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The Long and Winding Road

A Guide to the Article 8 Process Under New Delivery Methods
October 17, 2012

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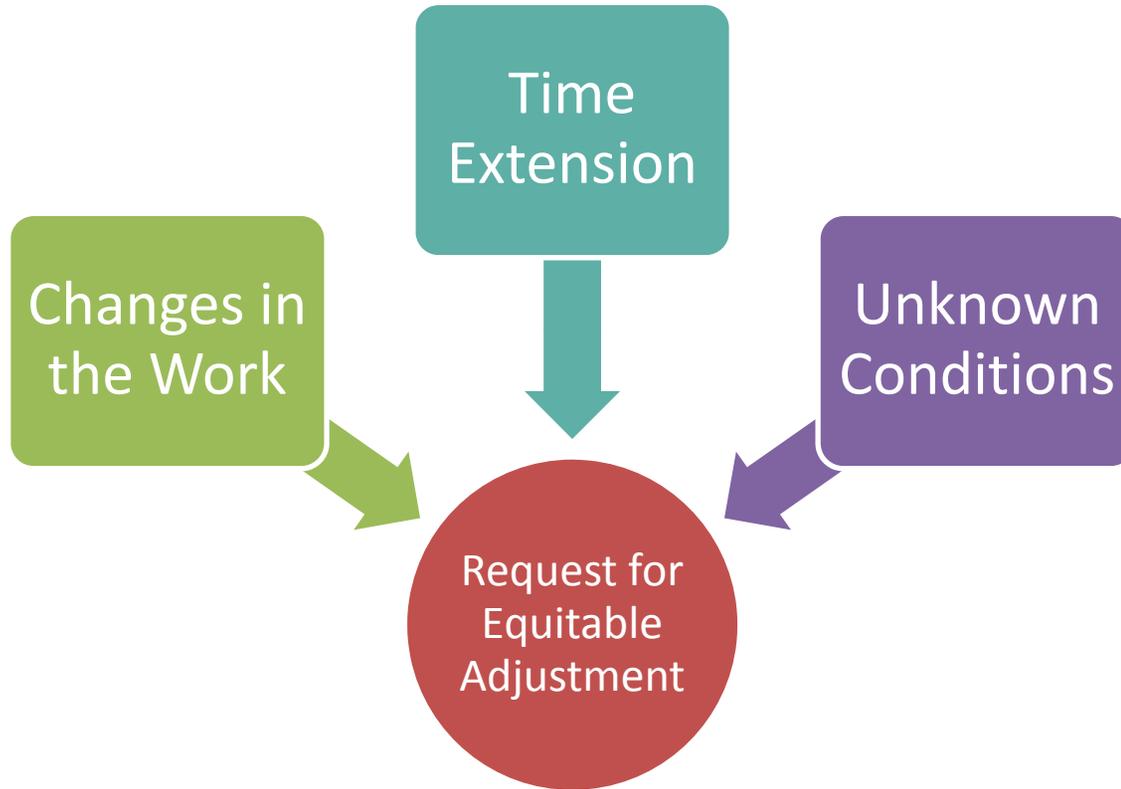
A Guide to the Article 8 Process Under New Delivery Methods

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Roads to Article 8



Every Dispute Should be Resolved...

...Using General Conditions as the Road Map

Article 8 is the starting point for resolving all disputes:

- Do not ignore other provisions of the general conditions.
- Need to require the claiming party to strictly adhere to the provisions of Article 8.

Every Dispute Should be Resolved... (cont'd)

- In turn, the owner also needs to strictly adhere to all provisions of Article 8.
- The ultimate goal of any Article 8 process is to resolve the dispute.
- Recent cases have upheld the contractual requirements of Article 8.

Breaking Down the Article 8 Process

The Article 8 Process

1. Initiation
2. Substantiation
3. Certification
4. Review and Analysis of the Claim

Breaking Down the Article 8 Process (cont'd)

5. Claim Decision and Claim Decision Review
6. Alternative Dispute Resolution
7. Claim Audit

Article 8.1 – Initiation of Claim

8.1.1 - Every Claim shall accrue upon the date of occurrence of the event giving rise to the Claim.

- Every Claim must be in writing
- Every Claim must be submitted within ten (10) days of the date of Occurrence.

