

# CLAIMS MANAGEMENT & ALTERNATIVE DISPUTE RESOLUTION (ADR)

## INTRODUCTION

Claims and disputes can have a disruptive effect on any construction project. To diminish this effect, the purpose of this workshop is:

- ◆ To share with the participants the positive and practical steps that can be taken both at the outset and during the course of a contract to prevent and minimise the number of claims. These steps can do much to reduce the potential sources of disputes that can so easily have a damaging effect on the project and the progress of work. To share with the participants the methods and techniques for dealing with any claims that do arise – techniques directed at the early and sensible resolution of claims so they do not result in bitter disputes that are costly in time, effort, and money.

## PRESENTER

### Dr. Jamal F. AlBahar, PMP, AVS

**Registered Arbitrator Dubai, U.A.E. and Kuwait - Associate Value Specialist, SAVE, USA**

**Active Member: PMI, CMAA, AACE, AAA, PMA, SAVE, CSI, President, PROMIS- Project Management Engineering Systems**

Dr. Al Bahar, is a regional expert in project management applications and a well recognized consultant in construction contracts and claims analysis. Dr. AlBahar is a frequent regional and international speaker on subjects related to project management, construction contracts, tendering procedures, claims analysis/evaluation, arbitration, and value engineering. Dr. AlBahar has conducted over 500 public and in-house training courses in the last 20 years on subjects related to contracts, claims analysis and pricing, project management, value engineering, budgeting and cost estimating, and effective project administrative procedures. Dr. AlBahar is a registered arbitrator in Kuwait, Bahrain and the U.A.E.

## PROGRAM

### DAY ONE

- ◆ Introduction to Claims
- ◆ Types of Construction Claims
- ◆ Typical major Claims and Causes
- ◆ Recognizing and Documenting Claims in EPC Contracts
  - ◆ Cost analysis, Time analysis, Event analysis
  - ◆ Owner representative's actions or in-actions
  - ◆ Preserving contractor's claims rights
- ◆ The Principal Contract Clauses that Apply to the Presentation and Defence of Construction Claims In EPC Contracts

### DAY TWO

#### TYPICAL MAJOR CLAIMS UNDER CONTRACT CLAUSES

- ◆ Delays
  - ◆ Suspension of Work, Excusable and Inexcusable Delay
  - ◆ Inefficiency and Disruption, Calculation of Time
- ◆ Acceleration
  - ◆ Directed or Ordered Acceleration, Constructive
  - ◆ Elements and Defences, Avoiding the Claim
- ◆ Changes/Variations And Extra Work
  - ◆ Directed Variations
  - ◆ Defective Plans and Specifications
  - ◆ Impossibility of Performance, Owner Nondisclosure
- ◆ Adverse Physical Conditions
  - ◆ General Principles
  - ◆ Notice Requirements
  - ◆ Owner Furnished Information
  - ◆ Contractor Right to Delay, Recovery Rights

### DAY THREE

#### CLAIMS DEFENCE, ANALYSIS, AND NEGOTIATION

- ◆ Claims Defenses, Analyzing The Claim
- ◆ Contractual Entitlement For Claims
- ◆ Analyzing Delay & E.O.T. Entitlement
- ◆ Analyzing , Quantification & Pricing of Damages
- ◆ Claim Preparation, Submission And Presentation
- ◆ Counter-Claims By Owners

### DAY FOUR

- ◆ NEGOTIATING A SETTLEMENT
- ◆ ALTERNATIVE DISPUTE RESOLUTION (ADR)
  - ◆ Mediation or Conciliation
  - ◆ Arbitration – is it the solution?
  - ◆ Litigation – stay away from it!
  - ◆ Available Arbitration Forum – A Brief Overview:
- ◆ ARBITRATION PROCEDURES
  - ◆ INTRODUCTION
    - ◆ Definition and Terms
    - ◆ What is Arbitrable, Language and Law
    - ◆ Standard Arbitration Clause as per FIDIC Conditions of Contract
  - ◆ THE NATURE OF ARBITRATION
    - ◆ General principles
    - ◆ Multi-party arbitrations
    - ◆ Binding arbitration agreements
    - ◆ The jurisdiction of the arbitrator
  - ◆ ADVANTAGES AND DISADVANTAGES
    - ◆ Compared to Mediation & Litigation
    - ◆ Other Dispute Resolution
  - ◆ ARBITRATION RULES
  - ◆ SELECTION OF ARBITRATORS

### DAY FIVE

- ◆ THE POWER AND RESPONSIBILITIES OF THE ARBITRATOR
  - ◆ Relevant skill and experience, Impartiality
  - ◆ General powers and duties
  - ◆ Civil engineering professionals and the use of specialist knowledge
- ◆ AWARDS AND DECISIONS
  - ◆ Secrecy of Deliberations, Majority Vote Requirement
  - ◆ Dissents and Separate Opinions, Interim and Final Awards
  - ◆ Formalities, Reconsiderations
- ◆ APPEALS / ENFORCEMENT
  - ◆ Limited Role of Courts, Will Not reverse for mere error
- ◆ HOW TO WIN
  - ◆ Careful Advance Planning, Know the law before you start
  - ◆ Frame the issues properly, Prove the facts