

CLAIM E SOLUTIONS

*reclaim your peace of mind
lost in the battle for claims..*



The obligations of a construction contract, though seem relatively simple as one reads them, it is a challenge to manage those as the obligations and the circumstances in which those are to be performed keep changing.

While managing the obligations in construction contracts, it is essential to balance cost, prevent loss of profit and remain compliant without missing on a single opportunity to earn the due revenue from contracts while working in a complex business environment.



Construction contracts are mostly drafted by the employers and accepted by the construction contractors “as given” with no room whatsoever for any negotiation. In these “take it or leave it” one-sided contracts the risk is heavily inclined towards the contractors with almost no room to bargain with the employers most of whom enjoy the power of sovereignty being government entities.

These one-sided contracts, when mismanaged by not investing appropriate skill and resource to manage them believing that contract management is “anybody’s business”, become a perfect recipe for disaster and this is one of the prime reasons why many construction companies could not survive for many generations and had to perish despite being profitable entities once upon a time.

“Contract Management is therefore the need of the hour”.

Do you..

have an organized contract repository with adequate visibility

have standard transaction protocol

monitor contract compliance

have mechanism to track delays and changes

have experienced contract specialists to manage contracts

have legal experts to prepare and raise/defend claims

have in-house experience in dealing with arbitration and litigation

Post contract award, project management and project execution often take all the attention and consume most of the resources with the result that contract management takes a back seat and given far less the importance than it actually calls for. By not paying enough attention to contract management, a contractor progressively loses its relative bargaining power in front of its employer to realize its legitimate claims on variations and time delays as the events that trigger the potential claims are either not measured/documented or not reacted to in time. Consequently, a contractor often deprives itself of significant additional revenue that it could make and sometime even has to face loss of profit - all due to not having paid adequate attention to contract management that it deserves.

An efficient **Contract Management** function assists in managing obligations of the contracting parties in an effective manner by improving the visibility of the obligations and recording and notifying deviation and breach of such obligations through appropriate contractual routes.

Our Contract specialists will

- ❑ review your contract document and prepare contractual “Dos and “Don’ts” to be followed by you during your contract execution;
- ❑ identify all claim events arising out of
 - scope and quantity change
 - site conditions differing materially from contract data
 - employer’s delay in - site hand-over, drawing approval, payment
 - interruption of work by the employer
 - suspension of work by the employer
 - disruption of work due to force majeure occurrences
 - termination of contract;
- ❑ identify any inexcusable delay on your part requiring your attention and action;
- ❑ vet all your critical claim related communications addressed to your employer;
- ❑ vet your letters of defense to contest any counter-claim by your employer

Substantial amount of funds are invested in infrastructure development projects and it is crucial that the value for money is earned in due time with successful completion of these projects within their pre-determined time frames and without cost over-runs. One of the top reasons for inefficient project delivery is - ignoring the importance of **project program monitoring and evaluation**. Unfortunately, this aspect, although known to many contractors, tend to be given little priority. Consequently, they are done simply for the sake of fulfilling the requirements of the funding agencies, without the intention of using them as a mechanism of ensuring the success of the projects. Monitoring and evaluation, although often considered same, they are actually distinct functions.

Monitoring is a process by which a project's physical progress and resource consumption are tracked on routine basis to establish any divergence to the project base-line schedule and resource allocation.

Evaluation is the process of analyzing information received through monitoring to predict the project trend in terms of any significant departure from project expectations.

Program management is continuous and objective assessment of a project status. It provides real-time update of the project progress with diagnosis of likely slippages/bottlenecks to facilitate timely decisions.

Our experts at Program management team will

- ❑ maintain and update records of site work progress obtained from you;
- ❑ review and monitor Project Program Implementation Schedule;
- ❑ prepare and submit Monthly Program Report on work progress along with comparative analysis between plan and actual progress and recommendation for recovery;
- ❑ participation in Project Meetings and Discussion, as required;
- ❑ analyze and quantify delays;
- ❑ conduct visits at project sites, do site survey and collect field data - if required

While bidding for any construction project, a contractor makes certain assumptions. They assume that:

- ✓ The scope of work has been appropriately defined
- ✓ The contract specifications, designs and drawings have been drafted correctly
- ✓ The owner has fulfilled any conditions necessary for the contractor to begin work
- ✓ The sites conditions as represented by the owner are true
- ✓ The schedule provided is complete and correct

In course of execution of the contract, the employer deviates from the promises & the representations made by them in the contract, and also otherwise fails to provide the contractually stipulated assistance, as and when required and this is primarily occasioned due to divergence in the interpretation of the contract as aforesaid. This situation act as catalysts for a contractor to raise claims against the employers.

Prima facie a contractor may make a claim against the employer for more time and money (loss and expense) and for the cost of changes to the works (as variations or as a quantum meruit). Types of contractor claims are broadly categorised as: Delay Claim, Disruption Claim, Acceleration Claim, Change of Scope Claim, Payment Claim, Prolongation Claim, Termination Claim.

