

Construction Memo No. 1-00

MEMO TO: Chief District Engineer
TEBM's for Construction
District Construction Engineer
Resident Engineers
Active Consultant Engineers

FROM: Dexter Newman, P. E. Director
Division of Construction

DATE: January 10, 2000

SUBJECT: Contractor's Claims

As was promised at the 1999 Resident Engineers' meeting, the Department has revised its procedures for handling contractor's claims. Part of this change has required modifying the provisions of 603 KAR 2:015 Section 9 & 10 that governs the claims procedures, which literally means we had to get the law changed. We have also changed our specifications and procedures to streamline the process, close some legal loopholes and hopefully keep more disputes from reaching the court system. A committee composed of Resident Engineers and District TEBM's, the General Counsel's office, the Central Office Construction staff, and top management oversaw the changes. This memo outlines the new procedures.

Form TC63-32, formerly named "Notice of Intent to File Claim", has been reworded and renamed to "Notice of Disagreement/Changed Conditions". The Contractor must fill out this form within 10 days of beginning any disputed work. By the specifications, the contractor is required to perform work directed by the Department. Filling out this form establishes the fact that the contractor feels that he deserves extra compensation for this work. Failing to file this document is grounds for forfeiture of the claim. The Resident Engineer, upon receipt of the Notice of Disagreement/Changed Condition, will answer the Contractor with seven days with form TC 63-33, Acknowledgement of Notice of Changed Condition/Disagreement. These documents put both sides on notice that a disagreement exists, and starts on dispute resolution process. Please get a copy of these forms to Mary Jane Holbrook at Central Office Construction, who is maintaining our records, as soon as possible, so the Central Office knows that a dispute or disagreement exists. The Resident, in conjunction with the District office, should review the situation, talk to the Contractor, and try to resolve the dispute as soon as possible. Quite often, simply reviewing the plans, proposal, and specification with the contract will quickly solve the problems. If it is resolved, please E-mail Mary Jane Holbrook a brief note of explanation.

Section 104.02 of the 2000 Edition of the Standard Specifications requires the contractor to perform the work directed, if the dispute is not resolved. Section 105.13 requires the Contractor to document the costs of performing the work. These costs are to be entered on standard cost-plus forms, and signed off by the Resident. This is a reversal of the traditional cost documenting roles. Both sides should work together to efficiently get the work done at the least possible cost. The Cost-documentation process is only to identify the monetary parameters of the dispute, and in no manner indicates any agreement to pay this amount, or validation of the claim. Deciding who pays for what work items will come later.

Please continue the negotiation process during the project. Generally, it is in both sides' interest to resolve the issue quickly. The Contractor may submit his formal claim at any time, but is required to submit it no later than 30 days after the date formal acceptance is made, unless the dispute arises over payment issues during the final estimate process. The Contractor would have 60 days after receipt of the final release to submit his claim in that case. Receiving the formal claim escalates the process and triggers new procedures. Please send a copy of this formal claim to the Central Office liaison through Mary Jane Holbrook.

The Resident Engineer and District office should review the claim, meet with the contractor, and write up their recommendations. Please consult with the Central Office liaison during this process. After receipt of the formal claim, the District needs to forward their recommendations to the Central Office.

The Central Office will accept, deny or settle the claim within 90 days of receipt. The traditional "Claims Committee" has been expanded to include the District TEBM's on a rotating basis, representatives from the Office of General Counsel and the Depute State Highway Engineer for Construction and Operations. The Director of Construction is the chairperson of the "Claims Committee", and retaining the responsibility for ultimately resolving the issues. District representatives and/or the Contractors may be asked in to clean up any lingering areas of confusion. The Director will send a response to the Contractor explaining the decision and outlining the appeals process to the Commissioner of Highways. The Resident Engineer and District Office will receive copies of this letter.

Depending on circumstances, the Department may elect to enter into non-binding mediation with the Contractor through a mutually agreed on neutral mediator. The parties will share the cost of the mediation service. This step would come after the Central Office decision, but prior to the administrative hearing stage. Either side can decline to participate in the mediation process, and the claims process would proceed as before. If both sides agree to the mediation, then any time tables called for in the process are suspended until after the mediation.

The goal of these changes is to quickly resolve disputes at the local level. Historically, the vast number of disputes has been resolved quickly and quietly. Only a handful actually reaches the trial stage. Probably some disputes will still be settled in the court system. These changes to the claims process are intended to reduce the number of disputes being litigated. Anyone who has experienced the expense and aggravation associated with litigation will consider this a worthy goal.

Please note that this memo is merely a summary of the changes contained in the regulation attached for your full review. We urge you to read all of the changes to the regulation to which the Cabinet will be bound if the regulation goes into effect. We intend on filing the regulation with LRC in January 2000 and hope to have it enacted into law soon thereafter.

DN:bw

cc:	J. M. Yowell	Chuck Knowles
	Joe K. Deaton	Steve Goodpaster
	J. D. Stone	FHWA
	Rick Stansel	KAHC
	John Sacksteder	PAIKY
	Simon Cornett	C. O. Engineers

**KENTUCKY TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS**

TC 63-32
Rev. 10/99 Mod. 6/00

Notice of Changed Condition/Disagreement

TO: _____
Project Engineer

SUBJECT: *603 KAR 2: 015 Sections 9 & 10*

PROJECT NO: _____ PCN: _____

COUNTY: _____

Please accept this letter as Notice of a Change of Condition/Disagreement on the subject project.

BID ITEMS : _____

REASON: _____

LOCATION: _____

CONTRACTOR: _____

BY: _____

TITLE: _____

NOTE: The Project Engineer should

Acknowledge receipt of this notice

Within 7 days by transmitting Form

TC 63-33 to Contractor.

RECEIVED BY: _____

TITLE: _____

DATE RECEIVED: _____

KENTUCKY TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
DIVISION OF CONSTRUCTION

TC 63-33
Rev. 10/99 Mod. 6/00

Acknowledgement of Notice of Changed Condition/Disagreement

PCN: _____

PROJECT NUMBER: _____ COUNTY: _____

ROAD NAME: _____ CH NO. _____

CONTRACTOR: _____

SUB-CONTRACTOR (if involved): _____

* Date Notice of Changed Condition/Disagreement: _____

TO THE ATTENTION OF: _____

TITLE: _____

*Please be advised that this office is in receipt of a Notice of Changed Condition/Disagreement, dated _____
on the subject project. Please be advised that this dispute shall be governed by the procedures and provisions set forth
in 603 KAR 2:015 sections 9 & 10.*

*Please be advised that pursuant to Section 105.13 of the applicable edition of Standard Specifications for Road and
Bridge Construction, it is the Contractor's responsibility to keep a strict account of all costs related to the substance of
the changed condition/disagreement. The project engineer will acknowledge his or her approval/disapproval with the
records each day.*

*Neither the Notice of Changed Condition/Disagreement nor the fact that the Engineer has acknowledged the cost shall be
construed as proving or substantiating the validity of the potential claim.*

COMMENTS:

*This form should be transmitted within 7 days of receipt by Project Engineer of
Contractor's Notice of Changed Condition/Disagreement

BY: _____
PROJECT ENGINEER

COPY TO: District Office
Director, Division of Construction
Project File

DATE: _____