

“Important Benefits of Attending This Program”

In this one-day program you will learn:

1. What constitutes a Differing Site Condition, including examples and tests.
2. How to protect your agency/company from losses due to Differing Site Conditions.
3. Understanding the risks of Differing Site Conditions for project owners, designers, contractors and subcontractors.
4. Contract clauses including “exculpatory” clauses which shift risk back and forth between the parties, and why all parties want a Differing Site Condition clause.
5. Use of Differing Site Condition clauses in Federal contracts and AIA documents.
6. Legal bases for Differing Site Conditions claims and defenses including CASE LAW examples.
7. What is the difference between a Type 1 and Type 2 Differing Site Condition claim and when does it matter?
8. How do owners evaluate differing site conditions? Includes a powerful, comprehensive 30-point checklist to be used both by owners and contractors.
9. How should contractors prepare, organize, format and present a Differing Site Condition claim?
10. What happens if the contractor “blew it” and failed to properly investigate the site prior to bidding?
11. Real life examples of Differing Site Conditions.
12. When is Spearin Doctrine a basis of recovery on Differing Site Conditions claims?
13. A bold approach to project owner’s management of Differing Site Conditions.
14. The risks of inadequate environmental site investigation and assessment.
15. When and why a contractor may request “bid escrow” under certain situations.
16. When to use an “estimated quantity clause” and “classified excavation clause” in public works contracts – and how they can cut both ways.
17. BEST PRACTICES – both in the field and in the office – for handling and mitigating a Differing Site Condition.
18. Use of daily reports and cost code reports in preparing, pricing and analyzing Differing Site Condition claims.
19. What are the potential direct and indirect damages in Differing Site Conditions claims? What documents are required to prepare and audit such claims?
20. What are the unique case law differences in SUBCONTRACTOR claims for Differing Site Conditions?
21. Why inefficiency claims are among the hardest to prove...and how to prove them.
22. Why “Measured Mile” is the gold standard in calculating quantum in loss of productivity claims.
23. What does research tell us about the effects of change orders on productivity?
24. Why it is not sufficient proof to use the Revay Formula (Leonard Study) in calculating loss of productivity quantum.
25. In inefficiency claims, what is the role of overtime, spot overtime, shift work, “point of no return”, weather, learning curve, trade stacking and out-of-sequence work?
26. What is the “BRT Bounce” and why is it important in determining how many weeks to work overtime without serious loss of productivity?
27. Case Studies in Differing Site Conditions and Loss of Productivity claims.
28. How implementing a Dispute Resolution Board can quickly resolve Differing Site Conditions claims and Inefficiency claims without legal fees and costly resolution delays.

The Program Agenda:

1. What constitutes a Differing Site Condition (DSC)?
 - a. Defining field conditions – when it is and is not a DSC
 - b. Examples of DSC and the difference between Type 1 and Type 2
 - c. Avoiding DSC
 - d. Hazardous materials
 - e. Renovation DSC
 - f. Recommended field procedures when a DSC is encountered
 - g. Case law throughout the US
2. How construction contracts apportion and shift risk between the parties
 - a. DSC contract clauses – standards
 - b. Notice Requirements
 - c. Exculpatory clauses and disclaimers
 - d. Site investigation clauses
 - e. Estimated quantity clauses
 - f. Classified excavation clauses
 - g. Recommended bidding practices to cope with DSC
 - h. What if there is no DSC clause in the contract?
3. How to construct a DSC claim
 - a. What the contractor must prove
 - b. Use of the Request for Equitable Adjustment
 - c. What if there was no pre-bid site investigation?
 - d. What project documentation is required/recommended?
 - e. Use of daily reports, special incident reports and cost code records
 - f. When to involve an outside reviewer
 - g. Proper format for the DSC claim
 - h. Proving entitlement
 - i. How to capture all of the real costs and prove quantum
 - j. Impacts of delay and disruption
 - k. Impacts of the DSC on loss of productivity
4. “Reverse DSC” – the owner’s friend
5. How to evaluate (and defend) a DSC claim
 - a. Quick parries – notice and documentation
 - b. Owner’s checklist for evaluation of DSC claims
 - c. How to quickly resolve DSC
 - d. Use of Dispute Resolution Boards in DSC resolution
6. Case Studies of DSC
7. What is “loss of productivity” or “inefficiency”?
 - a. Establishing the “100% productivity” benchmark
 - b. Tracking and reporting variances in productivity
 - c. Finding the “nexus” between an owner action (or DSC) and loss of productivity
 - d. The role of change orders in loss of productivity
 - e. Reputable studies by major Universities, Construction Industry Institute (CII), Business Roundtable and others
 - f. CII recommendations to Owners on
 - i. Managing ripple effect

- ii. The role of constructability reviews
 - iii. When NOT to employ fixed price contracting
 - iv. Using record-keeping and project management software in controlling the impacts of change
 - v. Assuring timely RFI answers to reduce loss of productivity
 - g. Use of Measured Mile method in establishing quantum on loss of productivity and when the “benchmark” is wrong
 - h. The role of unamortized learning curve in inefficiency claims
 - i. Impacts to productivity by the interaction of temperature and humidity, trade stacking, onsite management practices, communication and information management
8. The role of acceleration in loss of productivity
- a. When and how long to work overtime without serious loss of productivity – major university field studies to guide supervisors
 - b. The role of “spot” overtime
 - c. The “point of no return”
 - d. When to use shift work to accelerate with less loss of productivity
9. Case studies of loss of productivity/inefficiency claims
10. How to construct an inefficiency claim
- a. Proper format for the inefficiency claim
 - b. Proving entitlement
 - c. How to capture costs of loss of productivity and prove both quantum and its nexus to alleged causes
11. How to defend against an inefficiency claim
- a. What not to accept as proof
 - b. The forest ranger’s “nose test”
 - c. Why the owner usually “wins”
12. Creative methods to resolve inefficiency claims