



# CONSTRUCTION CLAIMS PREMIUM E-COURSE

Presented by

**Andy Hewitt**

FICCP, FCIQB, FCICES, FQSI



## **MODULE 6**

### **Responses and Determinations**

# Module Content

- In this module you will be looking at claims from the Engineer's perspective
- Every claims requires a response, which could be:
  - Acceptance in full
  - Acceptance, but with a reduced amount
  - Rejection

# Module Content

- You are required to look at different scenarios:
  - A reasonably presented claim for which you consider that an award should be made but reduced in quantum
  - A reasonably presented claim that you have been instructed to find ways to reject
  - A poorly presented claim for which you are required to produce a fair and reasonable assessment
  - A poorly presented claim which you have decided to deal with on a strictly contractual basis

# Things to Remember

- A response is written for the benefit of both the Contractor and the Employer
- A response needs to deal with cause, effect and entitlement and should be properly substantiated, even if the claim does not comply with these principles
- The object of an Engineer's response or determination is to convince both the Employer and the Contractor that the response is fair, in accordance with the Contract and if either the Employer or the Contractor raised a dispute, it will ultimately fail

# Presentation of the Response

A response document should adopt the same principles of presentation that have already been discussed in the modules dealing with claim presentation. In summary, it should:

- Comprise a stand-alone document
- Be user friendly
- Assume that the reader has no prior knowledge of the project or the circumstances of the claim
- Should not contain any irrelevant information
- Should lead to a logical conclusion in a step-by-step manner

# Presentation of the Response

- Sometime this will mean that you have to compose the response from first principles, rather than responding to the claim in the same order as it is presented
- Remember to pay attention to the 4 Key Points of narrative writing:
  - 1** Make the reviewer's job as easy and as pleasant as possible
  - 2** Ensure that the submission is a stand-alone document
  - 3** Assume that the reviewer has no prior knowledge of the project
  - 4** Do not include irrelevant information or content within the claim submission

# M6.1 Telstra Hotel and Serviced Apartments

## Claim for an Extension of Time Arising from the Leak to the Diaphragm Wall

- This is a reasonably presented claim
- You consider that the Contractor has over-claimed the extension of time, so you must calculate this for the award and convince the Contractor of your reasons
- The Contractor has not established why the additional work was a variation and the Employer has indicated that he considers that the responsibility for the leakage is the Contractor's. Therefore the response needs to convince the Employer that the Contractor is entitled to an award in the first instance
- The Contractor has not dealt with notices, which could be a valid reason for rejection of the claim. Investigate the matter and include your findings within the response



# M6.2 Northern Ring Road, Newtown

## Claim for Additional Payment for Dewatering, Interchange No. 3

- This is a reasonably presented claim that you have been instructed to attempt to reject
- You need to examine the contractual situation put forward by the Contractor and provide convincing arguments for rejection
- It is also suggested that you examine other contractual requirements to support your case
- The Contractor's entitlement is not clear-cut and this means that senior executives or a dispute board may investigate the matter

# M6.3 Telstra Hotel and Serviced Apartments

## Claim for an Extension of Time and Additional Payment Due to the Suspension of Work During the Political Conference

- This is a poorly presented claim
- The situation on the project is that you need to produce a fair and reasonable assessment of the matter
- Because the claim is poorly presented, it will be necessary to start from first principles in order to set out a fair award or rejection and clearly state your reasons for your assessment

# M6.4 Telstra Hotel and Serviced Apartments

## Claim for an Extension of Time and Additional Payment Due to the Suspension of Work During the Political Conference

- This is a poorly presented claim
- The Contractor is known for submitting poor quality and spurious claims
- You have already decided on a strategy to manage the Contractor's claims (see Module 3) and you have previously established your requirements for claim submissions with the Contractor
- Produce a response that complies with the Engineer's obligations under the Contract, but rejects the Contractor's claim

# Finally...

If you have any doubts or require any advice...

# Contact your tutor!

