



SPECIFICATIONS OVERVIEW

Claim Related Specifications:

5-6 Authority and Duties of Engineer's Assistants

5-12 Claims by Contractor

4-3.2 Increase, Decrease or Alteration in the Work

8-7.3 Adjusting Contract Time

CPAM 7.5 Construction Contract Claims

CPAM 5.1 Project Diary (Section 4)



5-6 Authority/Duties of Engineer's Assistants

Your Authority:

- to inspect all work and furnished material
- to call attention to any failure of the work or materials to meet contract documents
- to reject materials or suspend work until any questions at issue can be decided by the Engineer



5-12 Claims by Contractor

5-12.2.1 Extra Work:

- ◆ Written NOI required before beginning work
- ◆ Prelim. Time extension request w/in 10 days of delay start (8-7.3.2)

5-12.2.2 Delay:

- ◆ Written NOI required w/in 10 days after beginning of delay to Controlling Item of Work
- ◆ Prelim. Time extension request w/in 10 days of delay start (8-7.3.2)



2 Types of Claim

5-12.2.1

5-12.2.1 Claims For Extra Work: Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the

5-12.2.2

5-12.2.2 Claims For Delay: Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay, and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. On



Content of Written Claim

5-12.3 Requires the following minimum info:

- ◆ Factual statement of claim including dates, locations, affected work
- ◆ Date(s) of actions resulting in claim
- ◆ Identify all documents or oral communication related to claim (who)
- ◆ Provisions of contract supporting claim and reasons why or provisions allegedly breached
- ◆ Detailed breakdown of additional costs
- ◆ Specific dates and exact # calendar days sought for a time extension, entitlement basis, delay documentation



Content of Written Claim

5-12.3 Content of Written Claim: As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a written claim to the Department which will include for each individual claim, at a minimum, the following information:

- (a) A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;
- (b) The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;
- (c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;
- (d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;
- (e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:
 - (1) documented additional job site labor expenses;
 - (2) documented additional cost of materials and supplies;
 - (3) a list of additional equipment costs claimed, including each piece of equipment and the rental rate claimed for each;
 - (4) any other additional direct costs or damages and the documents in support thereof;
 - (5) any additional indirect costs or damages and all documentation in support thereof.
- (f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

How do we compensate Contractor for Extra Work or Delays?

5-12.6 which refers to 4-3.2 for compensation of:

- ◆ Actual Direct Costs (labor, material, equipment costs)
- ◆ Indirect Costs, Expenses and Profit (17.5% markup on direct costs or average daily overhead formula)





5-12.7 Mandatory Claim Records

- ...After giving the Engineer NOI to file claim for extra work or delay, **the Contractor must** keep daily records of all labor, material and equipment costs incurred...
- ...The Contractor shall, once NOI to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Department's daily records.



5-12.8 Claims for Acceleration

The Department is NOT liable for any constructive acceleration.

For the Contractor to have a valid claim for acceleration the FDOT must have given “express written direction for the Contractor to accelerate” which sets forth prices for such acceleration.



Certification of Claims

- ◆ 5-12.9 Certificate of Claim: ...the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.
- ◆ Similar certification required for requests for equitable adjustments within 4-3.2.



What Doesn't have to be Certified?

- ◆ Notices of Intent (5-12.2)
- ◆ Preliminary Requests for Time Extension (8-7.3.2)
- ◆ Requests for Time Extension (8-7.3.2)
- ◆ Department initiated requests for pricing of additional work do not require Contractor certification



What Needs Certification?

- ◆ Technically, any Contractor request for additional costs
 - In general, anything under dispute we expect Contractor to certify
- ◆ Must be certified by someone with authority to bind the Contractor (usually an officer of the Company)



Certification Language

- ◆ No specific language in contract but it should be notarized
- ◆ Example:

“Under penalties of perjury, I declare that the claim is made in good faith, that the supportive data provided is accurate and complete to the best of the my (Contractor’s) knowledge and belief, and that the amount of the claim reflects what is believed (the Contractor believes) to be the Department’s responsibility.”



Certification of Subcontractor Claims

- ◆ Typically, a prime contractor does not have full access to the books and records of its subcontractors
- ◆ Courts have held primes to less exacting standards for certifying sub claims
- ◆ But, courts do not absolve primes of the obligation to consider the amount of sub's claim and to assess whether, based on the information in prime's possession, the claim "accurately reflects the contract adjustment for which the Contractor believes the Department is liable."



Certification of Subcontractor Claims

- ◆ Prime Contractor serves a “Gate Keeper”
- ◆ Subcontractors to provide prime with same certification FDOT requires of prime
- ◆ Prime then certifies the subcontractor’s claim (on prime letterhead)
 - requires prime to certify that they believe that there is good ground for the claim and not that they believe the sub’s claim is certain



Certification of Subcontractor Claims

- ◆ Example Prime Certification of Subcontractor Claim

“This submission includes a subcontractor pass-through claim by ABC Construction. Under penalties of perjury, the Contractor has reviewed the pass-through claim and believes it is made in good faith and has merit, subject only to the following qualification (if any).”



