



125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8588 | WWW.TXDOT.GOV

January 1, 2017

RE: Texas Department of Transportation (TxDOT) Dispute Resolution Policy, Contract Claim Procedure, and Contested Case Procedure

To Whom It May Concern:

In 1987, TxDOT initiated a dispute resolution policy and a contract claim procedure for resolving disputes and claims between the Department and a contractor.

Dispute Resolution Policy

The current dispute resolution policy promotes a cooperative attitude between the engineer and contractor. Emphasis is placed on resolving issues while they are still current, at the area office or the district office, and in an informal manner. To resolve issues, the engineer and contractor must be open to addressing the issues and sharing information. If information is not shared, decisions may be limited to relying on the documentation that is available for review.

It is our goal to have a dispute settled in the district prior to elevating it to the Contract Claim Committee (CCC) as a claim. The Construction Division (CST) can assist in the resolution of a dispute with a contractor when requested by the district. The contractor may request that a district ask for assistance from CST; however, the request for a recommendation prepared by CST to settle a dispute must come from the district. Further, the dispute settlement recommendation is presented to the district for their use.

In the event that the district and contractor cannot resolve a dispute, the contractor may file a claim. The contract claim procedure can be found in Title 43 of the Texas Administrative Code, Part 1, Chapter 9, Subchapter A, Rule §9.2, "Contract Claim Procedure," available online at <http://www.sos.texas.gov/tac/index.shtml>. The contract claim procedure applies all highway construction contracts, maintenance contracts, guide signage contracts, building contracts, aviation contracts, and consultant contracts.

Additionally, Title 43 of the Texas Administrative Code, Part 1, Chapter 9, Subchapter A, Rule §9.6 outlines the CCC authority to administer claims stemming from a comprehensive development agreement (CDA) entered into under Transportation Code, Chapter 223, Subchapter E, Rule §9.6. The CCC authority to administer CDA claims will apply if alternative dispute resolution procedures were not established as part of the CDA,

Note that these rules do not cover purchase orders or any agreements administered by the Procurement Division. The claim resolution process for a purchase contract can be found in Title 43

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of the Texas Administrative Code, Part 1, Chapter 9, Subchapter A, Rule §9.1, "Contract Claims under Government Code, Chapter 2260."

Contract Claim Procedure

The contractor initiates the contract claim procedure by filing a detailed report with the district, CST, or the CCC. If filed with the district engineer or CST, the claim will be forwarded to the CCC, which administers the contract claim procedure. Attached is the suggested format for filing a claim. One original claim and six copies need to be submitted for use of the CCC.

If a claim has been forwarded to the CCC and the contractor wishes to resume negotiations with the district, the contractor must notify the CCC in writing of its intent to resume negotiations at the district level and request review of the claim be suspended by the CCC pending the outcome of the negotiations.

The CCC is currently comprised of a chair and three district engineers or division directors not involved with the contract in question. Submit communications with the CCC through the secretary for the CCC, by mail at 125 East 11th Street, Austin, Texas 78701-2483 or by phone at 512/416-2449. The CCC will request that the district or division who administered the contract submit a detailed report and recommendation, and the CCC will confer with any other division deemed appropriate. Open sharing of information by all parties involved is encouraged, so the information provided to the CCC completely and accurately reflects the issues and facts underlying the claim.

While the contractor's original submission of the request for a claim meeting may contain necessary information for the CCC to consider, CST staff may contact the contractor to solicit additional information in order to develop a report for the CCC's use in clarifying issues. Once the CCC has secured the necessary information, a meeting will be scheduled to discuss the claim with the contractor and district or division. If the contractor finds it necessary to introduce additional information to the CCC after this meeting is scheduled, it should be forwarded to the CCC secretary prior to the meeting date so that the added information may be given proper review and consideration prior to the meeting. This meeting is informal, without legal counsel, and gives all parties an opportunity to meet and discuss the claim. When the claim has been thoroughly covered, the CCC will recess the meeting. The CCC will consider the claim in private and send the contractor a certified letter with its proposed disposition of the claim. In accordance with the rules, the contractor will be afforded 20 calendar days from the date of receipt of the certified letter to agree or disagree with the CCC's decision.

Contested Case Procedure

In accordance with Title 43 of the Texas Administrative Code, Part 1, Chapter 91, Subchapter A, Rule §9.2(g)(3)(D)(ii), if a contractor is dissatisfied with the CCC's decision, the contractor may request a formal administrative hearing to resolve the claim under Title 43 of the Texas Administrative Code, Part 1, Chapter 1, Subchapter E, Part 121 et seq. of this title (relating to Procedures in Contested Cases).

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We provide the contractor with this information, because it is important for a contractor to be aware of these processes. Further, it is our goal to settle a dispute or claim in the fairest manner. We look forward to mutual resolution.

Sincerely,



Mark A. Marek, P.E.
Director of Engineering and Safety Operations

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Suggested Format for Filing a Claim

Request for Additional Compensation

Contractor Name:

CSJ:

Project Number:

Highway:

County:

Certification

Include the following statement on the initial page of the claim request, including the signature block shown below. The certification applies to all requests for contract adjustments and must be signed by an owner of the company.

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the contractor believes TxDOT is liable; and that I am duly authorized to certify the claim on behalf of the contractor.

Firm: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Summary

Give a brief explanation of the reasons for the request including the basis for the claim and the amount of additional compensation requested.

Details of Each Claim Issue

For each issue in the claim:

- provide the basis for the claim issue and the reason(s) TxDOT is responsible;
- explain the issue's impact on the project, (e.g., it resulted in extra work);
- provide a detailed explanation of the issue(s), the relevant facts, and supporting documents. Include, if appropriate, references to specifications, plans, time changes, correspondence, and project schedules that support the claim; and
- give a detailed cost breakdown and description of the additional compensation requested, including supporting documentation and calculations of the actual costs incurred.

Summary of Damages

If the claim involves several issues or request for additional compensation, provide a list of the claim issues, the additional compensation requested, and total amount of the entire claim.

Appendices

Include any supporting documentation (schedules, paid invoices, correspondence, daily diaries, etc.) you may deem necessary to support the claim. Do not send copies of specifications and plans from the contract unless they are needed to clarify the issue.