

**LOEWKE & BRILL**  
CONSULTING GROUP

# Construction Consulting

[www.loewkebrill.com](http://www.loewkebrill.com)



Established in 1992

# Meet Our Executive Team:



## **R. Michael Loewke CEO and Partner**

Former MEP Contractor  
Licensed Plumber (Cities of Rochester and Batavia)  
Former Monroe County Legislator  
Owned/Operated FBO Reliever Airport (Monroe County)  
Monroe County Civil Service Board Member  
AAA Panel Member/Arbitrator  
Certified Backflow Preventer Installer



## **James Loewke President and Partner**

Former Mechanical Contractor  
Licensed Plumber (City of Rochester)  
DEC Certified Underground Storage Tank Installer  
Certified Aboveground Storage Tank Installer  
NYS Department of Labor registered Steamfitter  
AAA Panel Member/Arbitrator  
Quickpen Certified Mechanical Estimator

# How can we best serve *your* needs?

## *Our Surety services include:*

Bonding Score	Collection of Contract Funds
WIP Report Review	Contractor Replacement
On-Site Monitoring	Change Order Review
Risk Assessment Status	Claim Investigation
Complete Documentation	Bond/Vendor Claim Investigation
Inventory/Tool/Equipment Appraisal	
Establish Completion Cost Budget (Reserve)	

## *Our IDM services include:*

On-site Monitoring	Change Order/Scope Review
Claim Investigation	Documentation
Job Completion Assistance	Bid Preparation Assist
Dispute Resolution	Schedule Review
Surety Assistance	Construction Progress Reports
Certified Payroll Assistance	

## *Our Contractor services include:*

Claim Investigation	Claim Preparations
Dispute Resolution	Notice Letters
Backcharge Disputes	Sub-Contractor Claims
Disputed Change Orders	Project Delays
Training Seminars and Workshops	

## *Our expert service to Attorneys includes:*

Litigation Support	Demonstrative Aids
Claims	Trial Graphics
Claim Preparation	2D Graphics
Claim Investigation	3D Graphics
Exhibit Preparation	Power Point
Expert Witness	Printed Material

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# CONSTRUCTION PROGRESS REPORT

An excerpt from a recent Audit performed for a School District Construction Project Contract contained the following:

## **Change Order Notes:**

There were a total of 50 change orders for which we can extrapolate data from the records supplied by the CM. 11 of these change orders, or 22%, were complete in terms of documentation and appropriate signatures. There were no change order documents for 24 of those changes, although the transactions are noted on the last AIA form supplied by the CM. 48% of the documentation was missing and 84% of the changes had been processed. Change Order #7 and Change Orders 43 through 50 are not reflected in the AIA. Change order #7 is dated incorrectly, October 19, 2003.

A sample of 19 of the change orders for which we had data revealed a lack of consistency in the change order proposals and questionable charges per the Contract Documents:

- Mobilization fees valued at 1% were added in 8 instances.
- Insurance fees were added in 15 instances with rates ranging from 1% to 6.34%.
- Bonding fees remained consistent at 1.44% for all 19 change orders.
- Punchlist fees were assessed at 1% in 9 instances.
- Operation and Maintenance Manual fees were applied at 1% in 7 instances.
- Closeout fees of 1% were applied in 4 instances.
- Expendable tool fees were assessed at 3% in 3 instances.
- Project Manager hours were applied in 5 instances with the rate per hour varying from \$57.98/hr. to \$78.98/hr.
- 15% Markup was applied in 14 cases.

**Rochester War Memorial Arena  
Rochester, New York**

**Contract Agreement Dated August 16, 1996**

**Supplement To Claims For  
Balances Due On Contract Work,  
Unforeseen Delays and Labor Inefficiency Costs, and  
Financial Impacts Including Consequential  
and Incidental Damages**

**A. Entitlement**

In the previous sections it was established that E&L suffered severe financial impact and cost for performance of its work on the Rochester War Memorial Arena. All of these costs were entirely beyond E&L's control. It was further established that because of these impacts E&L suffered heavy inefficiency costs and damages in the amount of \$4,961,516.00 as described and computed in the previous sections.

A basic tenet of contract law is that a breach of contract entitles the aggrieved party to damages. Such damages are intended to give the damaged party the benefit of the bargain and to put the party in the position it would have been in but for the breach. The preceding sections clearly identified the breach of contract.

