

Major contributors to claims include lack of alignment (owner-contractor; owner's team; contractor's team); failure of owners to meet their obligations; unforeseen site conditions; inadequate change control; and poor contractor performance.

The shortlisting process, when properly applied, provides the client with an effective means of reducing exposure to or avoiding claims. It also assures capable, competent, and resourced contractors to perform the work.

Recordkeeping is critical. Early resolution of potential claims and avoidance of formal disputes rest heavily on the quality of records prepared contemporaneously during the project.

Management of change processes must be communicated clearly to project teams.¹

Avoidance measures common to all phases include:

- Owner behaviors one voice; timely

- Knowledge of the contract

- Recordkeeping

A construction claim is a legitimate request for compensation or extension of time outside the

Incomplete project scope^v and OPR; wants exceed needs and lack clarity and contractual intent.

Poorly written contracts:

- o incomplete contract
- o improper precedence of documents
- o contract scope inconsistent with information provided to or available to bidders

Inadequate shortlisting process, which allows bidders less than qualified for the project at hand and in the designated timeframe to participate.

General bidding climate drives overly aggressive bids, increasing the pressure on contractors to claim.

Shortlisted contractors subject to profit pressures from other project portfolio performance issues.

Inadequate tender phase due diligence.

Incomplete responses to contractor questions during tender process, resulting in increased risk to contractor.

Inadequate documentation and recordkeeping during the pre-contract phase.

Also contributing to construction claims are:

Lack of timely contract execution and notice to proceed:

- o May lead to delay claims before project ever commences.
- o Indicative of future delays in executing agreed-to changes.

Execution of an incomplete contract.

Inadequate attention in contract development to typical sources of claims as outlined in the next section.

No listing of potential sources of construction claims will ever be complete, but some recurring reasons include:

Incomplete or inadequate bid information

Incomplete or poor quality drawings and/or specifications

- o incomplete basis of design (BOD)
- o conflicting requirements
- o high level of Requests for Information (RFIs)
- o work different than called for in drawings and specifications

Changes to scope, including increases, decreases, and modifications

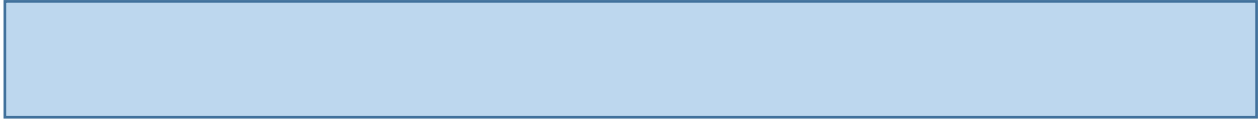
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Defective or late owner-furnished equipment and materials^{vi}
Project acceleration to regain schedule

Emphasis in this Executive Insight on the importance of the pre-tender phase has been highlighted, including the importance of:

Clarity and communication of strategic business objectives (SBOs)

Establish bidder pre-qualification criteria to focus the bidders list on the most qualified firms.
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Clear, fair (not arbitrary or onerous), and timely payment provisions, with contractor rights and

Transparent and frequent reporting of quality inspection, productivity^{xiv xv} and work process, including measured quantities.

Tracking and timely response to RFIs.

Timely processing of agreed-to changes, leading to incorporation in contract documents.

Timely contractor description of extra work or extra time, whether compensable or not. A struggling contractor is a leading indicator of future claims.

Milestone and commitment tracking, with any delays by either owner or contractor noted. Any disagreement in such assessments should be reconciled contemporaneously.

Adequacy and completeness of required and/or agreed to recordkeeping. Table 1 shows typical records to be completed and issued in a timely manner.

	Daily progress records
	Daily time records
	Daily workforce reports
	Daily production logs
	Daily equipment reports
	Cost/labor reports
	Exception reports
	Job schedules
	Near miss and accident reports
	Inspection reports
	Photographs, videos (time stamped) (i.e., soils)
	Shop inspection reports
	Vendor quality surveys
	Drawing logs
	Drawings and

performance of the contract. Quick, transparent communication and timely resolution are essential. Failing to do so will result in claims that will only grow in severity. Remember “delay and denial” are not effective strategies.

The owner’s project team will benefit from an approved contract summary and clear guidance on responsibilities, levels of approval, and any approval or contract modification process. Any direction to the contract should only be provided in writing and the basis for direction documented and any basis for a contract change noted and communicated to the contractor to establish a shared record. Any required approvals on means and methods should not be unreasonably withheld or approval delayed. Directing the contractor to utilize alternate means and methods often undoes the inoculation put in place pre-contract.



