

Are You Recovering All You Can on Your Existing Contracts
Eight Questions to Ask about Whether You Have a Claim

There is one basic question about whether you have a claim: **Was performance different than you planned when you bid and is it costing you time or money?** If the answer is “Yes” you may have a claim for additional time or money, or a claim to stop losing money. The key to claims identification and presentation is identifying the specific causes for those changes to performance. The following eight questions focus on common issues to determine if there is a claim.

1. **Is the government the cause for the changed performance?** Normally the government has to be the cause of the change for there to be a claim.
2. **Did the government provide misleading or inaccurate information in the solicitation?** The government has an obligation to tell you about information it has that impacts the costs or methods of performance. The information could be about the site, problems with previous performance, the amount of estimated work or any information it provided that you relied upon in making your bid.
3. **On a construction contract, was the change caused by an unusual subsurface condition that could not be observed from a reasonable site inspection; or do the conditions at the site differ from those indicated in the documents provided as part of the solicitation?** Subsurface conditions may be below the surface of a structure, such as below a floor or concealed by a roof or wall. There can be both a failure to disclose important information and an unknown site condition on the same contract.
4. **Did conditions change between the time you submitted your bid and award of the contract?** Did the government fail to maintain or change the site between the time bids were submitted and the award of the contract? Changes can also relate to internal budget problems or government policy changes that impacted the estimated quantities of goods or services to be ordered under the contract.

5. **Do you and the government interpret the contract requirements differently?** This is the biggest reason for contractor claims. There is almost no limit to the types of issues that can arise because of different contract interpretations. It can relate to the time of performance, the product to be delivered, the service to be provided, the method of construction, materials used, and almost any aspect of the contract.
6. **Is the government inspection reasonable?** If there are no inspection standards provided in the contract, then reasonable inspection standards will be implied based on the purpose of the contract. If there is an inspection standard it must be applied reasonably. Also, the inspection standard cannot be used to impose a different performance standard. .
7. **If the government did not cause the change, was the change caused by unusually severe weather, flooding, fires, strikes, and other similar causes?** Normally, these are not the responsibility of the government but you still have a claim for more time to perform the work. You will not have a claim for any cost impacts from the delay.
8. **Did the change cause an increase in cost or the time required to complete?** This is the ultimate question. I call this the “So what?” question. If the government interprets the contract unreasonably, inspects unreasonably, etc. but these improper actions do not cause higher costs or more time, then there is no damage and no claim.

If you think you have a possible claim, we provide a free consultation with you and analysis of the potential claims situation. Contact me by e-mail at info@powerlawoffice.com, fax at (707) 938-7185, or phone at (707)9387183 and mention that you read these “Eight Questions to Ask about Whether You Have a Clam” from Power Law Office.