Prohibited Claims

5-12.10 Non-Recoverable Items

- ◆ Loss of profit, incentives or bonuses
- ◆ Consequential damages (loss of bonding capacity, credit, bidding opportunities)
- ◆ Acceleration
- ◆ Attorney fees, claim preparation or litigation expenses
- ◆ Any claim for other than extra work or delay



4-3.2 Increase, Decrease Alteration in the Work

- ◆ Subject to the same certification requirements of the Claim Specification
- ◆ Contractor is only entitled to a time extension for performance of additional work to CIW that actually extends completion of the project due to no fault of the Contractor



Engineer's Cost Estimates

4-3.2.1 Extra Work Allowable Costs

- ◆ Written NOI required before beginning work
- ◆ Prelim. time extension request w/in 10 days of delay start (8-7.3.2)
- ◆ Let's review the Project Administrator /Engineer's Estimate for the cost of:
 1. Labor & Burden
 2. Materials & Supplies
 3. Equipment Costs
 4. Indirects, Expenses & Profit



4-3.2.1 (A) Labor & Burden

LABOR

- ◆ Include foreman actually engaged in work
- ◆ Do not include Supervisory or Clerical (*exception when unforeseen work is to a CIW that extends project completion*)
- ◆ Hourly labor rates based on certified payrolls on Federal Projects
- ◆ Non-Federal Projects can use prior projects or other federal projects contractor is on in area or use Davis bacon rates as comparison



4-3.2.1 (A) Labor & Burden

BURDEN

- ◆ Burden is the Contractor's cost for having employees (insurance, fringe benefits, worker's comp., FICA, etc.)
- ◆ Certified burden should be submitted at the Preconstruction Conference (per Table 4-3.2.1).
- ◆ Typical burden for roadway contractor is between 35-50%; bridge or painting 45-70%
- ◆ Subs not required to submit certified burden rates until they perform extra work that we are paying for by SA

4-3.2.1 (A) Labor & Burden

BURDEN



Table 4-3.2.1

Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law
Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor's actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual

*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).



4-3.2.1 (B) Materials & Supplies

- ◆ The Contractor shall receive the actual cost of materials and supplies incorporated into the work
- ◆ Contractor also receives compensation for transportation charges if special equipment, materials or supplies must be transported to project to complete the extra or unforeseen work



4-3.2.1 (B) Materials & Supplies

- ◆ Include cost of MOT devices used in performing the work
- ◆ Mobilization costs are valid but needs backup and justification so document



4-3.2.1 (C) Equipment

- ◆ Machinery or special tools, including fuel & lubricants, for actual time in operation
- ◆ Allow 50% Blue Book Rate for idle (standby) equipment
 - Don't pay for days the Contractor does not normally work (i.e. if not working weekends)
- ◆ Exclude small tools



Allowable Equipment Rates

Hourly Rate = Hourly Eqpt Rate + Hourly Operation Rate

- ◆ Hourly Equipment Rate:
(Monthly Rate/176) x Regional Factor
- ◆ Hourly Operating Rate:
(Hourly Operating Cost x 100%)

Standby Rate is 50% of the Hourly Equipment Rate

- ◆ Up to 8 hours per day (only # hours that, when added to operating time, equals 8 hours)
- ◆ When cost of moving exceeds accumulated standby cost
- ◆ No standby for no work days



Indirect Costs, Expenses, Profit

Option 1:

- ◆ 17.5% mark up on labor/burden, materials/supplies, equipment costs
- ◆ Plus any bond premium paid by Contractor resulting from extra/unforeseen work (provided clear & convincing proof actually paid)
- ◆ Contractor allowed 10% mark up on first \$50K and 5% mark up on any amount over \$50K on any subcontract directly related to work



Indirect Costs, Expenses, Profit

Option 2:

- ◆ Formula based on days of entitlement exceeding 10 cumulative days defined as:

$$D = (A \times C) / B$$

A = Original contract amount, \$

B = Original contract time, days

C = 8%

D = Average overhead per day



4-3.2.2 Subcontractor Allowable Costs

- ◆ Calculate the same as for prime per 4-3.2.1
- ◆ Notice requirements are the same
- ◆ Certification requirements are similar (goes through prime)



4-3.7 Differing Site Conditions

- ◆ Subsurface or latent physical conditions encountered that differ materially from those indicated in the Contract, or
- ◆ Unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work



4-3.8 Changes Affecting Utilities

- ◆ Notify the Department in writing of any potential impacts to utilities caused by their own proposed changes
- ◆ Contractor remains responsible for utility impacts, costs, delays, etc. resulting from their initiated changes



8-7.3 Contract Time Adjustments

May grant time extension:

- ◆ If CIW is delayed by factors not reasonably anticipated or foreseeable at the time of bid
- ◆ During original contract time or periods of authorized extension
- ◆ Will NOT grant time for delays due to Contractor fault or negligence



8-7.3 Adjusting Contract Time

- ◆ Can adjust for affect of Utility Adjustments on job progress IF
 - Utility work either not shown in plans or not reasonably close to utility relocation schedule
 - Utility work actually affected progress toward CIW completion
 - Contractor took reasonable measures to mitigate impact of utility work including schedule coordination and advance notice to utility owners to avoid delays



Notice Requirements

- ◆ Contractor must provide preliminary request for time extension in writing within 10 days after start of a delay to CIW
- ◆ Contractor must submit request for time extension in writing within 30 days after elimination of a delay to a CIW identified in the preliminary request
- ◆ Must provide supporting documentation and exact # days requested (dates are also beneficial)



CPAM 7.5 Construction Claims

- ◆ 7.5.4
- ◆ Any verbal notices should be recorded within your DWR in the “Comments” section. Make it clear to Contractor that “written” notice is required for their claim to be considered.
- ◆ Notify your PA immediately.



CPAM 7.5 Construction Claims

- ◆ 7.5.5
- ◆ Take steps to immediately resolve the issue.
- ◆ Immediately **DOUBLE** your efforts to document the contractor's labor, equipment and materials.