E&L relied on the accuracy of the contract plans and documents including the project schedule. All preplanning of E&L's construction work was disrupted from the very beginning with the need and issuing of extraordinary number of RFI's, IB's RFP's and change orders. LeCesse refused to issue a complete project schedule until July 10, 1997 and still did not incorporate all of the items provided to them by E&L on September 15, 1996.

E&L was directed to perform an additional \$1,310,488.00 of change orders and CCA work amounting to a 44% increase to the original contract. The owner had no intention of extending the completion date until it issued Change Order No. 7 dated July 8, 1998.

The construction manager (LeCesse) was responsible for scheduling and coordinating the work of all contractors on the project. The construction manager failed in his responsibility. The previous sections identified the numerous claims of lack of coordination, inefficiencies, failures to reply, incompetence, indifference and utter disregard of duties.

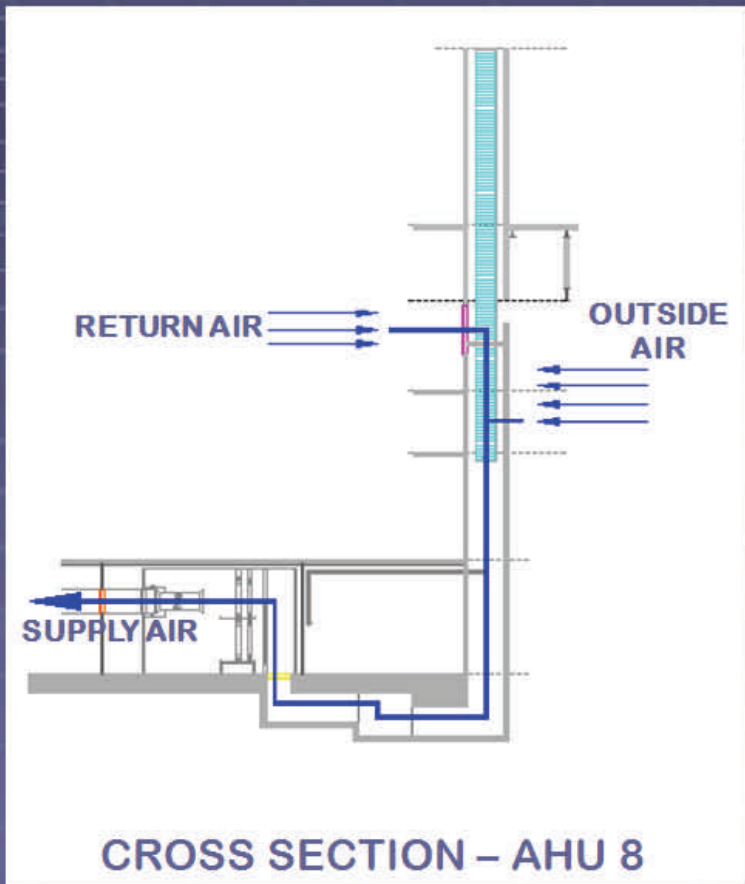
Throughout the course of the construction work E&L gave notice to all appropriate parties that they were being impacted. E&L demonstrated in the previous sections they requested information both in RFI form and by written correspondence, advised LeCesse/city of impending problems, wrote numerous follow-up correspondence, advised LeCesse/city of pending claims and made numerous requests for time extension. LeCesse/city had a clear duty to cooperate and not to prevent, hinder, ignore, or interfere with E&L's performance.

Based on the facts, contractual obligations and determination of responsibility, E&L is fully entitled to additional compensation in the amount of \$4,961,516.00. This amount does not include any claims for E&L's legal fees, or preparation costs of the claim at this time which it will pursue.

Item	Description	Cost
1.	Contract Amount to Date	\$4,007,511.00
	CCA's Submitted and Unpaid (9/11/98)	\$ 224,487.00
	CCA's Submitted and Unpaid	<u>\$ 57,579.00</u>
	Total Contract Amount	\$4,289,577.00
	Minus All Payments	(\$3,722,031.00)
	Unpaid to Date	\$ 567,546.00
2.	Unforeseen Delay & Inefficiency Damages	\$1,246,243.00
3.	Additional Material Installed – Not paid	\$ 45,503.00
4.	Tool Rental Applicable to Additional Labor	\$ 141,700.00
5.	Unpaid Miscellaneous	\$ 15,576.00
6.	Canceled CCA's (15% OH & Profit \$717,529.00)	\$ 107,629.00
7.	Interest	\$ 314,658.00
8.	Loss of Profits on Future Work	\$ 143,740.00
9.	Bonding Company Costs	\$ 178,354.00
10.	Net Loss on Auction vs. Appraisal	\$ 416,000.00
11.	Accelerated Rent	\$ 276,000.00
12.	Mortgages/Line of Credit Default	\$ 775,613.00
13.	Subcontractor Claims Disputed/Undisputed	<u>\$ 732,954.00</u>
	Total Claims	\$4,961,516.00



