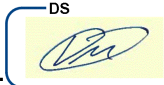




MEMO

January 2, 2024

To: District Engineers
Directors of Construction
Area Engineers

From: Duane Milligan, P.E.  ^{DS}
Director, Construction Division

Subject: Contract Claim Procedure 2024

CST revised the Contract Claim Procedure with the following:

- Revised "chairman" to "chair."

Attachments: Contract Claim Procedure 2024

CC: Lance Simmons, P.E., Chief Engineer
Jessica A. Butler, P.E., Director of Engineering and Safety Operations
Carl L. Johnson, P.E., Director of District Operations
Jason C. Duncan, P.E., Deputy Director Construction Division, CST
Carlos J. Rodriguez, P.E., Construction Section Director, CST
Melissa A. Daniels, Secretary, Contract Claims Committee



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January 2, 2024

Texas Department of Transportation (TxDOT) Contract Claim Procedure and Contested Case Procedure

Disclaimer

This document is for information purposes only and serves as a guide to assist Contractors/Consultants in satisfying the requirements of 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 [here](#).

The Contract Claim Procedure applies to the following types of contracts:

- Aviation projects (Transportation Code, §22.018)
- Information logo, major area shopping guide, and major agricultural interest sign projects (Transportation Code, §391.091)
- Highway improvement projects (Transportation Code, Chapter 223)
- Professional or consulting services (Government Code, Chapter 2254, Subchapters A and B)

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 apply to purchase orders or any agreements administered by the Procurement Division. The claim resolution procedure for such contracts 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".

Procedure To File A Claim

The contract claim consists of a **detailed report** and a **certification** from a Prime Contractor. A prime contractor can make a claim on behalf of a subcontractor only if the prime contractor is liable to the subcontractor on the claim. A Claim Certification Template, Claim Report Template, USB Drive Guide, and Supporting Documentation Guide are attached to assist in the development of the claim report. To file a claim, use the guidance below:

1. Submit 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.

Upon receipt of the claim, CST will review the data and analyze the information presented. If additional information is needed, CST will request it from the Contractor and establish a submittal deadline.

The Supporting Documentation Guide is provided for the Contractor's reference, listing suggested supporting documentation for common impacts.

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. Store the claim electronically and submit the detailed report, certification, and supporting documentation on a USB drive or external hard drive. The claim can be submitted to one of the following:

1. District/Division administering the contract
2. TxDOT Construction Division at the following address:

TxDOT Construction Division
Attn: (insert division director name)
125 E. 11th Street
Austin, TX 78701-2483

3. TxDOT Contract Claim Committee (CCC) at the following address:

TxDOT Contract Claim Committee
Attn: Claims Committee Secretary
125 E. 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. A suspension request can be sent to the TxDOT Contract Claim Committee (CCC) at the address above. The CCC will acknowledge receipt of the request and the date it was recorded.

If a settlement is reached:

The District/Division will notify the CCC of the settlement and a confirmation request will be sent by the CCC to the Contractor. The Contractor shall confirm the settlement in writing. The claim is then indefinitely suspended and the claim procedure will conclude.

If a settlement is not reached:

The District/Division will notify the CCC that a settlement was not reached and a confirmation request will be sent by the CCC to the Contractor. The Contractor shall confirm in writing that they wish to resume the claim procedure. The CCC will then acknowledge the claim procedure has resumed.

Contract Claim Process

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 3 – CST Requests/Receives District/Division Report	2-5 Months
Step 4 – CST Gathers Claim Analysis Information	
Step 5 – CST Researches and Analyzes Claim	3-8 Months
Step 6 – CST Drafts Claim Report	2 Months
Step 7 – CST Finalizes Draft Report for CST DD Review/Approval	1 Month
Step 8 – CCC Reviews/Approves Draft Report	1 Month
Step 9 – CCC Schedules and Holds Informal Meeting Review/Settle Claim	2 Months
Step 10 – CCC Provides Claim Offer	1-3 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, CST 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 the claim report 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 chair will provide written notice to the Contractor of the committee's decision on the claim. In accordance with TAC rules, if the Contractor does not object to the decision, the Contractor shall provide a written statement to the committee chair stating that the Contractor does not object to the decision. This written statement shall be submitted no later than 20 calendar days after receipt of the committee's decision.

