Flowchart 15 – Loss and Expense Procedure

1. Received notice and estimates for loss and expense

2. Is Contractor eligible for payment of loss and expense?
   - SOR

3. Inform Contractor of eligibility for loss and expense. Request further information, if necessary.
   - SOR

4. Received details, and evaluate the information submitted by the Contractor
   - SOR

5. Prepare report and submit to Claim Secretariat
   - SO/SOR

   Checklist for Contractor’s Claim Preparation of S.O/P.D Report

6. Review and prepare recommendation by Claim Secretariat
   - BUBK

7. Decision by Claims Committee
   - Claims Committee

8. Inform Contractor on the result
   - SOR

9. Revise Contract Sum; if approved; if Final Account is closed, revise Final Account
   - CAO

Refer: Chapter 12 – Adjustment of Contract Sum

Flowchart 15.1 – Loss and Expense Procedure
15 LOSS AND EXPENSE

15.1 INTRODUCTION

This chapter provides:

- Overview of standard contract provisions and how to deal with Contractor’s claim

15.2 PROCEDURES

Please refer to Flowchart 15.1 – Loss and Expense Procedure.

<table>
<thead>
<tr>
<th>Step</th>
<th>Procedures / Tasks</th>
<th>Action By / Reference</th>
</tr>
</thead>
</table>
| 1    | **SO/SOR received notice and estimates for loss and expense**  
Contractor within one (1) month or 60 days (for Design & Build Contract) of the occurrence of event, give notice in writing to S.O his intention to claim supported by estimated amount.  
The Contractor to submit details of his claim within 90 days after the issuance of Certificate of Practical Completion. | Action by: SOR |
| 2    | **Determine contractor’s eligibility for payment of loss and expense**  
Carry out preliminary assessment of all claims, and establish if the loss and expense claim is valid | Action by: SOR |
| 3    | **Inform Contractor of eligibility for loss and expense, and request for further information; if necessary**  
Inform Contractor in writing on eligibility and if documents substantiation is not sufficient, request for more supporting documents, supporting vouchers, explanation and calculation. | Action by: SOR |
| 4    | **Received details and evaluate the information submitted by the Contractor**  
The SOR shall forthwith evaluate all information submitted by the Contractor.  
The SOR shall finalise all claims to meet the deadline for completing Final Account, which is no later than three (3) or six (6) (Design & Build) months after end of Defects Liability Period. | Action by: SOR |
| 5    | **Prepare report and submit to Claim Secretariat**  
After assessment and evaluation, prepare report of evaluation complete with eligible amount for approval of the SO.  
Submit the report to the Claim Secretariat at BUBPK. | Action by: SO/SOR |
<table>
<thead>
<tr>
<th>Step</th>
<th>Procedures / Tasks</th>
<th>Action By / Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td><strong>Review and prepare recommendation</strong>&lt;br&gt;Claim Secretariat to assess report prepared by SO/SOR and prepare recommendation to Claims Committee.</td>
<td>Action by: BUBK</td>
</tr>
<tr>
<td>7</td>
<td><strong>Decision by Claim Committee</strong>&lt;br&gt;After reviewing report and recommendation; make decision.</td>
<td>Action by: Claims Committee</td>
</tr>
<tr>
<td>8</td>
<td><strong>Inform Contractor on the result</strong>&lt;br&gt;After determining the eligible amount claimable for loss and/or expense and after receive approval, inform Contractor in writing.&lt;br&gt;If not eligible, inform Contractor in writing.</td>
<td>Action by: SOR</td>
</tr>
<tr>
<td>9</td>
<td><strong>Revise Contract Sum; if approved</strong>&lt;br&gt;Adjust Contract Sum when claim for loss and/or expense is approved.&lt;br&gt;Prepare Final Account, based on the adjusted Contract Sum.&lt;br&gt;If Final Account has been prepared, closed and approved prior to the settlement of claims, then revise the Final Account accordingly.</td>
<td>Action by: CAO&lt;br&gt;Refer Chapter 12 – Adjustment of Contract Sum</td>
</tr>
</tbody>
</table>

### 15.3 LOSS AND EXPENSE PROVISIONS IN JKR203 & JKR203A CONDITIONS OF CONTRACT

The three (3) relevant clauses related to direct loss and/or expense are Clause 5(d), Clause 44 and Clause 48.