7.5.6 Claims Involving a Utility

- ◆ If a claim involves a utility, the PA must immediately notify the affected Utility Owner
- ◆ It can be verbal but must be followed up immediately in writing (Resident signs)



7.5.7.1 Comprehensive Documentation

- ◆ Document all relevant facts, be objective
- ◆ Most valuable information is that gathered on site when a claim situation is first encountered (spelling won't count against you)
- ◆ *A CLAIM FILE should be started for each NOI*



Claim File Contents

- ◆ Contractor notice
- ◆ PA response(s)
- ◆ Daily documentation and records of labor, equipment, materials (our independent records)
- ◆ Notice to other parties (Utility Owners)
- ◆ Weekly cost statements (from contractor)



Utility Notices

- ◆ No. 1 – Immediately upon being put on notice of claim
- ◆ No. 2 – After receiving the contractor claim package
- ◆ No. 3 – If Utility fails to resolve within 60 days, notify them of negotiation meeting where we will attempt to settle.
- ◆ NEW No. 4 – Demand Letter

SPECIFICATIONS OVERVIEW SUMMARY

5-12 Claims by Contractor

- ◆ 2 Types: Extra Work and Delay
- ◆ Content of written claim
- ◆ Mandatory records and how/what we can compensate
- ◆ Certification requirements



SPECIFICATIONS OVERVIEW SUMMARY

4-3.2 Increase, Decrease or Alteration in the Work

- ◆ Engineer's cost estimate
 - Labor & Burden
 - Material & Supplies
 - Equipment Costs
 - Indirects, Expenses & Profit
- ◆ Prime and Sub costs



SPECIFICATIONS OVERVIEW SUMMARY

4-3.8 Changes Affecting Utilities

CPAM 7.5 Construction Claim Administrative Procedures

- ◆ Documentation requirements
- ◆ Filing procedures
- ◆ Notice requirements to Utility Owners



Questions?



SECTION 5 CONTROL OF THE WORK

5-4 Errors or Omissions in Contract Documents.

Do not take advantage of any apparent error or omission discovered in the Contract Documents, but immediately notify the Engineer of such discovery. The Engineer will then make such corrections and interpretations as necessary to reflect the actual spirit and intent of the Contract Documents.

5-5 Authority of the Engineer.

Perform all work to the satisfaction of the Engineer.

The Director, Office of Construction will decide all questions, difficulties, and disputes, of whatever nature, that may arise relative to the interpretation of the plans, construction, prosecution, and fulfillment of the Contract, and as to the character, quality, amount, and value of any work done, and materials furnished, under or by reason of the Contract.

5-6 Authority and Duties of Engineer's Assistants.

The Director, Office of Construction may appoint such assistants and representatives as he desires. These assistants and representatives are authorized to inspect all work done and all materials furnished. Such inspection may extend to all or any part of the work and to the manufacture, preparation, or fabrication of the materials to be used. Such assistants and representatives are not authorized to revoke, alter, or waive any requirement of these Specifications. Rather, they are authorized to call to the attention of the Contractor any failure of the work or materials to meet the Contract Documents, and have the authority to reject materials or suspend the work until any questions at issue can be referred to and decided by the Engineer. The Engineer will immediately notify the Contractor in writing of any such suspension of the work, stating in detail the reasons for the suspension. The presence of the inspector or other assistant in no way lessens the responsibility of the Contractor.

5-7 Engineering and Layout.

5-7.1 Control Points Furnished by the Department: The Engineer will provide centerline control points (Begin Project, End Project, PIs, PTs, etc.) and bench marks at appropriate intervals along the line of the project to facilitate the proper layout of the work. Normally, the Engineer will furnish only one bench mark for water crossings. Preserve all reference points and bench marks that the Department furnishes.

As an exception to the above, for projects where the plans do not show a centerline or other survey control line for construction of the work (e.g., resurfacing, safety modifications, etc.) the Engineer will provide only points marking the beginning and ending of the project, and all exceptions.

5-7.2 Furnishing of Stake Materials: Furnish all stakes, templates, and other materials necessary for establishing and maintaining the lines and grades necessary for control and construction of the work.

5-7.3 Layout of Work: Utilizing the control points furnished by the Department in accordance with 5-7.1, establish all horizontal and vertical controls necessary to construct the work in conformity to the Contract Documents. Perform all calculations required, and set all stakes needed such as grade stakes, offset stakes, reference point stakes, slope...

5-12 Claims by Contractor.

5-12.1 General: When the Contractor deems that extra compensation or a time extension is due beyond that agreed to by the Engineer, whether due to delay, additional work, altered work, differing site conditions, breach of Contract, or for any other cause, the Contractor shall follow the procedures set forth herein for preservation, presentation and resolution of the claim.

Submission of timely notice of intent to file a claim, preliminary time extension request, time extension request, and the certified written claim, together with full and complete claim documentation, are each a condition precedent to the Contractor bringing any circuit court, arbitration, or other formal claims resolution proceeding against the Department for the items and for the sums or time set forth in the Contractor's certified written claim. The failure to provide such notice of intent, preliminary time extension request, time extension request, certified written claim and full and complete claim documentation within the time required shall constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to additional compensation or a time extension for such claim.