We have diverse experience and capabilities that allow us to address each client's specific issues from the perspective of the unique demands of construction claim management. Our claim handling expert team will

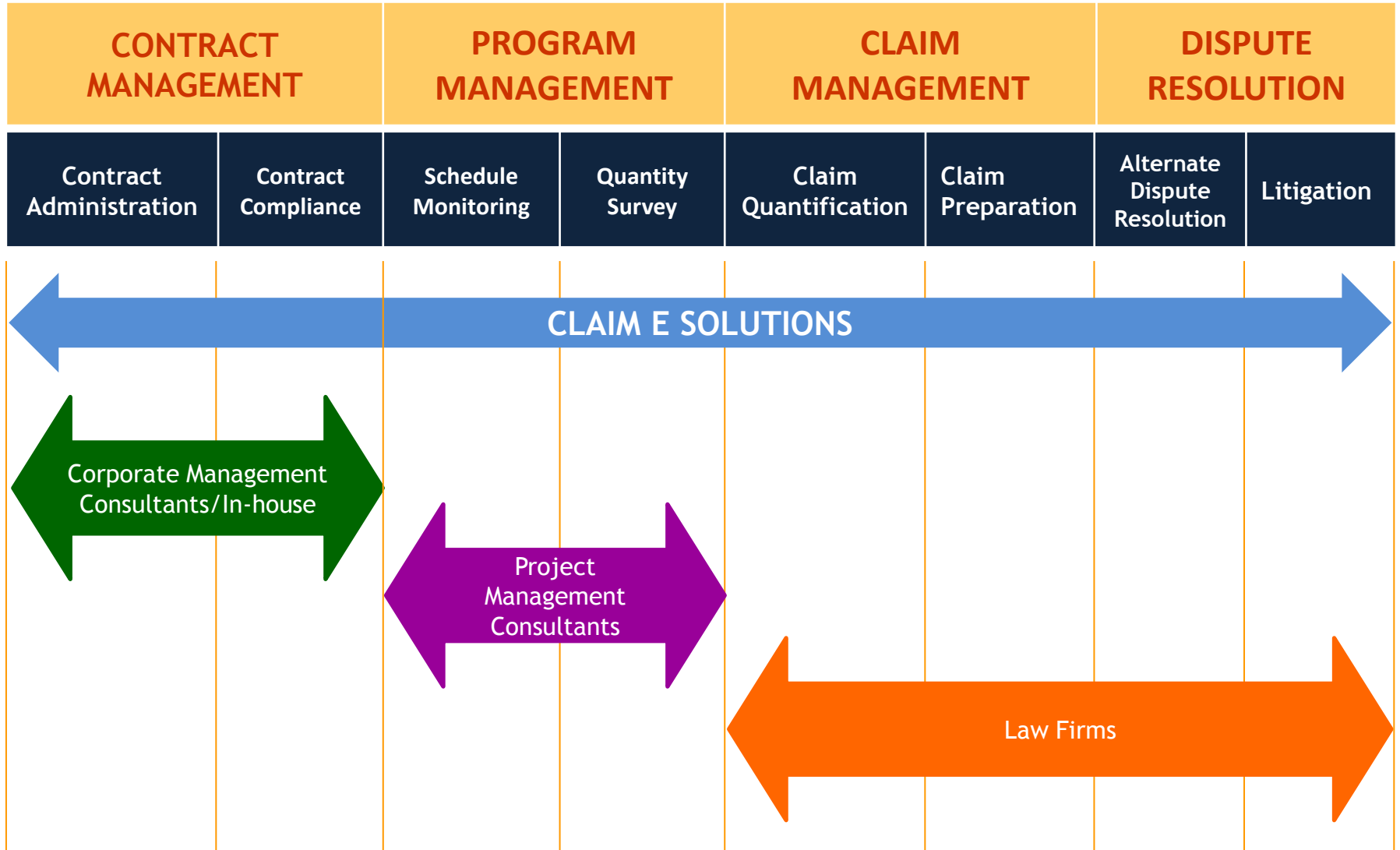
- ❑ identify the key defaults / delay of the employer and key disputes between you and your employer, arising out of and in connection with the construction contract;
- ❑ provide discovery assistance - identification of critical communications in the contract repository that would work as substantive evidence;
- ❑ provide quantification assistance and validation of claims arising out of
 - Differing site conditions
 - Construction change
 - Loss of productivity
 - Schedule delay
 - acceleration
 - Suspension and termination
 - Force Majeure
 - Others;
- ❑ identify the claim head and assist you to identify demonstrative evidences to raise the claims through critical communication analysis - exhibit preparation for claim support;
- ❑ assist in preparation of Claims

Infrastructure projects in India are plagued with schedule delays and some of the frequent causes for these delays are change of project's scope, delay in handing over of construction site, material difference between the actual data and information provided at the time of signing of contracts on physical aspects of the project - the foundations and soil characteristics, delay in payment by the employers and force majeure occurrences. Cost overrun on the contractors is an obvious consequence of the delay and contractors' claims for additional compensation are mostly declined by the employers that lead to dispute between the contracting parties.

Project contracts have the provisions to identify causations of change and delay and also provide for mechanisms to deal with such changes and delays. However, when the time actually comes to ascertain the causes, determine the responsible party/parties and deal with the consequences of the change and move forward, the contracting parties often find the contractual mechanisms inadequate and/or ineffective due to attempts by the parties to proclaim innocence. Resultantly, the contracting parties fail to resolve the issues between them as per the provisions of contract, and get into dispute mode and seek resolution through arbitration.

Our dispute handling expert team will

- ❑ analyse claim letters;
- ❑ identify potential claims not raised and advise on further claims (if first approach by client is at arbitration stage);
- ❑ advise client to initiate mediation, conciliation, DAB - if applicable;
- ❑ advise and assist client to invoke arbitration if mediation, conciliation fails;
- ❑ assist in Arbitration and/or court proceedings
 - advise client to invoke arbitration by contractual and/or statutory provisions
 - assist client in obtaining interim protection orders;
 - assist client in conducting arbitration proceedings;
 - assist client in enforcing awards;
 - assist client to challenge award, if needed



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*Thank
you*