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 the Contractor objects to the CCC's decision, the Contractor may request a formal administrative hearing to litigate the claim under Title 43 of the Texas Administrative Code, Part 1, Chapter 1, Subchapter E (relating to Procedures in Contested Cases). Submit this request no later than 20 calendar days after receipt of the committee's decision.

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 Construction Division at (512) 416-2500.

Claim Certification Template

CONTRACTOR

Address · Phone

[Email](#)

Texas Department of Transportation Contract Claim Committee (CCC)
125 E. 11th Street
Austin, Texas 78701-2483
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

The following template structure may be used by a Contractor/Consultant filing a claim. The use of this template will assist in providing clarity and expedient analysis of a claim.

CONTRACTOR'S NAME

CONTRACT CLAIM REPORT

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

CLAIM OVERVIEW

Although the complexity of a claim may include overlapping issues, the Contractor is encouraged to organize their claim report by presenting each claim issue separately. This template shows an outline of how a Contractor/Consultant's claim report may be submitted to provide clarity for expedient processing.

In this portion of the claim report, provide a clear and concise summary of each claim issue and the key elements of the issue relating to specific impacts (delays, disruptions, inefficiencies, etc.)

CLAIM SUMMARY TABLE

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

Issue Description		Time and Compensation Sought	
		Days	Dollars
1	Issue Name	3	\$1,000.00
2	Issue Name	0	\$400.00
3	Issue Name	5	\$1,600.00
Calculated Total		8	\$3,000.00

ISSUE 1: ISSUE NAME

Narrative

Provide an explanation that thoroughly describes the claim issue and the contract adjustment sought (time and/or compensation). Include the relevant facts and chronology of events surrounding the issue that support the claim. Within this section, include reference to the supporting documents in the claim attachments.

The table below outlines the adjustments sought by the Contractor/Consultant for Issue 1. Use the table format below for the claim issue, modifying as needed relative to the claim.

Issue Description		Time and Compensation Sought	
		Days	Dollars
1	Issue Name	3	\$1000.00

Entitlement

Provide the basis for entitlement of a contract adjustment. Include the specific contract language that allows for the contract adjustment being sought (time and/or compensation). Additionally, include information that demonstrates the Contractor/Consultant fulfilled its responsibilities cited in the Contract relative to the issue. Similarly, provide support that demonstrates TxDOT did not fulfill its responsibilities cited in the Contract relative to the issue.

Adjustment Amount

In this section, include the methodology used to arrive at the time adjustment being sought. When seeking damages, include actual expenses resulting from the claimed impact. Include all adjustment calculations in this section or as an attachment.

ISSUE 1 ATTACHMENTS

Provide all attachments relevant to Issue 1. Include timelines, plan sheets, pictures, diaries, payroll, or any other information that supports the claim. (Refer to the Supporting Documentation Guide for suggestions relative to the varying types of impacts)

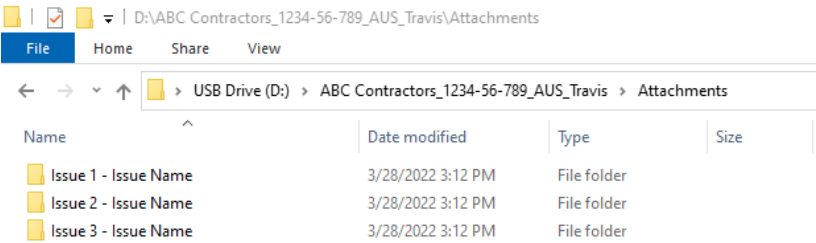
USB Drive Guide

ELECTRONIC FILE STRUCTURE

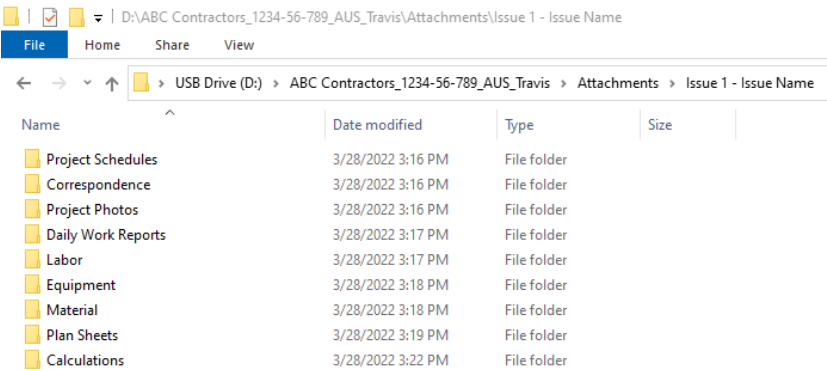
The USB flash drive should include one main folder named with the following convention:

Contractor_CSJ_District_County (Ex: ABC Contractors_1234-56-789_AUS_Travis)

Within this folder, include the claim report and a subfolder named “Attachments”. Within the Attachments folder include subfolders for each issue as shown below.