Clause 5(d) deals with S.O Instruction; Clause 44 deals with Loss and Expense caused by Delays whilst Clause 48 deals with Final Certificate.

The Contract Conditions has the following provisions/requirements:-

- Contractor shall within one (1) months of the occurrence of the event, give notice in writing to S.O of his intention to claim supported by an estimate of the amount of loss and/or expense likely to be incurred
- Within three (3) months after Practical Completion, the Contractor shall submit full particulars of all claims together with any documents, supporting vouchers, explanations and calculations
The grounds for direct loss and/or expense (under Form JKR 203/203A) are limited under to disruption of regular progress of the works or any part thereof by reasons of:-

(i) Directions given by S.O consequential upon disputes with neighboring owners not due to neglect or default of the Contractor of his Sub-Contractors [Clause 48 and Clause 43 (c)]

(ii) Contractor not receiving in due time necessary instructions and information due to negligence or default of the S.O [Clause 48 and Clause 43 (f)]

(iii) Delay on the part of artists, tradesmen or others engaged by the government for work not forming part of the Contract [Clause 48 and Clause 43(i)]

15.4 RELATIONSHIP BETWEEN LOSS AND/OR EXPENSE AND EXTENSION OF TIME

Many Contractors upon being granted and Extension of Time (EOT) presume that they can claim all additional costs for the extended period as loss and/or expense.

The granting of EOT does not give an automatic right to loss and/or expense.

EOT and loss and/or expense are separate and must be dealt with independent of each other and on their own merits.

Only by examining cause and effect can items of costs, which fall under loss and/or expense, be identified. If the delay was the responsibility solely of the Contractor, Contractor should not cover his additional costs arising from any delay of the building works by claiming Loss and Expense. If delay is due to natural factors, than loss and/or expense is not claimable.

15.5 TYPICAL HEAD CLAIMS AND WHEN THEY ARE JUSTIFIED

"Heads" of claim for Loss and/or Expense may include:-

(a) Additional Site Overheads

- Sometimes been referred to extended preliminaries. Should be based on actual additional costs incurred by the Contractor resulting from an event or circumstances, which brought to disruption to the regular progress of the works. The actual cost could either be higher or lower than the priced Preliminaries in the Contract Sum. The priced Preliminaries serves as a guide in assessment of loss and/or expense as to expenditure that the Contractor would expend had there been no disruption.

- The actual cost should not deviate too far from contract pricing and should it happen, then check carefully that the Contractor has not “loaded” his costs which he had incurred as a result of his own delays or poor management.

(b) Cost of uneconomic working (loss of productivity)

- This refers to Contractor’s loss of output or productivity due to disruption of the regular progress of the works, and includes idling costs. Contractor need to produce detailed records because the Contractor may generally be inefficient or he may have carried out work incorrectly.

- Contractor needs to demonstrate that he has taken measures to mitigate the loss.
15.6 ESTABLISHING IF A LOSS AND EXPENSE CLAIM IS VALID

The basic grounds to deal with a loss and expense claim are as follows:-

(a) The claim is in accordance with the relevant clauses of the Conditions of Contract.

(b) In line with the above, all notices and claims must be submitted in writing.

(c) The SOR shall assess all claims for loss and/or expense as soon as sufficient information is available.

(d) It must be an expense not recoverable elsewhere under the contract.

Assess the claim for loss and/or expense as follows:

(a) Expenses claimed are actual expenses which are supported by documentation.

(b) Loss can be proven through documentary proof and records.

(c) Contractor has shown that the loss and/or expense are direct consequence(s) of the delay/disruption (cause-and-effect).

