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September 21, 2021

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

Dear Contractor or other interested parties:

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

Disclaimer

This document is for information purposes only and serves as a guide to assist Contractors/Consultants in satisfying the requirements herein as per TAC Title 43 Part 1 Chapter 9 Subchapter A Rule 9.2.

Texas Administrative Code (TAC) Contract Claim Procedure

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 [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=43&pt=1&ch=9&rl=2](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=43&pt=1&ch=9&rl=2)

The contract claim procedure applies to the following types of contracts:

- Aviation Projects (Transportation Code, §22.018)
- Information logo, Major Area Shopping Guide Signs, and Major Agricultural Interest Sign Projects (Transportation Code, §391.091)
- Highway Improvement Projects as defined by 43 TAC §9.11(26)
- Professional or Consulting Services (Government Code, Chapter 2254)

Additionally, Title 43 of the Texas Administrative Code, Part 1, Chapter 9, Subchapter A, Rule §9.6, "Contract Claim Procedure for Comprehensive Development Agreements and Certain Design-Build Contracts," outlines the Contract Claim Committee (CCC) authority to administer claims stemming from a comprehensive development agreement (CDA) entered into under Transportation Code, Chapter 223, Subchapter E, "Comprehensive Development Agreements." 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 procedure for a purchase contract can be found in Title 43 of the Texas Administrative Code, Part 1, Chapter 9, Subchapter A, Rule §9.1, "Contract Claims under Government Code, Chapter 2260".

Successful Contract Dispute Resolution

TxDOT strives to execute contracts On-Time, On-Budget, and with High-Quality. This includes professional, compliant, and partnered contract administration best practices. TxDOT understands contract disputes are inevitable. To mitigate contract disputes, TxDOT utilizes precontract/preconstruction conferences, project pledges, and an issue resolution process (escalation ladder) to resolve contract issues while they are still current, at the project (District/Division) level, and in an informal manner.

Also, TxDOT's Construction Division (CST) Construction Support Section provides dispute resolution support to Districts/Divisions. The Contractor may request that a District/Division ask for assistance of CST; however, the request for a recommendation prepared by CST to settle a dispute must come from the District/Division. To request CST dispute resolution support, provide the following:

- Dispute resolution support request by emailing the CST Construction Section at CST-ConstructionSupport@txdot.gov
- Include in the subject line: Dispute Resolution Service Request, District/Division, CSJ or WA#, County, and let date in the subject line. An example is **(Dispute Resolution Service Request-AUS, CSJ 2211-02-017, Williamson, let 5/19)**
- Detailed description of project dispute
- Contact information to provide for questions and clarification

After receiving a request for dispute resolution support, the CST Support Section will review, analyze, and conclude a dispute recommendation report. This report is submitted to the District/Division managing the contract for final disposition. If a dispute cannot be resolved at the District/Division, then CST will recommend the availability of the Contract Claim Procedure.

Contract Claim Procedure

The contract claim consists of a **detailed report** and a **certification** from a Prime Contractor. A subcontractor can only make a claim through the Prime Contractor. A Certification and Claim Report template are attached to assist in the development of the claim report. To file a claim, use the Contract Claim Procedure below:

1. Develop a **detailed report** which provides the basis of the claim. The detailed report shall include relevant facts of the claim, cost or other data supporting the claim, a description of any additional damages requested, and documents supporting the claim.
2. **Certify** the detailed report with the statement: *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 the department is liable; and that I am **duly authorized** to certify the claim on behalf of the Contractor.*

A defective certification shall not deprive TxDOT of jurisdiction over the claim. Prior to the entry by TxDOT of a final decision on the claim, TxDOT shall require a defective certification to be corrected.

3. When submitting a claim, ensure the detailed report, certification and all supporting documentation are placed on a USB Drive (thumb, flash, or external hard drive). The claim can be submitted to one of the following in accordance with the requirements outlined in the TAC and as specified in Item 4 of the Standard Specifications:
 1. District/Division administering the contract
 2. TxDOT Construction Division, Attention: Division Director, 200 Riverside Dr., Austin, TX 78704
 3. TxDOT Construction Claims Committee, Attention: Claims Committee Secretary, 125 East 11th Street, Austin, TX 78701-2483
4. A counter claim may be filed by TxDOT 45 days before the CCC informal meeting. The CCC shall give the contractor the opportunity to submit a responsive report and recommendation concerning a counter claim filed by the department.