5-12.2 Notice of Claim:

5-12.2.1 Claims For Extra Work: Where the Contractor deems that additional compensation or a time extension is due for work or materials not expressly provided for in the Contract or which is by written directive expressly ordered by the Engineer pursuant to 4-3, the Contractor shall notify the Engineer in writing of the intention to make a claim for additional compensation before beginning the work on which the claim is based, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. If such notification is not given and the Engineer is not afforded the opportunity for keeping strict account of actual labor, material, equipment, and time, the Contractor waives the claim for additional compensation or a time extension. Such notice by the Contractor, and the fact that the Engineer has kept account of the labor, materials and equipment, and time, shall not in any way be construed as establishing the validity of the claim or method for computing any compensation or time extension for such claim. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9. However, for any claim or part of a claim that pertains solely to final estimate quantities disputes the Contractor shall submit full and complete claim documentation as described in 5-12.3 and duly certified pursuant to 5-12.9, as to such final estimate claim dispute issues, within 90 or 180 calendar days, respectively, of the Contractor's receipt of the Department's final estimate.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

5-12.2.2 Claims For Delay: Where the Contractor deems that additional compensation or a time extension is due on account of delay, differing site conditions, breach of Contract, or any other cause other than for work or materials not expressly provided for in the Contract (Extra

Work) or which is by written directive of the Engineer expressly ordered by the Engineer pursuant to 4-3, the Contractor shall submit a written notice of intent to the Engineer within ten days after commencement of a delay to a controlling work item expressly notifying the Engineer that the Contractor intends to seek additional compensation, and if seeking a time extension, the Contractor shall also submit a preliminary request for time extension pursuant to 8-7.3.2 within ten calendar days after commencement of a delay to a controlling work item, as to such delay and providing a reasonably complete description as to the cause and nature of the delay and the possible impacts to the Contractor's work by such delay, and a request for Contract Time extension pursuant to 8-7.3.2 within thirty calendar days after the elimination of the delay. On projects with an original Contract amount of \$3,000,000 or less within 90 calendar days after final acceptance of the project in accordance with 5-11, and on projects with an original Contract amount greater than \$3,000,000 within 180 calendar days after final acceptance of the project in accordance with 5-11, the Contractor shall submit full and complete documentation as described in 5-12.3 and duly certified pursuant to 5-12.9.

If the Contractor fails to submit a certificate of claim as described in 5-12.9, the Department will so notify the Contractor in writing. The Contractor shall have ten calendar days from receipt of the notice to resubmit the claim documentation, without change, with a certificate of claim as described in 5-12.9, without regard to whether the resubmission is within the applicable 90 or 180 calendar day deadline for submission of full and complete claim documentation. Failure by the Contractor to comply with the ten calendar day notice shall constitute a waiver of the claim.

There shall be no Contractor entitlement to any monetary compensation or time extension for any delays or delay impacts, whatsoever, that are not to a controlling work item, and then as to any such delay to a controlling work item entitlement to any monetary compensation or time extension shall only be to the extent such is otherwise provided for expressly under 4-3 or 5-12, except that in the instance of delay to a non-controlling item of work the Contractor may be compensated for the direct costs of idle labor or equipment only, at the rates set forth in 4-3.2.1(c), and then only to the extent the Contractor could not reasonably mitigate such idleness.

5-12.3 Content of Written Claim: As a condition precedent to the Contractor being entitled to additional compensation or a time extension under the Contract, for any claim, the Contractor shall submit a certified written claim to the Department which will include for each individual claim, at a minimum, the following information:

(a) A detailed factual statement of the claim providing all necessary dates, locations, and items of work affected and included in each claim;

(b) The date or dates on which actions resulting in the claim occurred or conditions resulting in the claim became evident;

(c) Identification of all pertinent documents and the substance of any material oral communications relating to such claim and the name of the persons making such material oral communications;

(d) Identification of the provisions of the Contract which support the claim and a statement of the reasons why such provisions support the claim, or alternatively, the provisions of the Contract which allegedly have been breached and the actions constituting such breach;

(e) A detailed compilation of the amount of additional compensation sought and a breakdown of the amount sought as follows:

(1) documented additional job site labor expenses;

(2) documented additional cost of materials and supplies;

(3) a list of additional equipment costs claimed, including each piece of equipment and the

rental rate claimed for each;

(4) any other additional direct costs or damages and the documents in support thereof;

(5) any additional indirect costs or damages and all documentation in support thereof.

(f) A detailed compilation of the specific dates and the exact number of calendar days sought for a time extension, the basis for entitlement to time for each day, all documentation of the delay, and a breakout of the number of days claimed for each identified event, circumstance or occurrence.

Further, the Contractor shall be prohibited from amending either the bases of entitlement or the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder, and any circuit court, arbitration, or other formal claims resolution proceeding shall be limited solely to the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder. This shall not, however, preclude a Contractor from withdrawing or reducing any of the bases of entitlement and the amount of any compensation or time stated for any and all issues claimed in the Contractor's written claim submitted hereunder at any time.

5-12.4 Action on Claim: The Engineer will respond on projects with an original Contract amount of \$3,000,000 or less within 90 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3, and on projects with an original Contract amount greater than \$3,000,000 within 120 calendar days of receipt of a complete claim submitted by a Contractor in compliance with 5-12.3. Failure by the Engineer to respond to a claim within 90 or 120 days, respectively, after receipt of a complete claim in compliance with 5-12.3 constitutes a denial of the claim by the Engineer. If the Engineer finds the claim or any part thereof to be valid, such partial or whole claim will be allowed and paid for to the extent deemed valid and any time extension granted, if applicable, as provided in the Contract. No circuit court or arbitration proceedings on any claim, or a part thereof, may be filed until after final acceptance per 5-11 of all Contract work by the Department or denial hereunder, whichever occurs last.

