

Chapter 27 - Disagreements, Disputes, and Claims

As stated in Section 00140.30, changes in plans, quantities, or details of construction are inherent in the nature of construction. That is because much of construction work involves things that are hidden beneath the ground and those hidden things may not actually be as had been anticipated. Also, even with the best of intentions, the plans may not work as well as expected when they are applied to the actual site, traffic, maze of utilities, etc.

When changes occur, there is the potential of disagreement. Also, whenever two people interpret contract language, there is the potential of disagreement.

Since there is a great potential for disagreement on construction projects, the Project Manager and project staff need to, among other things:

- Establish and maintain a working relationship with the Contractor that will allow them to work together to resolve problems
- Plan proactively to anticipate as many problems as possible so that solutions or alternate plans can be developed before the problem is actually encountered
- Develop and follow an issue resolution process to allow the parties to work through any problems, including an escalation process for those problems that are not resolved at the lowest possible level
- Be able to analyze the issue(s) objectively and openly to reach resolution

Section 00199 discusses resolution of disagreements and disputes. The intent of that specification is that disagreements would be resolved in a timely fashion, at the lowest possible administrative level, and that the Contractor is treated fairly in any disagreements.

The claim review process in Section 00199 does not apply to issues that only involve contract time. That review process is specified in Section 00180.80(d) and discussed in the Contract Time section (13) of this Manual. If the Contractor does not accept ODOT's findings on contract time issues, it may only pursue resolution through litigation.

Requests for additional compensation for damages incurred due to unreasonable delay, as specified in Section 00195.40, are addressed under the Section 00199 process. If needed by the Project Manager, the Contract Administration Engineer can provide training and assistance to the Project Manager in understanding, reviewing, and analyzing the project schedule and impacts to the project schedule.*

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It is extremely important that the Project Manager:

- As soon as the Project Manager receives a certified claim (request for additional compensation) document, as described in Section 00199.30, notifies the Construction Claims Coordinator in the Construction Section, so that the claim information can be entered in the database maintained for the Contract Administration Engineer.
- If the claim does not include all the information needed to adequately analyze the claim, request the needed information.
- Analyze each claim, including all information needed for adequate analysis, and responds to the Contractor within the 30-day time period specified in Section 00199.40.*

It is equally important that ODOT, at the Region/Area and Construction Section levels:

- Schedules the review meeting within 21 days after ODOT receives the claim (request for additional compensation) as discussed in Step 3 below
- Analyze the claim, and responds to the Contractor within the 30-day time period specified in Section 00199.40.
- If ODOT needs additional information to properly analyze the claim, at any level, ODOT must specify what information is needed. The Contractor must furnish that information within the specified 14-day period.

The processes in Section 00199 can be summarized as follows:

1. When the Contractor believes that ODOT has ordered it to perform work beyond that for which it will be paid under the contract or that a change in the work, including damage for unreasonable delay, has occurred or is about to occur, the Contractor's Superintendent or the designated representative needs to discuss it with the Project Manager or the designated representative. They need to look at potential changes in work processes, causes of the problem, impacts to the work, etc. If the Project Manager can agree that ODOT has ordered additional work or that a change has occurred and that ODOT is responsible for the additional or change in costs, the Project Manager should negotiate the cost and pay the costs via a Contract Change Order. If it cannot be resolved through discussion, ask the Contractor to submit its analysis and request in writing.

If the work is progressing, both the Contractor and the Project Manager should be agreeing on and recording the resources (i.e., labor equipment and

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materials) that were involved in the work that is in dispute. Be sure to record or document only the resources that are in dispute. Information about other resources that are not in dispute is extraneous.

The Project Manager should record that information on the Daily Progress Report, Daily Diary, or other document. The Project Manager may also use Daily Force account Record, form 734-3428, for this purpose, if the form is modified and appropriate information added to clearly indicate that the information only shows disputed work and that the work is not being done on a force account basis.

