

AACE
INTERNATIONAL
**RECOMMENDED
PRACTICE**

120R-21

**DEMONSTRATING ENTITLEMENT
FOR CONTRACT CHANGE ORDERS
OR CLAIMS – AS APPLIED IN
ENGINEERING,
PROCUREMENT, AND
CONSTRUCTION**

AACE
INTERNATIONAL

Rev. April 9, 2022



AACE® International Recommended Practice No. 120R-21

DEMONSTRATING ENTITLEMENT FOR CONTRACT CHANGE ORDERS OR CLAIMS – AS APPLIED IN ENGINEERING, PROCUREMENT, AND CONSTRUCTION TCM Framework 2.1.3 – Change Management

Revised April 9, 2022

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Contributors:

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Dr. Stephen P. Warhoe, PE CCP CFCC FAACE Hon. Life
(Primary Contributor)
Saad Ishac

Richard J. Long, PE
Donald F. McDonald, Jr. CCP PSP FAACE Hon. Life
Dr. Amin Terouhid, PE DRMP PSP

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ENGINEERING, PROCUREMENT, AND CONSTRUCTION**

TCM Framework: 10.3 – Change Management



April 9, 2022

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1. INTRODUCTION

This recommended practice (RP) addresses the necessary elements to determine technical entitlement for a change order request (COR) or claim as applied in engineering, procurement, and construction. While any definitions provided by contract documents would supersede this RP, in the absence of clarity in the contract, this RP defines key elements of the change request process. These elements of a COR or claim apply to any typical design, procurement, and construction contracting strategy or delivery method.

The purpose of this RP is to provide guidelines concerning the critical elements to demonstrate technical entitlement in support of a change order request or claim on a capital construction project, that most practitioners would consider to be a good practice, that can be relied on, and that they would recommend be considered for use where applicable. Additionally, *entitlement* in the terms of the RP is how a contractor administers the EPC contract (including the relevant purchase orders and subcontracts) entered into using the guidance of their legal advisor. This RP is focused on the *technical* administration of the contractual terms and conditions. Therefore, all usage of the term *entitlement*, throughout this RP, refers to technical entitlement and not to legal entitlement.

This recommended practice is relevant to stakeholders on a capital construction project; this includes owner, contractor, subcontractor, construction manager, or other stakeholders. Although this recommended practice is written in the context of a contract between an owner and contractor, it is equally applicable to any parties contracted to perform a project including owners and architect-engineers (A/E) as well as general contractors and their subcontractors. This RP can also be used as an internal change management guideline within an organization's management procedures. In the context of this recommended practice, the contractor is assumed to be the claimant. Of course, this is not always the case. The owner, employer, A/E, and a subcontractor can also be claimants as well.

It is important for all parties to a contract to understand the contract provisions, as well as laws, regulations, and standards that govern the contract. It is also highly recommended that an attorney be consulted to review the change management process of a contract and the terms defining the responsibilities of the claimant to demonstrate entitlement to requested change orders or claims.

For more discussion concerning the project change management process, refer to AACE International's RP 100R-19, Contract Change Management – As Applied in Engineering, Procurement, and Construction. [1]

In the engineering, procurement, and construction industry, the primary change management tool used to document and authorize change to the contract is the *change order*, also referred to as a *variation order* or contract modification / amendment.

A change order is defined as:

*A document requesting and/or authorizing a scope and/or baseline change or correction. 1) From the owner's perspective, it is an agreement between the project team and higher authority approving a change in the project control baseline. 2) From a contractor's perspective, it is an agreement between the owner and the contractor to compensate for a change in scope or other conditions of a contract. It must be approved by both the client and the contractor before it becomes a legal change to the contract.*¹

In the context of a project, *change* is defined as an "alteration or variation to a scope of work and/or the schedule for completing the work."² However, changes can include more than alterations or variations to work scope. Change

¹ AACE International, Recommended Practice 10S-90, Cost Engineering Terminology, AACE International, Morgantown, WV. (Latest revision). [2]

² *Ibid*.

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can also include revisions to contract terms, sequences of work, alteration of work conditions, and other administrative revisions. A change may be directed by the client or discovered as being necessary due to facts and circumstances that are identified during the course of the project. Construction contracts differ from most legal agreements in that they anticipate that changes will occur.

A number of different events, changes, or owner-responsible actions can influence the development of change orders on projects. These events, changes, or owner-responsible actions can result from either foreseen or unforeseen conditions, many of which are listed and described in AACE International Recommended Practice 100R-19.³

Before a change order is executed between the parties, typical construction contracts require a COR, or proposal, first be submitted by the contractor to the owner as well as related predecessor and successor actions (i.e., notice, follow-up, and resolution). A COR is defined as:

A proposal from a claimant concerning a requested change to the contract's compensation amount or payment terms, time of completion, product or performance specification, or other terms within the contract.

The COR should provide enough relevant information and analysis to adequately demonstrate the contractor's entitlement to variances in cost or schedule associated with the change in scope. However,

*Change is not made without inconvenience, even from worse to better.*⁴

Even after more than 250 years, the meaning of the above quote continues to have significant relevance in the project engineering, procurement, and construction industries. Changes on projects often create a varying amount of tension between the parties of a contract, and at times, create mistrust between these parties. However, in industries in which projects are the norm, it is now typically understood that change is endemic.⁵

The inconveniences that often occur during, and sometimes after, project execution concern steps that owners and contractors take towards achieving final agreement with respect to a contract COR. The challenges often stem from the owner's and contractor's respective views as to whether the contractor has adequately provided the documentation and analyses necessary to demonstrate entitlement to a requested change such that a contract change order should be executed. The approval of a change order may not occur in a timely manner, which may indicate that the owner feels the contractor has not provided enough information or analyses to justify increasing the contract compensation or granting an extension of time to the project schedule. Often, what the owner finds missing in a COR is one or more of the required elements of a change order, or that one or more are inadequately demonstrated. These elements are further discussed in the Recommended Practice section.

It is recommended that the elements that should be demonstrated in a contract COR, and the extent to which they should be described, be agreed upon before the contract is signed and work commences. Experience has shown that one cannot go into projects assuming a perfect world whereby the owner and contractor have equal understandings in this regard. Because the potential stakes associated with disputed changes can be significant, many disputes can be avoided with this common understanding established well before the project begins. To deal effectively with the changes that might arise on a project, the project participants should have established a common understanding of

³ AACE International, Recommended Practice 100R-19, Contract Change Management – As Applied in Engineering, Procurement, and Construction, AACE International, Morgantown, WV. (Latest revision). [3, p. 7]

⁴ Pickavance, K. (2005). Delay and Disruption in Construction Contracts. London, LLP. [4]

⁵ Turner, J. R. (2009). The Handbook of Project-Based Management: Leading Strategic Change in Organizations, The McGraw-Hill Companies, Inc. [6]