5-12.5 Pre-Settlement and Pre-Judgment Interest: Entitlement to any pre-settlement or pre-judgment interest on any claim amount determined to be valid subsequent to the Department's receipt of a certified written claim in full compliance with 5-12.3, whether determined by a settlement or a final ruling in formal proceedings, the Department shall pay to the Contractor simple interest calculated at the Prime Rate (as reported by the Wall Street Journal as the base rate on corporate loans posted by at least 75% of the nations 30 largest banks) as of the 60th calendar day following the Department's receipt of a certified written claim in full compliance with 5-12.3, such interest to accrue beginning 60 calendar days following the Department's receipt of a certified written claim in full compliance with 5-12.3 and ending on the date of final settlement or formal ruling.

5-12.6 Compensation for Extra Work or Delay:

5-12.6.1 Compensation for Extra Work: Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.

5-12.6.2 Compensation for Delay: Notwithstanding anything to the contrary contained in the Contract Documents, the additional compensation set forth in 5-12.6.2.1 shall be the Contractor's sole monetary remedy for any delay other than to perform extra work caused by the Department unless the delay shall have been caused by acts constituting willful or intentional interference by the Department with the Contractor's performance of the work and then only where such acts continue after Contractor's written notice to the Department of such interference. The parties

anticipate that delays may be caused by or arise from any number of events during the term of the Contract, including, but not limited to, work performed, work deleted, change orders, supplemental agreements, disruptions, differing site conditions, utility conflicts, design changes or defects, time extensions, extra work, right-of-way issues, permitting issues, actions of suppliers, subcontractors or other contractors, actions by third parties, suspensions of work by the Engineer pursuant to 8-6.1, shop drawing approval process delays, expansion of the physical limits of the project to make it functional, weather, weekends, holidays, special events, suspension of Contract time, or other events, forces or factors sometimes experienced in construction work. Such delays or events and their potential impacts on the performance by the Contractor are specifically contemplated and acknowledged by the parties in entering into this Contract, and shall not be deemed to constitute willful or intentional interference with the Contractor's performance of the work without clear and convincing proof that they were the result of a deliberate act, without reasonable and good-faith basis, and specifically intended to disrupt the Contractor's performance.

5-12.6.2.1 Compensation for Direct Costs, Indirect Costs, Expenses, and Profit thereon, of or from Delay: For any delay claim, the Contractor shall be entitled to monetary compensation for the actual idle labor and equipment, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(d) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.

5-12.7 Mandatory Claim Records: After giving the Engineer notice of intent to file a claim for extra work or delay, the Contractor must keep daily records of all labor, material and equipment costs incurred for operations affected by the extra work or delay. These daily records must identify each operation affected by the extra work or delay and the specific locations where work is affected by the extra work or delay, as nearly as possible. The Engineer may also keep records of all labor, material and equipment used on the operations affected by the extra work or delay. The Contractor shall, once a notice of intent to claim has been timely filed, and not less than weekly thereafter as long as appropriate, provide the Engineer a copy of the Contractor's daily records and be likewise entitled to receive a copy of the Department's daily records. The copies of daily records to be provided hereunder shall be provided at no cost to the recipient.

5-12.8 Claims For Acceleration: The Department shall have no liability for any constructive acceleration of the work, nor shall the Contractor have any right to make any claim for constructive acceleration nor include the same as an element of any claim the Contractor may otherwise submit under this Contract. If the Engineer gives express written direction for the Contractor to accelerate its efforts, such written direction will set forth the prices and other pertinent information and will be reduced to a written Contract Document promptly. No payment will be made on a Supplemental Agreement for acceleration prior to the Department's approval of the documents.

5-12.9 Certificate of Claim: When submitting any claim, the Contractor shall certify under oath and in writing, in accordance with the formalities required by Florida law, that the claim is made in good faith, that the supportive data are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the claim accurately reflects what the Contractor in good faith believes to be the Department's liability. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor.

5-12.10 Non-Recoverable Items: The parties agree that for any claim the Department will not have liability for the following items of damages or expense:

- a. Loss of profit, incentives or bonuses;

- b. Any claim for other than extra work or delay;
- c. Consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities, loss of credit standing, cost of financing, interest paid, loss of other work or insolvency;
- d. Acceleration costs and expenses, except where the Department has expressly and specifically directed the Contractor in writing "to accelerate at the Department's expense"; nor
- e. Attorney fees, claims preparation expenses and costs of litigation.

5-12.11 Exclusive Remedies: Notwithstanding any other provision of this Contract, the parties agree that the Department shall have no liability to the Contractor for expenses, costs, or items of damages other than those which are specifically identified as payable under 5-12. In the event any legal action for additional compensation, whether on account of delay, acceleration, breach of contract, or otherwise, the Contractor agrees that the Department's liability will be limited to those items which are specifically identified as payable in 5-12.

5-12.12 Settlement Discussions: The content of any discussions or meetings held between the Department and the Contractor to settle or resolve any claims submitted by the Contractor against the Department shall be inadmissible in any legal, equitable, arbitration or administrative proceedings brought by the Contractor against the Department for payment of such claim. Dispute Resolution Board, State Arbitration Board and Claim Review Committee proceedings are not settlement discussions, for purposes of this provision.

5-12.13 Personal Liability of Public Officials: In carrying out any of the provisions of the Contract or in exercising any power or authority granted to the Secretary of Transportation, Engineer or any of their respective employees or agents, there shall be no liability on behalf of any employee, officer or official of the Department for which such individual is responsible, either personally or as officials or representatives of the Department. It is understood that in all such matters such individuals act solely as agents and representatives of the Department.

5-12.14 Auditing of Claims: All claims filed against the Department shall be subject to audit at any time following the filing of the claim, whether or not such claim is part of a suit pending in the Courts of this State....

