

## Chapter 15 - Disputes & Claims

### *1-1501 Contractor's Right to Claim*

In accordance with Connecticut General Statutes Section 4-61, the Department of Transportation is subject to claims from its construction contractors. If a claim is not resolved to its satisfaction, a contractor may pursue it further in either Superior Court or formal arbitration. The Department acknowledges the validity of warranted claims and will offer the contractor payment of those sums the Department deems appropriate. We have found that the sooner we make a concerted effort to resolve a claim after it is received, the more likely it is that an amicable resolution will be achieved.

### *1-1502 Notification Requirements*

**The following is a list of events and situations that the Assistant District Engineer or District Engineer shall bring to the immediate attention of the Office of Construction.**

1. Receipt of a written notice of a claim.
2. Receipt of a demand for payment of costs which District personnel are not able to verify, such as but not limited to, overhead.
3. Receipt of a request for extension of contract time that, if granted, may expose the State to liability for cost incurred during or resulting from delay of project work.
4. Alleged differing site condition and/or significant change in the character of project work, receipt of a request for the adjustment of contract prices based on an alleged differing site conditions or a significant change in the character of project work if the aggregate adjustments would increase contract costs by \$100,000 or more.
5. Request to modify or waive contract requirements, as in situations in which a credit to the State should be proposed, a revision of the limitations of operations is requested, or the contractor is proposing design revisions.
6. Any situations in which the Department's action may set a significant precedent, or in which the Department's actions or inactions may have a significant effect on latter or larger demands or claims by a contractor.

**In addition the Assistant District Engineer or District Engineer must discuss the following with the Construction Division Chief or the Construction Administrator prior to implementation:**

- Directed acceleration of a project;
- Any change, alteration, modification, or waiving of Division 1 or the General Conditions of the Standard Specifications or any changes that may have been made to them by the Special Provisions or the Supplemental Specifications;
- Any change of the method of measurement for an item;
- Any request for a payment of home office overhead.

The Districts should follow this procedure on all projects, including projects being partnered. Partnering decreases the amount of time that the field staff has to resolve the dispute prior to escalating it to the next level. However, partnering does not change or alter the requirements of the contract nor does it give the District the authority to settle disputes beyond the ability given to them by the contract and the Construction Administrator.

### ***1-1503 The Dispute & Claim Process***

This section describes the procedure, which should be followed in handling contractor disputes and claims. The purposes of this process is to protect the State's interests and to ensure that appropriate resources are dedicated to a prompt resolution or, failing that, to a vigorous and well-planned defense of claims made against the Department.

**Dispute:** A dispute is a contractual problem involving a conflict between the Department and the contractor concerning extra work, increased costs, etc., which can be resolved at the District level or at the Contract Board of Review under the terms of the contract. A dispute is a problem that has not been formalized by *any* legal action.

**Claim:** A claim is a dispute that has progressed to the stage of a formal notice of claim, demand for arbitration or suit. A dispute may become a formal claim when it is not resolved at the District level and is passed up to the Office of Construction for formal processing. A claim is also defined as a dispute that cannot be resolved at the District level as explained further in this procedure.

**Step 1.** Whenever there is a potential contractual dispute on a project, the project Inspector involved should immediately bring the matter to the attention of the Chief Inspector who will make a note of it on their Diary. The Chief Inspector shall notify the Project Engineer of the potential dispute. The project personnel should research the facts and begin efforts to resolve the dispute. If the dispute is not resolved within twenty-one (21) days, the project engineer shall discuss the issue directly with the Assistant District Engineer on the twenty-first day. The project personnel should then discontinue discussions with the contractor regarding the dispute unless otherwise directed by the Assistant District Engineer.

**Step 2.** The Assistant District Engineer will assume responsibility for coordinating further efforts to resolve the dispute. Throughout Step 2, the Assistant District Engineer will keep himself informed with regard to the dispute and participate, as he deems appropriate, in attempts to resolve it. The Assistant District Engineer will confer with the District Engineer and the District Engineer may attempt to negotiate an equitable settlement of such matters, including issues regarding significant changes in the character of the work or regarding differing site conditions, for sums which he can justify, not to exceed \$ 100,000.00. For disputes exceeding \$100,000.00 in value, the District Engineer shall consult with the Office of Construction before proceeding with a dispute resolution.

If the District is unable to resolve the dispute or claim, the District Engineer or Assistant District Engineer must then discuss it with the Transportation Principal Engineer of Claims in the Office of Construction.

**Step 3.** Upon notification of the dispute or claim, the Office of Construction will talk with involved District and/or field personnel about the subject dispute in order to better understand the relevant issues. The Office will then discuss the matter with representatives of the Office of the Attorney General, and follow the advice received in all future activities relating to the dispute. All reports, opinions, recommendations, and other documents which the Office of Construction is advised by legal counsel to obtain, will be produced with limited or no copies and will be treated confidentially, and handled in whatever manner is necessary to protect the attorney-client privilege which may apply to them. The object is to protect those documents from being disclosed to third parties except, as our attorney may deem appropriate. The Transportation Principal Engineer of Claims, with advice from the Construction Administrator and/or the Construction Division Chief, will use all means at his disposal to produce a settlement of the dispute. The District will discontinue all communications with the contractor or its agents regarding the dispute unless otherwise instructed by the Office of Construction or by legal counsel.

**Step 4.** When the contractor or its attorney files suit in Superior Court or a demand for arbitration in an arbitration forum, the attorney representing the State will assume responsibility for the State's defense in the ensuing litigation, arbitration or mediation. The attorney's primary contact person within the Department, for purposes of handling such a defense, will be the Transportation Principal Engineer of Claims. The Office of Construction will arrange to have all the resources within the Department available to the attorney as they may be needed to carry out the defense or settlement of such formal claims.

**Summary:** The determination of when a discussion or dispute has become a claim is frequently a matter of subjective judgment. Consequently, it is important that those employees, who deal with the Department's contractors regularly, such as Chief Inspectors and Project engineers, keep their supervisors informed regarding disputes and demands for additional payment. It is equally important that the Assistant District Engineer and the District Engineer keep the Construction Administrator, the Construction Division Chief, and the Transportation Principal Engineer of Claims well informed regarding claims and potential claims.