# AIR HANDLER UNIT/FURNACE



Home Furnace

Rochester War Memorial Arena  
Claim Graphic #1



Rochester War Memorial Arena  
Claim Graphic #2

# RFP 70043

Original Construction Date

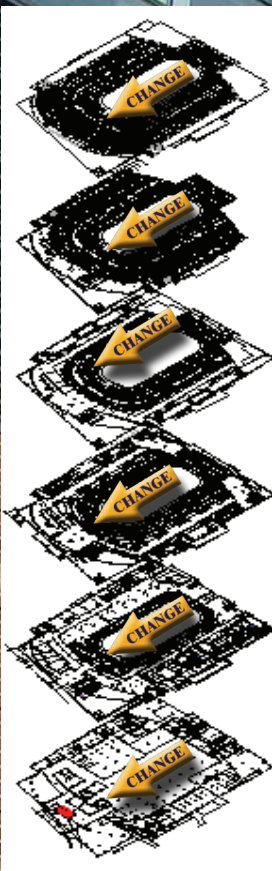
Original Contract

1/97

1/98

August 16, 1996

July 12, 1998



## Cooling Tower Control Systems

- RFP 70043 March 10, 1997
- Directive December 20, 1997
- 285 days

## Rochester War Memorial Arena Claim Graphic #3

**The John W. Danforth Company**  
**Mechanical Contractors**  
**Buffalo Life Sciences Complex**  
**Buffalo, New York**

**Contract Agreement Dated February 18, 2004**

**Claims For Balances Due On Contract Work,**  
**Equitable Adjustment For**  
**Poor Coordination, Labor Inefficiency Costs, and**  
**Financial Impacts Including Consequential**  
**and Incidental Damages**

**Executive Summary**

The John W. Danforth Company (Danforth) received a contract agreement (Contract Number 9571CA-06) dated February 18, 2004 from Turner Construction (Turner), Roswell Park Cancer Institute(RPCI) University of Buffalo(UB) and the Dormitory Authority of the State of New York (DASNY), for furnishing the Mechanical Construction Contract on the Buffalo Life Sciences Complex Project (BLSC), located in Buffalo, New York. RPCI/UB/DASNY's project and construction managers are also Turner Construction.

The contract for work at the BLSC, in the amount of \$12,717,376.00 less CCIP deductions, is \$12,369,900.00

Danforth's bid estimate was based on the scope of work as shown on the contract documents. Turner's scheduling including the contract work with Danforth is based on building completion on November 11, 2005. The performance of the work was drastically altered by Poor Coordination, excessive coordination, stacking of trades, and the inordinate amount of disruptions, requests for information (RFI), project modifications, changes, and additions to the project.

There were over 770 RFI's, 38 Directives, and 65 requests for proposals (RFP) which added an additional \$1,693,678.00 to the contract. This represents approved change orders plus project modifications for an increase of approximately 13.3% to Danforth's original contract. However, the actual number of hours expended for the mechanical contract work exceeded original estimated hours by 31.97%. Many of the above RFI's were requested because the contract documents were either incorrect, unclear, uncoordinated, missing information, or there were different site conditions than anticipated by the Architect or Engineer.

The disruptions and stacking of trades seriously affected the work and prevented the employees of Danforth from working in an efficient manor. The actual labor records for Danforth show the increase in man-hours during the course of the project. The sections for scheduling show Turner continuously changing the critical path dates but not

extending the completion date. This compressed the amount of time Danforth had to perform its work. To further compound the problems, Danforth through the course of the construction identified major coordination and scheduling problems. Roswell Park Cancer Institute and Turner failed to address the issues in a timely manner. However, when RPCI/UB/DASNY and Turner determined how they would deal with these issues The John W. Danforth Company's work was dramatically increased in scope, while it was told to complete its work including these changes by the original contract dates. The disruption and changes were so dramatic they resulted in a cardinal change.

A cardinal change occurs when the changes (either formal or constructive) are so extensive as to change the entire character of the work required under the contract. A cardinal change is considered a breach of contract because it goes beyond the nature of the work which reasonably could have been anticipated by the contractor when bidding the project, thus fundamentally changing the economics of the bid. A cardinal change may arise from one major specific item of change or may be the result of an inordinate amount of individual changes.

