related to the contractors. Understanding of construction claim process will lead to a less problematic claim process. Apart from this, the interview replies show the respondents’ level of knowledge on various issues of construction claims. In addition to this, certain aspect related to construction claims was also identified. The findings highlight on the need for a good documentation and record keeping system with a competent site staff that can recognize a claim during project execution. Keeping appropriate project information is an essential part of project monitoring and reporting. It also appears that a standard and transparent procedure should be put in place whereby contractors would be able to follow to properly prepare the claim. In addition, the staff awareness, training in how to document and submit a well-supported claim, and negotiations with clients are becoming a necessity.

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