If form 734-3428 is used to record the disputed work, it is recommended that the following modifications, and others as appropriate, be made to the form:

- Cross out the form's title and indicate a different title for its use, such as "Record of Disputed Work"
 - Cross out the blank for "EWO No."
 - In the space for "Description of Work" and "Remarks", include a description of the dispute or reference a different document that clearly describes the dispute and why this information is being recorded
 - Have the Contractor write a short description of the reason for the dispute and include a copy with the record(s) of the resources involved in the dispute
 - Cross out the information in the instruction box at the bottom left of the form
 - Review the recorded information with the Contractor to assure agreement on the disputed resources and work. Ask the contractor to sign the form to indicate agreement. If the Contractor will not sign, the Project Manager must attempt to resolve that issue and assure that all disputed resources and work are being recorded.
 - If requested, provide a copy to the Contractor. In lieu of that, the Contractor may record the disputed resources on its own format.
2. The written notice about the disagreement helps the Contractor and the Project Manager to better understand the problem, the causes, the solutions, and the impacts involved in the disagreement. It may identify additional information that was not included in the verbal discussions.

The Project Manager must analyze the written request and may request additional information or clarification from the Contractor. Again, if the

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Project Manager agrees* that a change in the contract work has occurred and that the Agency is responsible for the change in costs, the Project Manager must negotiate the cost and pay it via a Contract Change Order.

Again, if the work is progressing, both the Contractor and Project Manager should be agreeing on and recording the resources involved in the work that is in dispute. *If the Contractor and Project Manager cannot resolve the dispute, it becomes a formal claim if the Contractor wishes to pursue it.

3. The Contractor must submit its claim no later than 15 calendar days after Second Notification. If a subcontractor wishes to file a claim (request for additional compensation) and has requested to have its retainage released, the Contractor must file that claim before *15 calendar days after the Contractor submitted the request to have the subcontractor's retainage released.

When the Project Manager receives a certified claim document, as described in Section 00199.30, notify the Contract Claims Coordinator in the Construction Section so the claim can be entered into the database maintained for the Contract Administration Engineer.*

The claim needs to include the information that is necessary for ODOT to evaluate the issue and the costs associated with it. A listing of probably items is shown in Section 00199.30(b).* The costs may be calculated as shown in 00199.30(b) or may be calculated on a force account basis.

The Project Manager must review the claim and request additional information if necessary. The Contractor must provide additional information within 14 days after the Project Manager requests it.*

The Project Manager must accept or deny the claim within 30 calendar days after the Project Manager has received all needed information.

If the Contractor does not accept the Project Manager's findings, it may request, within 10 days, *review at the Region level.

4. At this step, the Contractor would present its claim to the Area Manager for the Region level review. The presentation must occur within 21 calendar days of the Contractor's request for the hearing unless agreed differently.

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The Area Manager may request additional information and the Contractor must provide the information within 14 days of the request.

The Area Manager must provide a written decision within 30 calendar days. If agreement is not reached, the Contractor may request, within 10 days, review at the Construction Section* level.

5. At this step, the Contractor would present its claim to the Contract Administration Engineer. The presentation must occur within 21 calendar days of the Contractor's request for the hearing unless agreed differently. The Contract Administration Engineer may request additional information, if needed, and the Contractor must provide the information within 14 days of the request.*

The Contract Administration Engineer must provide a written decision within 30 calendar days.*

If agreement is not reached, the Contractor may request to escalate the claim to the appropriate portion of Section 00199.40(c). When needed, the Contract Administration Engineer will initiate the actions of 00199.40(c).

The whole intent of this section is that disagreements are settled in a timely manner and at the lowest possible administrative level. Please work toward this goal.

The Project Manager should consult with the Area Manager or the Contract Administration Engineer if needed.

If ODOT has incurred additional costs because of failure of a utility to timely modify, move, etc. its facilities, ODOT may recover those additional costs from the utility. Refer to the Procedure – Billing a Utility for Extra ODOT Costs located in the Work Done by Utilities and Railroads section of this Manual.**

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