Article 8.1 – Initiation of Claim (cont'd)

8.1.1 - Every Claim shall accrue

- Every Claim must include the following:
 - The nature and the anticipated amount of the impact
 - Identification of circumstances responsible
 - Identification of affected activities on the construction schedule
 - Anticipated impacts and delays

Article 8.2 – Substantiation of Claim

- 30 days after initiation of a Claim
- Four (4) copies of all information required to substantiate
- Minimum information:
 - A narrative of the circumstances
 - Detailed identification of the work
 - Copies of the contractor's daily log
 - Copies of relevant correspondence and other relevant information
 - A copy of recent financial information
 - Certification

Article 8.2 – Substantiation of Claim (cont'd)

- Failure to comply with 8.2 constitutes an irrevocable waiver
- Separate requirements for time extension versus adjustment of contract sum

Article 8.5 – Certification of the Claim

The contractor shall certify the claim 30 days after initiating the Claim or before Contract Completion, whichever is earlier.

- Requirement that they use language provided in the contract
- Date that the Contracting Authority receives Claim triggers the 120 day exhaustion period
- Failure to certify constitutes a waiver
- Receipt of certified claim triggers Owner responsibilities

Article 8.8 – Review of the Claim

The A/E shall review the claim and prepare a written analysis.

- For the General Contracting and Construction Manager at Risk
- Project Manager performs this function for Design Build projects
 - A narrative of the facts giving rise to the claim
 - Identification of relevant contract documents and language

Article 8.8 – Review of the Claim (cont'd)

- Project Manager performs this function
 - An analysis of contract compliance
 - An analysis of claimed labor
 - An analysis of any time extension
 - A concluding opinion
 - An appendix
 - The Project Manager on a Design Build project may hire someone to perform this analysis.

Article 8.9 – Claims Decision

Requires the Project Manager to examine the Certified Claim in conjunction with the A/E's analysis.

- Requires Action within 14 days of receipt
- Project Manager may employ additional resources
- If contractor and owner agree with Project Manager's decision then a Change Order will be issued
- Contractor may request review of the Project Manager's decision

Article 8.9 – Claims Decision (cont'd)

Requires the Project Manager

- A meeting shall be conducted with 30 days
- This decision is the final administrative decision of the contracting authority
- Litigation or alternative dispute resolution
- Mediation, negotiation, or other ADR process accepted by the parties

Article 8.12 – Audit of the Claim

- All Claims are subject to an audit
- Can be performed by an employee or consultant
- 10 days written notice
- Mandates cooperation by the contractor
- Failure to cooperate with Audit constitutes a waiver of claim

Article 8.12 – Audit of the Claim (cont'd)

- Non-exhaustive laundry list provided
- “Second” 10-day notice
- Includes all bid documents

Comparing the Documents

Both versions Multiple Prime and General Contracting Article 8 provisions are identical.

The Article 8 provisions for the CM at Risk contract are identical as well except that the term construction manager is substituted for contractor.

Comparing the Documents (cont'd)

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Challenges Moving Forward

1. Managing the Article 8 process
2. Making sure that the correct version of Article 8 is being applied
3. Obtaining the documents necessary to do the contractually required analysis

Challenges Moving Forward (cont'd)

4. Writing the claim response in accordance with the Contractual documents
5. Complying with the times outlined in Article 8
6. Preparing an analysis without receiving all documents required for substantiation

Avoiding Article 8

- Article 8 is a necessary evil
- Compare a previous version with the current version
- The process has evolved
- Contractors are engaging attorneys earlier in the process

Avoiding Article 8 (cont'd)

- Encourage field level meetings to be between project people
- Resolve the dispute
- Passing on the responsibility can and will result in additional costs

Conclusions:

1. It's okay to say "No"
2. It's okay to analyze the merits of the claim even if there are notice deficiencies
3. The merits of the claim can be determined without every document
4. Follow the process set forth in your document

Conclusions (cont'd)

5. Timely responses only aide the process, don't string it along
6. You cannot make everyone happy

“I need an equitable adjustment”

“I don't understand what you need”

“I gave you everything, and you still said no”

Questions?

Questions after the Webinar?

Contact presenters directly:

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