Suspending the Submittal of Claim to Resume Negotiations with District/Division

If a claim has been submitted and the Contractor wishes to resume negotiations with the District/Division, notify the CCC in writing of the intent to resume negotiations at the District/Division level and request review of the claim be suspended by the CCC pending the outcome of the negotiations. Until the time of the CCC informal meeting, the contractor and the District/Division may still pursue the option to settle the claim as a dispute. Submit this request in writing to TxDOT Construction Claims Committee, Attention: Claims Committee Secretary, 125 East 11th Street, Austin TX 78701-2483.

Following Contract Claim Submittal

All contract claims submittals are analyzed by the Claims Section of CST. Once a contract claim is received by CST, the following 10-Step Claim Review Process occurs:

10-Step Claim Review Process	Approximate Timeframe
Step 1 – TxDOT Receives and CST Reviews Claim Submittal for TAC Compliance	3 Days
Step 2 – CST Accepts or Rejects Claim Submittal by letter and informs CCC, District/Division, and Contractor	1 Week
Step 3a – CST Requests/Receives District report	2-5 Months
Step 3b – CST Gathers Claim Analysis Information	
Step 4 – CST Researches and Analyzes Claim	3-8 Months
Step 5 – CST Drafts Claim Report	2 Months

Step 6 – CST Finalizes Draft Report for CST DD Review/Approval	1 Month
Step 7 – CCC Review/Approve Draft Report	1 Month
Step 8 – CCC Schedule and Hold Informal Meeting Review/Settle Claim	2 Months
Step 9 – CCC Provides Claim Offer	1-3 Days
Step 10 – Contractor Accepts/Rejects Offer	20 Days

Note: The time frames for CST to complete the 10-Step Claim Process depend on the complexity and scope of the contract claim. During steps 1-7 above, the CST analyst may contact the Contractor and District/Division to solicit additional information or clarification to develop a Claim Report. Once the CCC has reviewed and approved the Claim Report, the CCC schedules a meeting to discuss the claim with the District/Division and the Contractor. This meeting is informal, without litigation, and is not admissible for any purpose in a formal administrative hearing. Following the informal claim meeting, the CCC recesses the meeting and considers all aspects of the claim in private.

The CCC concludes claim recommendations and sends the Contractor a certified letter with its proposed disposition of the claim. In accordance with TAC rules, the Contractor is afforded 20 calendar days from the date of receipt of the certified letter to agree or disagree with the CCC's decision. If the Contractor objects to the CCC's decision, the contractor may file a petition with the executive director no later than 20 days after receipt of the CCC certified letter.

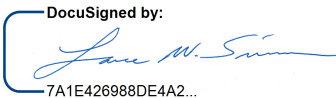
Contested Case Procedure

In accordance with Title 43 of the Texas Administrative Code, Part 1, Chapter 9, 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 1.21 et seq. of this title (relating to Procedures in Contested Cases).

Contact Information to Answer Contractor Questions

TxDOT strives to promote an environment of trust, mutual respect, integrity, and fair-dealing between the Department and the Contractor in the successful execution of contracts. If you have any questions regarding the procedures outlined in this document, please feel free to contact the Construction Division at (512) 416-2500.

Sincerely,

DocuSigned by:

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Lance Simmons, P.E.

Director of Engineering and Safety Operations

Claim Certification Template

CONTRACTOR

Address · Phone

[Email](#)

Texas Department of Transportation Contract Claim Committee (CCC)
200 East Riverside Drive
Austin Texas 78704
Date: Month Date, Year

SUBJECT: CONTRACTOR CLAIM #1

Attention: CST Division Director

Contract Information:

District or Division Administering the Contract: *Example Aviation Division*
Project Number or Work Authorization Number: *Example CM 2014(727)*
Highway or Facility Location: *Example US 77 or Port Aransas Ferry Building*
County: *Example Harris County*

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 the department is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.

Contractor or Consultant Company Name: Contractor
Printed Name: Authorized Representative
Signature: XXXXXX
Title: Authorized Representative Title
Date: Month Day, Year

Claim Report Template

CONTRACTOR'S NAME

CONTRACT CLAIM REPORT

The following template structure may be used by a Contractor/Consultant filing a claim.

CONTRACT INFORMATION

The contract information consists of a description of the work provided in the contract by the Consultant/Contractor. The table below shows other relevant contract information that assists in describing the contract details.