The large number of changes on this project, coupled with the nature and sequence of the changes caused Danforth to do substantial work and incur substantial additional expense in order to perform the work it originally agreed to complete.

Turner failed in its duties as construction manager for this project. Danforth has documented examples of Turner's failure to properly coordinate the Mechanical Construction work on the project and do all things required in order to ensure the efficient and orderly completion of the work. These examples include: lack of coordination, creating inefficiencies, duration deficiencies, and ineffective response time.

Due to the numerous coordination problems, disruptions, changes, improper scheduling, added scope of work, and ineffective construction management, Danforth suffered inefficiency costs and damages as fully detailed in the subsequent sections of this report in the amount of **\$5,939,423.00**.

The project record fully supports a determination of entitlement and the amount of the claim. Together they provide the basis for an equitable adjustment.

The object of a contractor's claim is to make whole or to place the damaged party in the same financial position it would have been in but for the alleged contract change or breach. Accordingly, Danforth submits this to set forth its damages, including amounts unpaid under the contract, and consequential and incidental damages resulting from the poor coordination, labor inefficiency, and poor project management by **Roswell Park Cancer Institute, Dormitory Authority of The State of New York, University of Buffalo, and Turner Construction.**

Accordingly, the following is a recitation of all the damages described and computed above valid up to June 30, 2005.

<b>Item #</b>	<b>Description</b>	<b>Cost</b>
1.	Directives and T & M submitted and unpaid	\$ 608,279.00
2.	Unprocessed Construction Changes	\$ 477,409.00
3.	Interest for Directives and Changes	\$ 48,856.00
4.	Poor Coordination and Inefficiency Costs	\$1,678,020.00
5.	Interest on Labor	\$ 127,249.00
6.	Tool rental applicable to additional labor	\$ 124,760.00
7.	Lifts and equipment rental	\$ 852,457.00
8.	Tool rental and equipment interest	\$ 74,104.00
9.	Cancelled RFP's (15% P & O)	\$ 18,030.00
10.	VAV Boxes Impact	\$ 79,534.00
11.	Increase in Balancer costs	\$ 89,234.00
12.	Excessive Coordination	\$ 351,670.00
13.	Material Handling	\$ 55,547.00
14.	Accelerated offsite storage	\$ 40,339.00
15.	Coordination and as-builts	\$ 83,925.00
16.	Temporary A/C	\$ 105,794.00
17.	Subcontractor Claims	\$ 44,920.00
18.	General Interest Claims	\$ 79,296.00
19.	Punitive Damages	<u>\$1,000,000.00</u>
	<b>Total Claims:</b>	<b>\$5,939,423.00</b>

■ MASON   
 ■ ELECTRICAL   
 ■ PIPEFITTER   
 ■ PLUMBER   
 ■ SHEETMETAL   
 ■ CARPENTER

03/2004 = 889	09/2004 = 3360
04/2004 = 1197	10/2004 = 3837
05/2004 = 1779	11/2004 = 4075
06/2004 = 2511	12/2004 = 3929
07/2004 = 3033	01/2005 = 3520
08/2004 = 3137	02/2005 = 3850

: CLICK FOR MATH :

