



NAC Executive Insights

Prime Contract Management

Key Points

- Contract disputes are a regular and costly activity on large complex construction projects.
- Adding a Prime Contract Manager (PCM) to the contractor's project team reduces the contractor's exposure and may help mitigate disputes.
- The PCM supports the administration of the prime contract, with principal duties in the area of change management.
- The pivotal role the PCM can play in management of contract compliance often lends itself to some additional associated activities.
- From the owner's perspective, the PCM role can be valuable in getting issues and potential claims on the table in order to reach timely resolutions.

Introduction

Contract disputes seem to be a regular and costly activity on large complex construction projects. Typical disputes, such as differing site conditions and the impact of owner changes, involve a variety of factual issues. It is not unusual for the most contentious arguments, however, to focus on whether the contractor met the administrative requirements of the contract for its claim, such as filing a timely notice of the claim. In reality, many contractors fail to comply with these administrative requirements. This may occur because the contractor's project team does not fully understand what is contractually required for a given situation. Often it is because the contractor has a reluctance to confront the client or a belief that the team can resolve these items later as a group.

Faced with the challenges of administering what at times may be a burdensome prime contract, experience has shown that the addition of a Prime Contract Manager (PCM) to the project team will reduce the contractor's exposure, especially as it relates to timely notices. The addition of a PCM will reinforce rigorous management of the project and reduce its associated risks.

Roles and Responsibilities

The PCM supports project management in the administration of the prime contract, principally in the area of change management. Duties may broaden as required, particularly to address projects with specific or unusual contractual requirements. On projects of scale, consideration should be given to using the PCM position as a developmental position for a high potential

individual who could ultimately win promotion to a project line management position after 12 -24 months, such as a segment director on a large infrastructure project.

Change Management Roles

In undertaking its change management responsibilities, the PCM will prepare a prime contract summary for all members of the project team. It will clearly delineate scope and required notices. Variations between the final contract scope and any subsequent agreements with the client and the proposal as-bid scope are highlighted. Notice periods are summarized and clear articulation of the required form and content of notices is provided.

The PCM also identifies and tracks potential change orders and claims. This is a proactive activity. It necessitates daily interaction with each of the segment or area teams to assess any emerging change or claim issues. In this regard, the PCM provides an initial assessment with respect to such issues and ensures contemporaneous development of required supporting documentation. The PCM also ensures sufficient segregation of costs to support a formal claim and similarly ensures sufficient segregation of schedule impacts.

The PCM ensures all notice requirements in the prime contract and other related agreements, governing laws, or regulations are met. The PCM administers the "Project Notice" program such that all notices to the client have come through the PCM. They similarly ensure all permit, regulatory, or other such notices are comparably administered.

The PCM has the essential role of ensuring all change requests or claims have been thoroughly researched and documented. He/she assembles necessary documentation, including the rationale of the basis of a claim, with clear reference and conformance to the prime contract. The PCM may directly prepare documentation in coordination with project or segment teams to ensure timely, compelling, and complete submission.

In preparation of any potential claim, the PCM ensures coordination of all project elements involved or affected by the claim, including subcontractors and suppliers. Notices from engineering subcontractors on design-build projects warrant special attention to ensure the contractor has provided timely, appropriate notice.

The PCM ensures that changes fully account for cost, schedule, and disruption impacts, and coordinates and assists as required in cost and schedule analysis. He/she will develop any required follow-up submissions. Typically, the PCM handles all correspondence to ensure a consistent project-wide approach.

Having led the development of a comprehensive and timely change request, the PCM leads or significantly participates in any negotiation processes, ensuring that the contractual basis for the change is sustained and substantiated throughout the process. The PCM works closely with the legal team, obtaining its advice and ensuring future rights are preserved for dispute resolution. The PCM will play a major role in assisting the legal team during any dispute resolution processes.

The PCM communicates the status of change and claim activities to key project and corporate executives, including any joint venture partners. This communication includes both formal reports as well as periodic “event” reports. This includes timely identification of proposed actions that require corporate or joint venture executive committee approval.

Finally, the PCM expedites resolutions with the owner by preparing any close-out paperwork required for completion of changes or claim resolutions, and assists with any flow-down to subcontractors. The PCM will then coordinate any necessary revisions to:

- Scope of work
- Price
- Schedule
- Plans
- Payment schedule
- Drawdown curve
- Bonds or letters of credit
- Insurances
- Other contract terms or conditions
- Updates prime contract summary

Other Potential Roles

The pivotal role the PCM can play often lends itself to some additional associated activities. These include:

- Tracking and ensuring compliance of all project deliverables, including required plan submissions, ongoing submittals, approvals, updates, and revisions.
- Supporting subcontract management, including communicating flow-down requirements and negotiation of subcontract exceptions to these. The PCM may also support subcontractor changes that may not be associated with the owner.
- Managing substantial completion and final acceptance.
- Permit management and tracking (if there is no dedicated permits manager).
- Assisting in document retention policy, determination, and reviews.

About the Author

Bob Prieto was elected to the National Academy of Construction in 2011. He is a senior executive who is effective in shaping and executing business strategy and a recognized leader within the infrastructure, engineering, and construction industries.

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