

Loss of Productivity Claim Checklist

“Loss of Productivity”, also called “Inefficiency”, is real in construction and there have been dozens of distinguished scholarly articles and research papers written on the topic. The biggest problems with Loss of Productivity claims are (1) many owners don’t recognize them as legitimate because they see so many poorly prepared ones, and (2) most contractors don’t keep sufficiently detailed crew productivity records to prove their losses. A good forensic effort can help overcome both of these problems.

This checklist should be used by both contractors and owners or their construction managers in preparing, evaluating, defending and resolving Loss of Productivity Claims.

1. Determine the potential causes of alleged lost productivity:
 - a. Crews have been accelerated by others.
 - b. Crews have worked overtime beyond that contemplated in the contract.
 - c. Trades have been stacked (many working in the same area reducing the square footage per person or causing access issues).
 - d. Schedule has been “disrupted” (even if not delayed).
 - e. Crews have been working piecemeal, out-of-sequence.
 - f. Crew size has changed dramatically.
 - g. Excessive RFIs and Change Orders have impacted construction rhythm.
 - h. Because of delays by others, work that was planned for warm weather was pushed into cold weather.
2. Has the contractor/subcontractor, in fact, been damaged?
 - a. Have line item “actual” costs exceed “budgeted/bid” costs in those areas identified above?
 - b. Have you expended more labor hours for the same units?
 - c. Does the party who alleges lost productivity keep records of labor hours per unit (per square foot, per cubic yard, etc.) for each contract activity?
 - d. Does the contractor/subcontractor have sufficient records to compare productivity rates BEFORE the alleged impact by others vs. productivity rates AFTER the alleged impact by others (**“Measured Mile”**, see below)?
3. Has the contractor/subcontractor given written notice to the owner or construction manager in a timely fashion according to the requirements of the Contract?
4. What does the Contract say – if anything – about lost productivity claims? What are the procedures, requirements, time frames, etc.?
5. If overtime may be a factor:
 - a. Who ordered the overtime?
 - b. How many laborers have worked overtime?

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- c. How many hours per week of overtime have they worked – for how many weeks?
 - d. How was it tracked? Are certified payroll records available?
6. If “excessive” change orders may be a factor:
 - a. Has the contractor/subcontractor tracked labor hours separately for contract work vs. change order work?
 - b. What is the percentage of change order labor hours to contract work labor hours on the overall project?
 - c. Has the alleged loss of productivity occurred early in the project, at the middle or at the end of the project?
7. If trade stacking or crowding may be a factor:
 - a. Can the contractor/subcontractor produce records showing the number of laborers in the same area at the same time and the square footage of workspace per worker?
8. Can the contractor/subcontractor prove both:
 - a. Entitlement – that lost productivity was caused by others?
 - b. Quantum – how much productivity was lost (hours and dollars)?
9. If the claim involves “**Measured Mile**” (see above): Is the benchmark period “representative” of anticipated conditions?
 - a. Should include normal contract inefficiencies
 - i. Bad weather
 - ii. Productivity losses for other reasons
 - iii. Should not be “ideal”
 - b. Questions to ask:
 - i. Was the soil excavated during the benchmark all the expected types or only the easy soil?
 - ii. Did the benchmark period include:
 1. A proper blend of anticipated low-productivity elements or was it all high-productivity work?
 2. A representative amount of bad weather days?
 3. A representative amount of equipment downtime?
 4. Consideration of:
 - a. Learning curves?
 - b. Finishing costs?
 - c. Other normal contractor inefficiencies?
 - iii. Loss of Efficiency adjustments
 1. Analyze costs in other period to demonstrate representative data
 - a. Cost codes become critically important here
 2. Adjust using estimates prepared by engineers, estimators, consultants, other knowledgeable persons
10. What if no “measured mile” is available?
 - a. Select another benchmark
 - i. Question: how do you make it fair?
 - b. Selecting a productivity benchmark:
 - i. Bid’s productivity estimate

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1. Testimony about decisions, assumptions, changes made in preparation of the bid
 - a. Bid work papers and supporting schedules
 - i. Clear, concise, detailed
 - b. Notes of the estimator
 - c. Bid escrow may be appropriate where a Differing Site Condition leading to loss of productivity is highly probable
 - i. Eg. environmental remediation
- ii. Contractor's productivity on other similar projects
 1. Problem: projects are seldom identical
- iii. Another contractor's productivity on the same project
 1. Problem: skills from one contractor to another are not homogenous
- iv. Productivity manuals and studies
 - a. Problem: not site specific
- v. Expert evaluation or re-estimation after the fact.

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