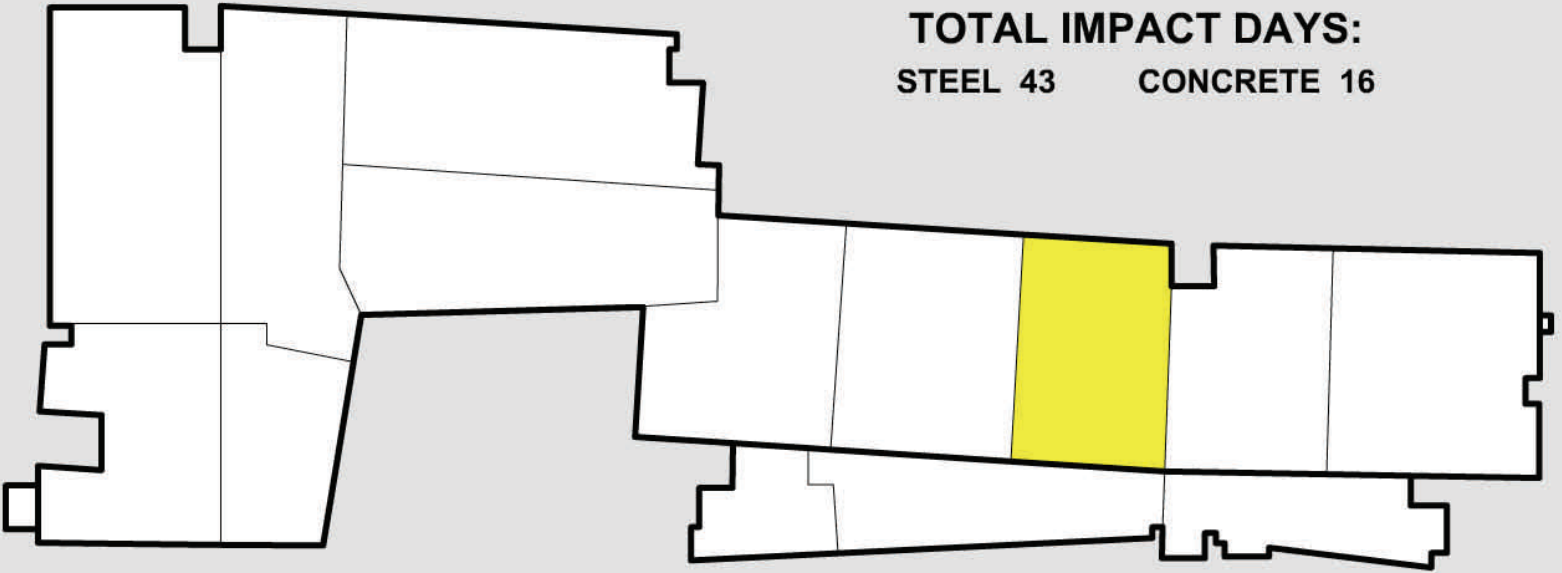
Average Workspace = 19 sq. ft  
 Average Man Hours per Month = 2,926

CLICK FOR STACKING OF TRADES



## Buffalo Life Sciences Complex Claim Graphic #1

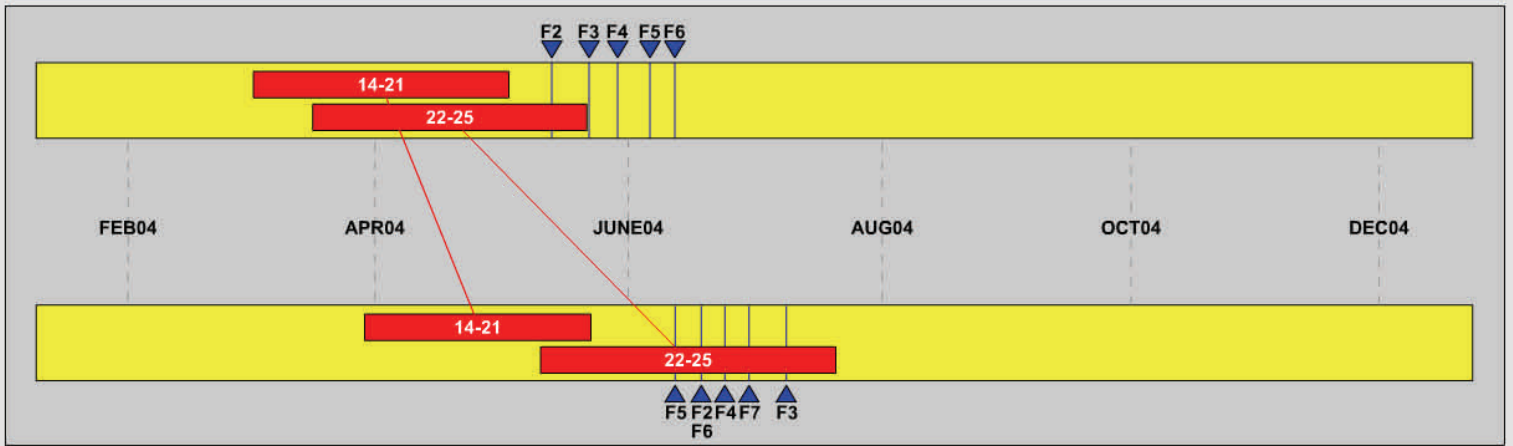
**TOTAL IMPACT DAYS:**  
STEEL 43    CONCRETE 16



■ STEEL    ■ CONCRETE

SCHEDULED

[CLICK here for Additional Impacts](#)



ACTUAL

## Buffalo Life Sciences Complex Claim Graphic #2



Marc Brown  
Hiscock & Barclay Attorneys

Re: Thomann vs. City School District of Rochester

This report is being prepared per your request regarding allegations and back charges from the City School District at Wilson Magnet School (#9908213 – Contract dated March 16, 2000) against William J. Thomann.