When a claim arises, relevant records should be assembled for review and any equitable adjustment. Letters and memorandum to file written long after the change event are less valuable and convincing than contemporaneous documentation and communication. Owner-generated communication throughout the project must be drafted such as not to create an unintended change to the contract requirements or provide support to the contractor in any subsequent claim. Documents at one stage may take on increased importance later in the project.

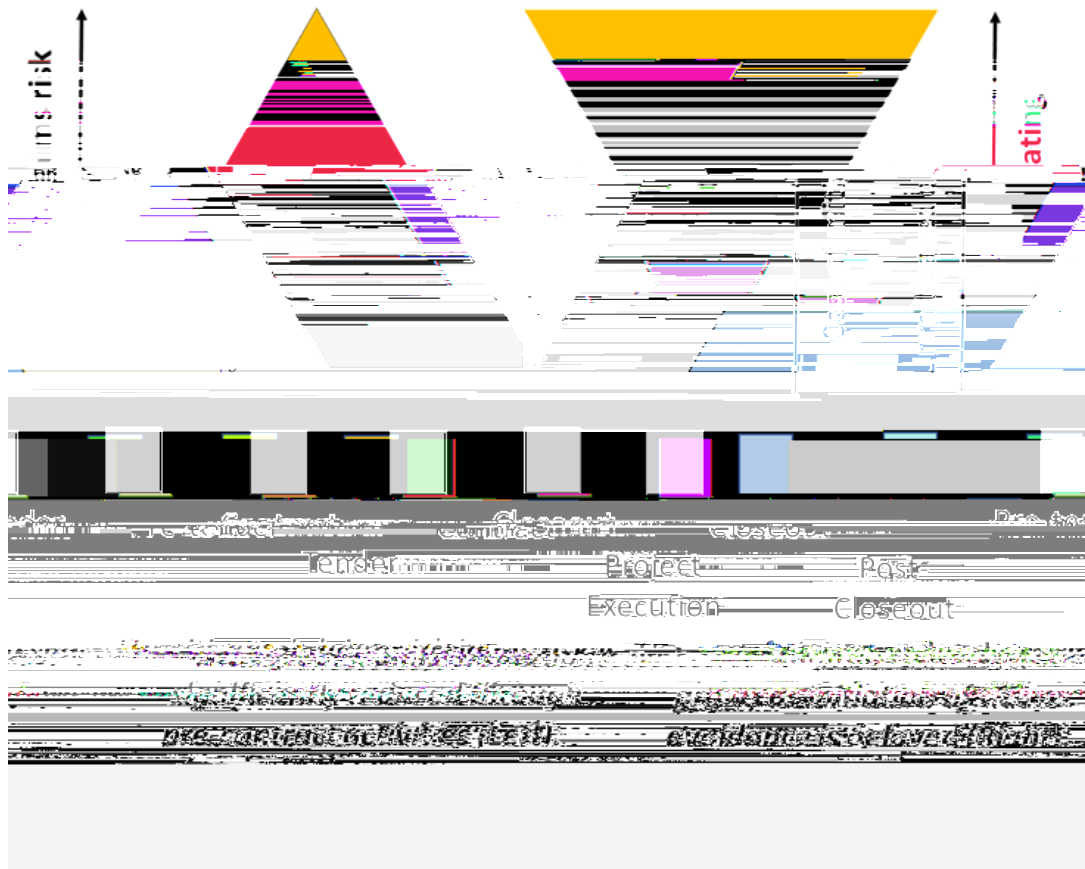
Project closeout is focused on confirming satisfactory completion of all works in accordance with the contract. Closeout processes should result in a contractor certifying the works (in whole or in part) are complete and the owner has accepted such works. Post-contract guarantees or warranties should commence in accordance with contract requirements.

Final turnover^{xvi} and acceptance of the work may be conditioned on resolution of outstanding claims and any already approved amounts for the completed work. Care must be taken to ensure any acceptance or lack of acceptance of certified works does not create unintended consequences, including creating a new basis for a claim.

Certification of payments by the owner should be a simple process, providing for prompt payment and eliminating a commonly disputed area.

Claims avoidance at this stage includes:

Inspecting and preparing a detailed punch list



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The following NAC Executive Insights were cited in this article:

