

# CLAIMS AVOIDANCE & DOCUMENTATION

## FDOT ENGINEERING TECHNICIANS TRAINING

### OCTOBER 2011



*What do you mean, there were no bridges in the contract?*



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# Claim Avoidance and Documentation

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## Agenda

1. What is a Claim
2. Three Main Claim Areas
3. Claim Avoidance Strategies
4. Claim Notice Requirements
5. Documentation
6. References



# Introduction

## Claim Avoidance and Documentation

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What is a Claim ????????

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## What is a Claim??????

A request by a Contractor for Additional Compensation that the Inspection Staff Disagrees with.



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What are some Examples of  
Claims ??????



# Introduction

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What are some Examples of  
Claims ??????

Common Examples-Design Error,  
Differing Site Conditions, Utility  
Delay

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Whose fault is a Claim????

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Whose fault is a Claim????

Almost all the time it is not the  
Inspector, so above all—

**DO NOT TAKE IT PERSONALLY**

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### Do Not Take It Personally...Why?

- ◆ You did not Design the Project
- ◆ You did not cause the Site Conditions
- ◆ You did not place the Existing Utilities



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Claim Trends – Most are Good Contractors

- ◆ Competitive Bid Process
- ◆ Sound Capabilities
- ◆ Mind Set of building Quality
- ◆ Complete the Project Timely



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### Claim Trends – A few Contractors

- ◆ Focus on Claims for Profit
- ◆ Quality and Timeliness Distant 2<sup>nd</sup>
- ◆ Bid Low Claim High
- ◆ Set up Claims at Pre-Bid
- ◆ Failure of Contractor to Mitigate
- ◆ Generate Conflict, Make it Personal



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What are the Three Major Claim Areas???



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What are the Three Major Claim Areas??

- ◆ Utility Conflicts
- ◆ Differing Site Conditions
- ◆ Design Errors or Omissions

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## UTILITY CONFLICTS

1. Unforeseen Utility within Right of Way
2. Utility not at the location Depicted in Plans
3. Any other examples?????



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## DIFFERING SITE CONDITIONS

1. Cap Rock Encountered where Soil Depicted
2. Existing Pond Elevations not as depicted within the plans
3. Existing Pile in Conflict with New Pile
4. Any other examples?????



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## DESIGN ERRORS OR OMISSIONS

1. Missing pay items
2. Incorrect pay item for work depicted within the plans
3. Elevation Conflicts between existing conditions and work proposed
4. Any other examples?????



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## CLAIM AVOIDANCE STRATEGIES

1. Know the Contract
2. Be Prepared to Inspect Every Pay Item
3. Daily Records of Construction are Critical



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## CLAIM AVOIDANCE STRATEGIES

### Know the Contract

- ◆ Study the Plans
- ◆ Maintain Complete Set of Project Specifications to include: Contract, Special Provisions, Supplemental Specifications, Technical Specifications, etc.  
(Know Standard Specification 5-2)
- ◆ Review the Computation Book Quantities and compare against Plans



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## CLAIM AVOIDANCE STRATEGIES

### Be Prepared to Inspect Every Pay Item

- ◆ Have your Contract Documents with you at all times and review them prior to performing Inspections
- ◆ Maintain a copy of the QC Guide List for Contractor and Verification Requirements
- ◆ Know the Basis of Payment of every Pay Item so that you record measurements to the proper degree of accuracy

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## CLAIM AVOIDANCE STRATEGIES

The Daily Record of Construction is Critical

- ◆ Keep detailed daily records for all activities
- ◆ Keep accurate list of Manpower and Equipment
  - ◆ Is equipment active or inactive
  - ◆ Keep list of equipment entering and leaving project
- ◆ Use Proper Source Documents for Recording Measurements
- ◆ If you Encounter Problems, Take Photographs or Video of the Operation



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Contractor Tells the Inspector,

“We Intend to File a Claim”

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What Does this mean ??

How Does this Change your Job??

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What Does this mean ??

The Contractor believes they have encountered a “Changed Condition” to the Contract that will require extra work or time and added costs by the Contractor that they believe were not included within the Original Contract.



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### How Does this Change your Job??

Once the Contractor notifies the Inspection staff that they intend to file a claim, the Inspector should notify the Project Administrator and the Inspection Staff should Immediately double their efforts at documenting exactly “Who, What When, Why, Where and How” the potential change occurred.



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### NOTICE OF CLAIM

- ◆ The Contractor Must Provide Written Notice to the Department of their Intent to File a Claim
- ◆ So that FDOT has the opportunity to keep strict record of ACTUAL LABOR, MATERIAL, EQUIPMENT and TIME



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## NOTICE OF CLAIM

- ◆ **5-12.2 Notice of Claim:**
- ◆ **5-12.2.1 Claims For Extra Work:** Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension.



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### Mandatory Claim Records

- ◆ The Contractor must Provide their records to the FDOT...
- ◆ The Inspector's Daily Work Reports must in turn be provided to the Contractor...
- ◆ What the Inspector Includes in their Documentation will be used to Evaluate, Validate or Invalidate the Contractor's Claim...



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## Inspector Claim Records (Daily Work Reports)

### Labor Related

- ◆ Crew Size...Number...Location
- ◆ Hours of Work...Start...Stop
- ◆ Time Event Encountered...Event Completed
- ◆ The Daily Work Reports will be compared to the Contractor's Time Sheets and Payroll
- ◆ **Why?? To Evaluate, Validate or Invalidate**



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Inspector Claim Records (Daily Work Reports)

## Equipment Related

- ◆ Number and Type of Equipment (ID #)...
- ◆ Idle or Active and Location...
- ◆ Hours of Utilization...Start...Stop...
- ◆ The Daily Work Reports will be compared to the Contractor's Equipment Logs...
- ◆ **Why?? To Evaluate, Validate or Invalidate**



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Inspector Claim Records (Daily Work Reports)

### Material Related

- ◆ Materials Delivered/Removed...Location...
- ◆ General Description of Material...
- ◆ The Daily Work Reports will be compared to the Contractor's Invoices...
- ◆ **Why?? To Evaluate, Validate or Invalidate**



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## Claim Specification References and CPAM

- ◆ 5-4—Errors or Omissions to Contract Documents
- ◆ 5-12—Claims By Contractor
- ◆ CPAM—Section 7.5 Construction Contract Claims
- ◆ CPAM— Section 5.1 Project Diary



# Claim Avoidance and Documentation

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In Summary we discussed

1. What's a Claim
2. Three Main Claim Areas
3. Claim Avoidance Strategies
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Questions???

Comments???