## **I. GENERAL STATEMENT**

William J. Thomann (WJT) had a contract with the Rochester City School District (RCSD) for HVAC work regarding additions and alterations to Wilson Magnet school. The contract date in the amount of \$1,166,900 including change orders was March 16, 2000, and the original completion date was June 22, 2001.

On or about October 10, 2001 a punch list (Punch List #1) was issued by the RCSD and its professionals. On or about October 23, 2001 another punch list (Punch List #2) was issued. On or about October 24, 2001 a third punch list (Punch List #3) was issued. On or about January 4, 2002, the RCSD by letter (the Letter) from Terrence J. Costich, Project Architect, ordered WJT to stop work. On or about January 14, 2002 the RCSD hired Monroe Piping to complete the balance of the punch lists issued to WJT. On or about June 21, 2002, WJT presented the board with its Final Application and Certification for Payment (Final Application), requesting payment of the remaining \$99,301.40 of the Contract balance. On or about June 25, 2002, the Final Application was rejected by RCSD.

On or about January 9, 2003, WJT commenced with an action against the RCSD for breach of contract, seeking damages in the amount of \$99,301.40. On or about February 4, 2003, the RCSD served an Answer and Counterclaim seeking damages against WJT in the amount \$295,190.44. On or about February 7, 2003, WJT served a Reply to RCSD's Counterclaim. This report is being prepared in response to that Counterclaim.



City School District of Rochester  
Claim Graphic #1



City School District of Rochester  
Claim Graphic #2



City School District of Rochester  
Claim Graphic #3



City School District of Rochester  
Claim Graphic #4

# “Survival in the 21st Century”

**Loewke & Brill Consulting Group provides a workshop in which we teach people in all facets of the construction industry survival in today’s complex, litigious and “hoodwinked” construction industry. We teach the most comprehensive explanation of contractor’s rights and remedies under the contract. We provide and explain in detail (in construction lingo) the actual laws of the industry. We also offer alternative ways to save money, increase cash flow, and shorten collection time.**

Have you ever been told by the Construction Manager on a project; “The clean up for the job is \$50,000. There are eight prime contractors on site so your portion is \$6,250”? Then you had to “eat” this cost because you wanted to get the balance of your contract payment. If so, then you paid \$6,250 too much!

We have all noticed the changes in recent years of added paperwork and more people in the day to day operations of a construction site. There is no doubt anyone in the industry has had the feeling that they have been treated unfairly on a job or had their rights taken away by someone else, or possibly have been a victim of someone else’s misfortune and had no way to recover.

This workshop will teach you how to protect yourself against these types of things happening again. We provide you with the most comprehensive explanation of your rights under the contract. After this seminar you will feel as though no job is too complicated.

We will provide and explain during the course of the seminar the actual laws of the industry (included in the handouts for you to keep). These will give you an upper hand in defending your rights. We also provide and explain to you our copyrighted paperwork which helps to defend your position all the way through the project with no added costs to you. We also offer alternative ways to save your company money, increase your cash flow, and shorten your collection time.

Today’s construction business is not about making friends like it used to be, but about survival. This course is taught by people who used this paperwork and “survived”, **AND** received a \$2.8 million check from the City of Rochester for their claim.



# training schedule

<b>Estimating</b>	Forms E-1 through E-3 Follow your bid deposits	30 min
<b>Contracts</b>	Form C-1 Contract terms A-Z	60 min
<b>Supplemental Conditions</b>	Form C-1 Supplemental terms A-Z	60 min
<b>Owner Representatives</b>	C/M or Clerk -what to do	20 min
<b>Mobilization Forms</b>	PM-1 through PM-3 What you really need	45 min
<b>Paperwork/Laws</b>	Forms P-1 through P-15 Copyrighted paperwork	90 min
<b>Change Orders</b>	Form CO-1 What you need to get ALL your money	25 min
<b>Disputes and Claims</b>	and D&C-1 through D&C 5 Learn how to protect yourself	45 min
<b>Job Closeout</b>	Forms JC-1 through JC-3 Close your project in 45 days	25 min
<b>Recap/General Discussions</b>	Any questions?	30 min



NOTES