Within each of these folders include subfolders for each type of supporting document included as shown below.



Please note that unorganized or bulk data will not be accepted.

Supporting Documentation Guide

The table below provides suggestions of the documentation required to support varying claim issues. The list is not intended to be all-inclusive and supporting documentation is not limited to contents of this guide.

Impact Type	Entitlement Support	Cost Support
Disruption	<ul style="list-style-type: none"> • Impacted activity identified in project schedule(s) • Electronic project schedule native file(s) • Accepted contemporaneous schedule(s) for impact period • Correspondence describing cause for disruption • Written notice to the Engineer of intent to request additional compensation 	<ul style="list-style-type: none"> • Labor <ul style="list-style-type: none"> ○ Certified payroll for disrupted period ○ Timesheets for impacted labor during disrupted period ○ Calculations for claimed amount • Equipment <ul style="list-style-type: none"> ○ List of impacted equipment (year, make, model) ○ Rental invoices for impacted equipment (if rented) ○ Blue book values for impacted equipment (if owned) ○ Calculations for claimed amount • Material <ul style="list-style-type: none"> ○ Material invoices for material used due to impact ○ Calculations for claimed amount • Subcontracts <ul style="list-style-type: none"> ○ Subcontractor invoices with supporting documentation shown above for labor, equipment, and material

Impact Type	Entitlement Support	Cost Support
Inefficiency or Acceleration	<ul style="list-style-type: none"> • Impacted activity identified in project schedule(s) • Electronic project schedule native file(s) • Accepted contemporaneous schedule(s) for impact period • Analysis of impacted vs unimpacted productivity (Measured Mile Analysis) • Specific locations where work was inefficient (Station to Station, Plan sheet markups) • Correspondence describing cause for inefficiency or acceleration • Written notice to the Engineer of intent to request additional compensation • Written notice to the Engineer of potential time impact 	<ul style="list-style-type: none"> • Labor <ul style="list-style-type: none"> ○ Certified payroll for inefficient or accelerated period ○ Timesheets for impacted labor during inefficient or accelerated period ○ Calculations for claimed amount • Equipment <ul style="list-style-type: none"> ○ List of impacted equipment (year, make, model) ○ Rental invoices for impacted equipment (if rented) ○ Blue book values for impacted equipment (if owned) ○ Calculations for claimed amount • Material <ul style="list-style-type: none"> ○ Material invoices for material used due to impact ○ Calculations for claimed amount • Subcontracts <ul style="list-style-type: none"> ○ Subcontractor invoices with supporting documentation shown above for labor, equipment, and material

Impact Type	Entitlement Support	Cost Support
Delay	<ul style="list-style-type: none"> • Documents establishing the impact was the responsibility of TxDOT • Notice of Potential Time Impact • Establish delay to project completion date <ul style="list-style-type: none"> ○ Accepted baseline and monthly schedule updates, including narrative, in PDF and native schedule software file format ○ Time Impact Analysis specific to the delay period per specification ○ PSSR if required by specification • If delay analysis is retrospective, define the method of analysis <ul style="list-style-type: none"> ○ For the impact period: <ul style="list-style-type: none"> ▪ Identify all the critical path activities ▪ Identify the planned duration and start/finish dates for each critical activity ▪ Identify the actual duration and start/finish dates for each critical activity ▪ Calculate the delay to each critical activity • Correspondence • RFIs • Change Orders 	<ul style="list-style-type: none"> • Overhead <ul style="list-style-type: none"> ○ Invoices ○ Payroll data ○ Timesheets ○ Calculations for claimed amount • Documentation for Standby <ul style="list-style-type: none"> ○ List of impacted equipment (year, make, model) ○ Rental invoices for impacted equipment (if rented) ○ Blue book values for impacted equipment (if owned) ○ Calculations for claimed amount • Cost Escalation <ul style="list-style-type: none"> ○ Material Purchase Agreements ○ Equipment Rental Agreements ○ Material Invoices ○ Equipment Invoices ○ Calculations for claimed amount