15.7 REFERENCE DOCUMENTS

Please refer to Volume 10A for the standard reference or sample documents mentioned in the procedures or processes outlined in this Chapter.

15.8 REFERENCES

Please refer to the latest Treasury Circulars and DID Circulars on claims for loss and expense.

Treasury Circular
(Surat Pekeliling Perbendaharaan)
• Nil

Treasury Instructions
(Arahan Perbendaharaan)

DID Circulars
(Surat Pekeliling / Edaran JPS)
• Nil
APPENDIX 15A

Checklist for the Assessment of Contractor’s Claim and Preparation of S.O./P.D. Report

(Senarai Semakan Penyediaan Penilaian Tuntutan Kontraktor dan Laporan Pegawai Penguasa)
APPENDIX 15A CHECKLIST FOR THE ASSESSMENT OF CONTRACTOR’S CLAIM AND PREPARATION OF S.O./P.D. REPORT (SENARAI SEMAKAN PENYEDIAAN PENILAIAN TUNTUTAN KONTRAKTOR DAN LAPORAN PEGAWAI PENGUASA)

<table>
<thead>
<tr>
<th>TAJUK PROJEK</th>
<th>Untuk Tindakan</th>
<th>Nama Pegawai</th>
<th>Tarikh Diberi Kepada</th>
<th>Tarikh Diterima Oleh</th>
<th>Tarikh Siap Semakan</th>
</tr>
</thead>
<tbody>
<tr>
<td>PMK 1</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PMK 2</td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>AK*</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>BIL.</td>
<td>KETERANGAN</td>
<td>PMK1</td>
<td>PMK2</td>
<td>AK*</td>
<td>ULASAN</td>
</tr>
</tbody>
</table>

1.0 AM

1.1 Fahami asas tuntutan dan tentukan sinopsis peristiwa yang menyebabkan tuntutan oleh Kontraktor.

1.2 Tentukan tuntutan layak dipertimbangkan untuk dibawa ke J/K Tuntutan antaranya seperti berikut:

1.2.1 Asas tuntutan adalah dibenarkan di Bawah Kontrak seperti A.P 202 Jadual III (e) iaitu:

- Kerugian dan perbelanjaan disebabkan oleh kelambatan Kerajaan dan/atau mematuhi Arahan PP atau kerana mematuhi keperluan Berkanun
- Percanggahan dalam atau antara Dokumen-dokumen kontrak
- Tuntutan lain yang nyatanya dibenarkan dalam Syarat-syarat Kontrak seperti:
  - Fasal 43 (c), (f) & (i) Borang JKR 203/203A
- Apa-apa kos yang ditanggung berhubung dengan fee & caj pemindahan pembentungan, bekalan air, bekalan elektrik dan lain-lain yang berkaitan
1.0 (Samb.)

(b) Tuntutan kontraktor yang berpunca dari pecah kontrak atau kegagalan Kerajaan atau PP yang menyebabkan pelaksanaan Kerja Kontraktor terhalang atau terlewat.

(c) Kontraktor telah melaksanakan obligasi tambahan yang tidak berbentuk fizikal kekal (seperti item-item awalan, kerja sementara, penggunaan loji, peralatan termasuk peranca & acuan, perubahan masa / tempoh penyiapan dan lain-lain.)

(d) Kontraktor telah mengeluarkan perbelanjaan tambahan atau menanggung kerugian secara langsung yang tidak akan diganti bayar melalui pembayaran yang dibuat di bawah mana-mana peruntukan lain dalam kontrak.