5-13 Recovery Rights, Subsequent to Final Payment.

The Department reserves the right, if it discovers an error in the partial or final estimates, or if it discovers that the Contractor performed defective work or used defective materials, after the final payment has been made, to claim and recover from the Contractor or his surety, or both, by process of law, such sums as may be sufficient to correct the error or make good the defects in the work and materials.

Retain all records pertaining to the project for a period of three years from the date of the Engineer's final acceptance of the project. Upon request, make all such records available to the Department or its representative. For the purpose of this Article, records include all books of account, supporting documents, and papers that the Department deems necessary to ensure compliance with the Contract provisions.

SECTION 4 SCOPE OF THE WORK

4-1 Intent of Contract.

The intent of the Contract is to provide for the construction and completion in every detail of the work described in the Contract. Furnish all labor, materials, equipment, tools, transportation, and supplies required to complete the work in accordance with the Contract Documents.

4-2 Work not covered by Standard Specifications.

Proposed construction and any contractual requirements not covered by these Standard Specifications may be covered by Contract plan notes or by Supplemental Specifications or Special Provisions for the Contract, and all requirements of such Supplemental Specifications or Special Provisions shall be considered as a part of these Specifications.

4-3 Alteration of Plans or of Character of Work.

4-3.1 General: The Engineer reserves the right to make, at any time prior to or during the progress of the work, such increases or decreases in quantities, whether a significant change or not, and such alterations in the details of construction, whether a substantial change or not, including but not limited to alterations in the grade or alignment of the road or structure or both, as may be found necessary or desirable by the Engineer. Such increases, decreases or alterations shall not constitute a breach of Contract, shall not invalidate the Contract, nor release the Surety from any liability arising out of this Contract or the Surety bond. The Contractor agrees to perform the work, as altered, the same as if it had been a part of the original Contract.

The term "significant change" applies only when:

(A) The Engineer determines that the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or

(B) A major item of work, as defined in 1-3, is increased in excess of 125% or decreased below 75% of the original Contract quantity. The Department will apply any price adjustment for an increase in quantity only to that portion in excess of 125% of the original Contract item quantity, or in case of a decrease below 75% to the actual amount of work performed such allowance to be determined in accordance with 4-3.2, below. In the Case of a decrease below 75% the department will only apply a price adjustment for the additional cost that are a direct result of the reduction in quantity.

In (A) above, the determination by the Engineer shall be conclusive. If the determination is challenged by the Contractor in any proceeding, the Contractor must establish by clear and convincing proof that the determination by the Engineer was without any reasonable basis.

4-3.2 Increase, Decrease or Alteration in the Work: The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely provided a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute

resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data provided are accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the Department, the Department will review the content of any duly certified request for equitable adjustment or other dispute resolution proposal, with any further action or inaction by the Department thereafter being in its sole discretion. Any request for equitable adjustment that fails to fully comply with the certification requirements will not be reviewed by the Department.

The monetary compensation provided for below constitutes full and complete payment for such additional work and the Contractor shall have no right to any additional monetary compensation for any direct or indirect costs or profit for any such additional work beyond that expressly provided below. The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. All time related costs for actual performance of such additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

4-3.2.1 Allowable Costs for Extra Work: The Engineer may direct in writing that extra work be done and, at the Engineer's sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

(a) Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen actually engaged in the work; and will not include project supervisory personnel nor necessary on-site clerical staff, except when the additional or unforeseen work is a controlling work item and the performance of such controlling work item actually extends completion of the project due to no fault of the Contractor. Compensation for project supervisory personnel, but in no case higher than a Project Manager's position, shall only be for the pro-rata time such supervisory personnel spent on the contract. In no case shall an officer or director of the Company, nor those persons who own more than 1% of the Company, be considered as project supervisory personnel, direct labor or foremen hereunder.

Payment for burden shall be limited solely to the following:

Table 4-3.2.1	
Item	Rate
FICA	Rate established by Law
FUTA/SUTA	Rate established by Law

Medical Insurance	Actual
Holidays, Sick & Vacation benefits	Actual
Retirement benefits	Actual
Workers Compensation	Rates based on the National Council on Compensation Insurance basic rate tables adjusted by Contractor's actual experience modification factor in effect at the time of the additional work or unforeseen work.
Per Diem	Actual but not to exceed State of Florida's rate
Insurance*	Actual
*Compensation for Insurance is limited solely to General Liability Coverage and does not include any other insurance coverage (such as, but not limited to, Umbrella Coverage, Automobile Insurance, etc.).	

At the Pre-construction conference, certify to the Engineer the following:

- (1) A listing of on-site clerical staff, supervisory personnel and their pro-rated time assigned to the contract,
- (2) Actual Rate for items listed in Table 4-3.2.1,
- (3) Existence of employee benefit plan for Holiday, Sick and Vacation benefits and a Retirement Plan, and,
- (4) Payment of Per Diem is a company practice for instances when compensation for Per Diem is requested.

Such certification must be made by an officer or director of the Contractor with authority to bind the Contractor. Timely certification is a condition precedent to any right of the Contractor to recover compensations for such costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such costs. Any subsequent changes shall be certified to the Engineer as part of the cost proposal or seven calendar days in advance of performing such extra work.

(b) Materials and Supplies: For materials accepted by the Engineer and used on the project, the Contractor will receive the actual cost of such materials incorporated into the work, including Contractor paid transportation charges (exclusive of equipment as hereinafter set forth). For supplies reasonably needed for performing the work, the Contractor will receive the actual cost of such supplies.

