

Claims Review Board

Effective: October 30, 1995

UDOT 08B-91

Revised: February 17, 2016

Purpose

To establish a policy for the Utah Department of Transportation (Department) for the Claims Review Board. The Claims Review Board hears unresolved claims and make recommendations for settlement to the Department's Deputy Director.

Policy

The Department's construction contracts allow contractors to pursue Administrative resolution of any claim that cannot be resolved through the Partnering Escalation Ladder. The contracts also provide that if no agreement is reached the Contractor may submit a written request to the Resident Engineer and Director of Construction and Materials, or designee, who will schedule a meeting before the Department Claims Review Board. The Claims Review Board makes recommendations to the Deputy Director. Determinations made by the Deputy Director are administratively final.

The Deputy Director makes offers of settlement in compliance with Utah Code Section 63G-10-402. Any offer of settlement is subject to Rule 408 of the Utah Rules of Civil Procedure and records of the offer of settlement are considered protected pursuant to Utah Code Section 63G-2-305(32), except for the final settlements, that are public records.

The Claims Review Board is composed of:

The Project Development Director (chairman)

Director of Construction and Materials

A representative selected by the Utah Chapter of the Associated General Contractors (AGC)

The Board will meet as needed to review claims. The Department will furnish a secretary who will prepare notes or minutes if desired by the Board.

The review of the claim is an informal process. The claim may be presented with or without legal counsel. A written claim must be submitted by the contractor as required by Standard Specification 00727, Control of Work, before a meeting will be scheduled.

The Board will make its recommendations and outline its reasoning to the Deputy Director within 30 days after the completion of the claim meeting.

The Deputy Director, as the official designee of the Department's Executive Director, will consider the recommendations of the Claims Review Board, the Board findings, the claim documentation, and other materials needed to make an informed decision. A written decision is issued by the Deputy Director. The Deputy Director's decision outlines, in general terms, the reasons for the decision. If the claim is rejected, or if the sum tendered by way of settlement is not acceptable to the contractor, the contractor may elect to file a complaint in district court.

The Deputy Director will issue a written decision within 45 days after the claim meeting, if the amount does not require approval as outlined in Utah Code 63G-10-402, unless the parties involved agree in writing to a time extension. Failure to issue a written decision within the specified time will be considered a denial of the claim.

Procedures
Claims Review Board

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Responsibility: Resident Engineer

Actions

1. Notify the District Engineer, the Region Director, and the Project Controls Engineer of actual or potential claims.
2. Establish and maintain a separate file documenting all facts and information relating to actual or potential claims until the dispute or claim is resolved.
3. Determine whether or not the written claim meets the requirements for a claim submission as defined in Standard Specification Section 00727, Article 1.23, paragraph D. Instruct the contractor to make changes as necessary.
4. Review the claim and prepare a reply that responds to each item for which the Contractor has claimed additional payment or time.
5. Forward Contractor's original claim and letter requesting a meeting with the Claims Review Board 5 calendar days after receiving the request to the Project Controls Engineer.
6. Provide a claim analysis response to the contractors claim letter to the Project Controls Engineer.
7. Arrange to have statements from other personnel involved in the project related to the claim available at the meeting.
8. Prepare a Change Order to cover the agreed settlement if the Claims Review Board provides a decision that includes an offer of settlement that is accepted by the contractor.
9. Prepare and present a written or visual presentation at the Claims Review Meeting.

Responsibility: Director of Construction and Materials or designee

10. Set a date, time, and location for the Claims Review Board meeting and immediately notify all parties involved.

11. Contact the AGC and request that they select a panel member not directly involved with the Claim to serve on the Board.
12. Coordinate with this panel member to verify that the selected panel member is available to participate on the Claims Review Board.

Responsibility: Project Controls Engineer or Designee

13. Assist the Resident Engineer with the presentation to the Claims Review Board.
14. Help the Department prepare for whatever legal action the Contractor pursues if the Contractor rejects the Department's decision.
15. Review Contractor's claim for compliance with the Standard Specifications for completeness of information necessary to determine validity of the claim.
16. Return claims to Contractor or Resident Engineer for additional information where data furnished is not complete.
17. Provide the Contractor with a copy of documentation and information that will be presented at the meeting a minimum of 14 calendar days before the Claims Review Board meeting.
18. Provide the Claims Review Board with a copy of the Contractor's and Resident Engineer's documentation and information that will be presented at the meeting a minimum of 14 calendar days before the Claims Review Board meeting.

Responsibility: Claims Review Board

19. Hear the Contractor's claim and the Department's response. Do not allow new claims to be discussed in the meeting.
20. Review the Claim documentation provided by the Project Controls Engineer prior to the meeting.
21. Determine a recommendation for settlement in a separate meeting.
22. Submit a written recommendation to the Department's Deputy Director within 30 days after the claim meeting.

Responsibility: Deputy Director of Transportation

23. Notify the Contractor in writing of the decision of the Department within 45 calendar days after the claim meeting if the settlement offer is for less than the amount required to be approved by the Transportation Commission identified in Utah Code 63G-10-402. This decision is administratively final.
24. Schedule a time within 5 calendar days after the claim meeting to present the claim to the Transportation Commission, governor, or Legislative Management Committee when the claim exceeds the amount described in Utah Code 63G-10-402.
25. Notify the Contractor in writing of the meeting date and time within 5 calendar days after the date and time for the presentation to the applicable party are set.
26. Provide the Contractor with the applicable party's decision in writing within 5 calendar days after the decision is received by the Department.