District or Division Administering the Contract	Example: Aviation Division
Project Number or Work Authorization	Example: CM 2014(727)
CSJ	XXXX-XX-XXX
County	Example: Harris County
Highway or Facility Location	Example: US 77 or Port Aransas Ferry Building
Contract Execution Date	XX/XX/XXXX
Contract Termination Date	XX/XX/XXXX
Work Begin Date	XX/XX/XXXX
Work Accepted Date	XX/XX/XXXX
Any other Key Dates?	

TABLE OF CONTENTS

The following table of contents provides the report sections that are key components that provide structure and clarity of a claim. The Project Overview, Issues, Issue attachments, and Claim Summary sections will be covered in detail below.

Project Overview	Page X
Issue 1	Page X
Issue 1 Attachments	Page X
Issue 2	Page X
Issue 2 Attachments	Page X
Claim Summary	Page X

PROJECT OVERVIEW

TxDOT organizes a claim report by breaking up into individual compartments called issues. This template shows an outline of how a Contractor/Consultant's claim report may be submitted to provide clarity for expedient processing.

The first portion of the claim report is the Project Overview which provides a clear and concise summary of what the claim issues are about, the key elements of the issues relating to delays, escalation costs, inefficiencies, etc. This is where the Contractor/Consultant portrays an overview of the entire claim with each issue summarized in parts and provides a list of compensation or time due to provide a summarized description. In addition, within this section of the report, provide information such as:

- Summarized issues with a brief description of each.
- The actual let date, award date, and the low bid amount.
- The allowable working days and how time was to be charged, additional days granted and total liquidated damages if any.
- The actual Authorization to Begin Work, when time began, and when the date the contractor began work.
- The actual date work was completed and the date the project was accepted.
- If applicable, information about project default and Surety Takeover information including execution date, completion contractor' completion and acceptance date.
- In listing the actual dates and noting any differences from the contractual dates listed on the Cover Page. Provide any relevant information that led to adjustments or impacts to contractual time frames.
- Provide any information that may describe the issues such as sequence of construction, special holidays or weekend work, night work only, etc.

ISSUE 1: UNPAID MOBILIZATION (EXAMPLE ONLY)

The table below outlines the time and compensation claimed by the Contractor/Consultant for Issue 1. Since, the complexity of a claim may include overlapping issues, TxDOT simplifies the claim process by breaking down the analysis of a claim into individual issue resolution. Use the table format below for the claim issue, add or modify as needed according to the claim.

Issue Description		Time and Compensation Claimed	
		Days	Dollars
1	Unpaid Mobilization Expenses	33	\$100.00
Calculated Total		33	\$100.00

Provide an explanation that thoroughly represents a summarized description of the claim issue. Provide total dollars and or time claimed by the Contractor/Consultant. Provide specific contract language breached that proves entitlement. Segment the issue into the monetary, time, and pricing sections to allow for easy organization of issues.

ISSUE 1: ATTACHMENTS

Provide all attachments relevant to issue 1. Include timelines, plan sheets, pictures, diaries, payroll, or any supporting information that validates the issue.

ISSUE 2: UNPAID CHANGE ORDER AND FORCE ACCOUNT WORK (EXAMPLE ONLY)

The table below outlines the time and compensation claimed by the Contractor/Consultant for Issue 2. Since, the complexity of a claim may include overlapping issues, TxDOT simplifies the claim process by breaking down the analysis of a claim into individual issue resolution. Use the table format below for the claim issues, add or modify as needed according to the claim.

Issue Description		Time and Compensation Claimed	
		Days	Dollars
2	Unpaid Change Order and Force Account Work	0	\$400.00
Calculated Total		0	\$400.00

Provide an explanation that thoroughly represents a summarized description of the claim issue. Provide total dollars and or time claimed by the Contractor/Consultant. Provide specific contract language breached that proves entitlement. Segment the issue into the monetary, time, and pricing sections to allow for easy organization of issues.

ISSUE 2: ATTACHMENTS

Provide all attachments relevant to issue 2. Include timelines, plan sheets, pictures, diaries, payroll, or any supporting information that validates the issue.

CLAIM SUMMARY

Use the below table format to summarize the claimed issues, and/or modify as needed according to the filed claim.

Issue Description		Time and Compensation Claimed	
		Days	Dollars
1	Unpaid Mobilization Expenses	33	\$100.00
2	Unpaid Change Order and Force Account Work	0	\$400.00
Calculated Total		33	\$400.00