(c) Equipment: For any machinery or special equipment (other than small tools), including fuel and lubricant, the Contractor will receive 100% of the "Rental Rate Blue Book" for the actual time that such equipment is in operation on the work, and 50% of the "Rental Rate Blue Book" for the time the equipment is directed to standby and remain on the project site, to be calculated as indicated below. The equipment rates will be based on the latest edition (as of the date the work to be performed begins) of the "Rental Rate Blue Book for Construction Equipment" or the "Rental Rate Blue Book for Older Construction Equipment," whichever is applicable, as published by Machinery Information Division of PRIMEDIA Information, Inc. (version current at the time of bid), using all instructions and adjustments contained therein and as modified below. On all projects, the Engineer will adjust the rates using regional adjustments and Rate Adjustment Tables according to the instructions in the Blue Book.

Allowable Equipment Rates will be established as set out below:

- (1) Allowable Hourly Equipment Rate = Monthly Rate/176 x Adjustment Factors x 100%.
- (2) Allowable Hourly Operating Cost = Hourly Operating Cost x 100%.
- (3) Allowable Rate Per Hour = Allowable Hourly Equipment Rate + Allowable Hourly Operating Cost.
- (4) Standby Rate = Allowable Hourly Equipment Rate x 50%.

The Monthly Rate is The Basic Machine Rate Plus Any Attachments. Standby rates will apply when equipment is not in operation and is directed by the Engineer to standby at the project site when needed again to complete work and the cost of moving the equipment will exceed the accumulated standby cost. Standby rates will not apply on any day the equipment operates for eight or more hours. Standby payment will be limited to only that number of hours which, when added to the operating time for that day equals eight hours. Standby payment will not be made on days that are not normally considered work days on the project.

The Department will allow for the cost of transporting the equipment to and from the location at which it will be used. If the equipment requires assembly or disassembly for transport, the Department will pay for the time to perform this work at the rate for standby equipment.

Equipment may include vehicles utilized only by Labor, as defined above.

(d) Indirect Costs, Expenses, and Profit: Compensation for all indirect costs, expenses, and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise, is expressly limited to the greater of either (1) or (2) below:

(1) Solely a mark-up of 17.5% on the payments in (a) through (c), above.

(i) Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original Contract bond rate paid by the Contractor. No compensation for bond premium will be allowed for additional or unforeseen work paid by the Department via initial contingency pay item.

(ii) The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

(2) Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be.

Further, in the event there are concurrent delays to one or more controlling work items, one or

more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when cumulatively totaled together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, and days granted for performing additional work.

4-3.2.2 Subcontracted Work: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited to as provided for in 4-3.2.1 (a), (b), (c) and (d)(1), with the exception of, in the instance of subcontractor performed work only, the subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided, however, that such payment for additional subcontractor bond will only be paid upon presentment to the Department of clear and convincing proof that the subcontractor has actually provided and paid for separate bond premiums for such additional or unforeseen work in such amount.

The Contractor shall require the subcontractor to provide a certification, in accordance with 4-3.2.1 (a), as part of the cost proposal and provide such to the Engineer. Such certification must be made by an officer or director of the subcontractor with authority to bind the subcontractor. Timely certification is a condition precedent to any right of the Contractor to recover compensation for such subcontractor costs, and failure to timely submit the certification will constitute a full, complete, absolute and irrevocable waiver by the Contractor of any right to recover such subcontractor costs.

4-3.3 No Waiver of Contract: Changes made by the Engineer will not be considered to waive any of the provisions of the Contract, nor may the Contractor make any claim for loss of anticipated profits because of the changes, or by reason of any variation between the approximate quantities and the quantities of work actually performed. All work shall be performed as directed by the Engineer and in accordance with the Contract Documents.

4-3.4 Conditions Requiring a Supplemental Agreement or Unilateral Payment: A Supplemental Agreement or Unilateral Payment will be used to clarify the plans and specifications of the Contract; to provide for unforeseen work, grade changes, or alterations in plans which could not reasonably have been contemplated or foreseen in the original plans and specifications; to change the limits of construction to meet field conditions; to provide a safe and functional connection to an existing pavement; to settle documented Contract claims; to make the project functionally operational in accordance with the intent of the original Contract and subsequent amendments thereto.

A Supplemental Agreement or Unilateral Payment may be used to expand the physical limits of the project only to the extent necessary to make the project functionally operational in

accordance with the intent of the original Contract. The cost of any such agreement extending the physical limits of the project shall not exceed \$100,000 or 10% of the original Contract price, whichever is greater.

Perform no work to be covered by a Supplemental Agreement or Unilateral Payment before written authorization is received from the Engineer. The Engineer's written authorization will set forth sufficient work information to allow the work to begin. The work activities, terms and conditions will be reduced to written Supplemental Agreement or Unilateral Payment form promptly thereafter. No payment will be made on a Supplemental Agreement or Unilateral Payment prior to the Department's approval of the document.

4-3.5 Extra Work: Extra work authorized in writing by the Engineer will be paid in accordance with the formula in 4-3.2. Such payment will be the full extent of all monetary compensation entitlement due to the Contractor for such extra work. Any entitlement to a time extension due to extra work will be limited solely to that provided for in 4-3.2 for additional work.

4-3.6 Connections to Existing Pavement, Drives and Walks: Generally adhere to the limits of construction at the beginning and end of the project as detailed in the plans. However, if the Engineer determines that it is necessary to extend the construction in order to make suitable connections to existing pavement, the Engineer will authorize such a change in writing.

For necessary connections to existing walks and drives that are not indicated on the plans, the Engineer will provide direction regarding the proper connections in accordance with the Design Standards.