2.0 PENILAIAN TUNTUTAN KONTRAKTOR

2.1 Tentukan samaada kontraktor telah mematuhi semua prosedur dan syarat-syarat kontrak yang melayakkan tuntutannya dipertimbangkan ;

(a) Kontraktor telah memberi notis yang jelas (menyatakan perkara yang dituntut berserta dengan anggaran tentang amaun yang dituntut) menyatakan niatnya untuk membuat tuntutan dan diberi kepada PP dalam tempoh yang disyaratkan dalam kontrak, dan

b) Kontraktor telah mengemukakan butiran terperinci, lengkap dengan dokumen sokongan bagi membuktikan tuntutannya dalam tempoh yang disyaratkan dalam kontrak.
<table>
<thead>
<tr>
<th>BIL.</th>
<th>KETERANGAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.0 (Samb.)</td>
<td>PENILAIAN TUNTUTAN KONTRAKTOR (Samb.)</td>
</tr>
<tr>
<td>2.2</td>
<td>Dapatkan maklumat tambahan yang berkenaan yang telah disahkan oleh PP / Wakil PP seperti;</td>
</tr>
<tr>
<td></td>
<td>• Surat-menyurat yang berkaitan dan/atau</td>
</tr>
<tr>
<td></td>
<td>• Minit mesyuarat, buku harian tapak dan/atau</td>
</tr>
<tr>
<td></td>
<td>• Sijil-sijil dalam kontrak yang berkaitan seperti lanjutan masa dll., dan</td>
</tr>
<tr>
<td></td>
<td>• Dokumen Kontrak</td>
</tr>
<tr>
<td>2.3</td>
<td>Syor sama ada memperaku / menolak tuntutan dari kontraktor disediakan berdasarkan;</td>
</tr>
<tr>
<td></td>
<td>(a) Fakta-fakta kes mengikut rekod seperti item 2.2 di atas dan mengikut pengetahuan PP dalam mengawasi projek, dan</td>
</tr>
<tr>
<td></td>
<td>(b) Peruntukan-peruntukan yang berkaitan dalam kontrak.</td>
</tr>
<tr>
<td>2.4</td>
<td>Tentukan kuantum bayaran (jika didapati wajar dibayar) kepada kontraktor ;</td>
</tr>
<tr>
<td></td>
<td>(a) Perkara yang diambilkira sebagai item yang layak dituntut adalah teratur.</td>
</tr>
<tr>
<td></td>
<td>(b) Tempoh yang layak diambilkira (bagi tuntutan yang berkaitan dengan tempoh masa) oleh kontraktor adalah teratur.</td>
</tr>
<tr>
<td></td>
<td>(c) Dokumen-dokumen yang menyokong tuntutan serta bukti-bukti kerugian yang ditanggung dan perbelanjaan tambahan sebenar yang telah dikeluarkan oleh kontraktor adalah teratur. (Dokumen hendaklah yang asal atau diakui sah oleh PP / Wakil PP)</td>
</tr>
<tr>
<td>BIL.</td>
<td>KETERANGAN</td>
</tr>
<tr>
<td>------</td>
<td>------------</td>
</tr>
<tr>
<td>2.0</td>
<td>PENILAIAN TUNTUTAN KONTRAKTOR (Samb.)</td>
</tr>
<tr>
<td>2.4</td>
<td>Tentukan kuantum bayaran (samb.) (Contoh dokumen sokongan – Penyata gaji pekerja, bil-bil dan resit-resit bayaran, perkiraan yang disahkan oleh Profesional yang berdaftar dll.)</td>
</tr>
<tr>
<td></td>
<td>(d) Perkiraan terperinci mengenai amaun ganadirugi yang layak dibayar adalah teratur.</td>
</tr>
<tr>
<td>2.5</td>
<td>Format Laporan PP disediakan mengikut garispanduan dalam Peraturan Mengenai Arahan Perubahan Harga Bagi Kontrak Kerja.</td>
</tr>
<tr>
<td>2.6</td>
<td>Laporan PP yang lengkap dikemukakan kepada PP untuk persetujuan.</td>
</tr>
</tbody>
</table>

Tandatangan Pegawai Semakan:  
Tarikh Selesai Tugasan:  

Tandatangan Pegawai Pengesahan:  
Tarikh Selesai Tugasan:  

Tandatangan Kualiti Audit:  
Tarikh Selesai Tugasan:  

* Jika berkenaan