



and Materials

TIPS

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Highlights

The following are highlights of recent changes made to the Contract Claim Procedure. The effective date of these changes was July 13, 2007.

- The contract claim procedure (Texas Administrative Code, Part 1, Chapter 9, Subchapter A, Rule §9.2.) covers all highway construction contracts, maintenance contracts, guide signing contracts, building contracts, aviation contracts, consultant contracts and comprehensive development agreement (CDA) contracts (Rule §9.6).
- The deadline to file a claim is the earlier of one year after the date of final acceptance of the contract, the date the department issues notice to the contractor that they are in default or the date the department terminates the contract. If a claim results from the enforcement of a warranty, the prime contractor shall file the claim no later than one year after expiration of the warranty period.
- Claims must be certified by the prime contractor and include the following signed statement as part of the claim report filed:

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.

If a certification is found to be defective, a meeting will not be scheduled with the Contract Claims Committee (CCC) until the certification is corrected.

- A claim against the department shall be forfeited to the department by any person who corruptly practices or attempts to practice any fraud against the department in the proof, statement, establishment or allowance thereof. In such cases, the department shall specifically find such fraud or attempt and render judgment of forfeiture. This applies if there is clear and convincing evidence that a person knowingly presented a false claim for the purpose of getting paid for the claim.
- After a claim proceeding has begun, the department may make a counter claim. The department may, but is not required to use the administrative proceeding to file a counter claim. When the department has a claim against a contractor, the department may file suit in a court of competent jurisdiction. There is a set deadline of 45 days for the department to file a counterclaim before the contract claim committee holds the informal meeting with the contractor. The procedure for the department to file a claim in a court of competent jurisdiction, including the deadline to file a claim, is set by other law.



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- ➔ The prime contractor may make a claim on behalf of a subcontractor only if the prime contractor is liable to the subcontractor on the claim. Sub-contractors and suppliers cannot file a claim directly with the department.
- The rules require the contractor to provide a detailed report of their request. The rule further states the detailed report shall provide:
 - The basis for the claim,
 - Relevant facts of the claim,
 - Cost and other data supporting the claim,
 - Description of any additional compensation requested; and,
 - Documents supporting the claim.

References

The original *Contract Claim Procedure* was adopted on June 10, 1988. The current version can be found in Title 43 of the Texas Administrative Code, Part 1, Chapter 9, Subchapter A, Rule §9.2.

In the Internet go to:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=43&pt=1&ch=9&rl=2](http://info.sos.state.tx.us/pls/pub/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=43&pt=1&ch=9&rl=2).

Contact Information

Please contact the Claims, Disputes, and Special Programs Section of the Construction Division at 512/416-2500, if you have any questions about the content of this article.