4-3.7 Differing Site Conditions: During the progress of the work, if subsurface or latent physical conditions are encountered at the site differing materially from those indicated in the Contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the Contract are encountered at the site, the party discovering such conditions shall promptly notify the other party in writing of the specific differing conditions before the Contractor disturbs the conditions or performs the affected work.

Upon receipt of written notification of differing site conditions from the Contractor, the Engineer will investigate the conditions, and if it is determined that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of any work under the Contract, an adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly. The Engineer will notify the Contractor whether or not an adjustment of the Contract is warranted.

The Engineer will not allow a Contract adjustment for a differing site condition unless the Contractor has provided the required written notice.

The Engineer will not allow a Contract adjustment under this clause for any effects caused to any other Department or non-Department projects on which the Contractor may be working.

4-3.8 Changes Affecting Utilities: The Contractor shall be responsible for identifying and assessing any potential impacts to a utility that may be caused by the changes proposed by the Contractor, and the Contractor shall at the time of making the request for a change notify the Department in writing of any such potential impacts to utilities.

Department approval of a Contractor proposed change does not relieve the Contractor of sole responsibility for all utility impacts, costs, delays or damages, whether direct or indirect, resulting from Contractor initiated changes in the design or construction activities from those in the original Contract Specifications, design plans (including traffic control plans) or other Contract Documents and which effect a change in utility work different from that shown in the

utility plans, joint project agreements or utility relocation schedules.

SECTION 8 PROSECUTION AND PROGRESS

8-7 Computation of Contract Time.

8-7.1 General: Perform the contracted work fully, entirely, and in accordance with the Contract Documents within the Contract Time specified in the proposal, or as may be extended in accordance with the provisions herein below.

The Department considers in the computation of the allowable Contract Time the effect that utility relocation and adjustments have on job progress and the scheduling of construction operations required in order to adequately maintain traffic, as detailed in the plans or as scheduled in the Special Provisions.

8-7.2 Date of Beginning of Contract Time: The date on which Contract Time begins is either (1) the date on which the Contractor actually begins work, or (2) the date for beginning the charging of Contract Time as set forth in the proposal; whichever is earlier.

8-7.3 Adjusting Contract Time:

8-7.3.1 Increased Work: The Department may grant an extension of Contract Time when it increases the Contract amount due to overruns in original Contract items, adds new work items, or provides for unforeseen work. The Department will base the consideration for granting an extension of Contract Time on the extent that the time normally required to complete the additional designated work delays the Contract completion schedule.

8-7.3.2 Contract Time Extensions: The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid. The Department may allow such extension of time only for delays occurring during the Contract Time period or authorized extensions of the Contract Time period. When failure by the Department to fulfill an obligation under the Contract results in delays to the controlling items of work, the Department will consider such delays as a basis for granting a time extension to the Contract.

Whenever the Engineer suspends the Contractor's operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension. The Department will not grant time extensions to the Contract for delays due to the fault or negligence of the Contractor.

The Department does not include an allowance for delays caused by the effects of inclement weather or suspension of Contractor's operations due to holidays as defined in 8-6.4, in establishing Contract Time. The Engineer will continually monitor the effects of weather and, when found justified, grant time extensions on either a bimonthly or monthly basis. The Engineer will not require the Contractor to submit a request for additional time due to the effects of weather.

The Department will grant time extensions, on a day for day basis, for delays caused by the effects of rains or other inclement weather conditions, related adverse soil conditions or suspension of operations as defined in 8-6.4 that prevent the Contractor from productively performing controlling items of work resulting in:

- (1) The Contractor being unable to work at least 50% of the normal work day on pre-determined controlling work items; or
- (2) The Contractor must make major repairs to work damaged by weather, provided that the damage is not attributable to the Contractor's failure to perform or neglect; and provided that the Contractor was unable to work at least 50% of the normal workday on pre-determined controlling work items.

No additional compensation will be made for delays caused by the effects of inclement weather. The Department will consider the delays in delivery of materials or component equipment that affect progress on a controlling item of work as a basis for granting a time extension if such delays are beyond the control of the Contractor or supplier. Such delays may include an area-wide shortage, an industry-wide strike, or a natural disaster that affects all feasible sources of supply. In such cases, the Contractor shall furnish substantiating letters from a representative number of manufacturers of such materials or equipment clearly confirming that the delays in delivery were the result of an area-wide shortage, an industry-wide strike, etc. No additional compensation will be made for delays caused by delivery of materials or component equipment. The Department will not consider requests for time extension due to delay in the delivery of custom manufactured equipment such as traffic signal equipment, highway lighting equipment, etc., unless the Contractor furnishes documentation that he placed the order for such equipment in a timely manner, the delay was caused by factors beyond the manufacturer's control, and the lack of such equipment caused a delay in progress on a controlling item of work. No additional compensation will be paid for delays caused by delivery of custom manufactured equipment.

The Department will consider the affect of utility relocation and adjustment work on job progress as the basis for granting a time extension only if all the following criteria are met:

- (1) Delays are the result of either utility work that was not detailed in the plans, or utility work that was detailed in the plans but was not accomplished in reasonably close accordance with the schedule included in the Contract Documents.
- (2) Utility work actually affected progress toward completion of controlling work items.
- (3) The Contractor took all reasonable measures to minimize the effect of utility work on job progress, including cooperative scheduling of the Contractor's operations with the scheduled utility work at the preconstruction conference and providing adequate advance notification to utility companies as to the dates to coordinate their operations with the Contractor's operations to avoid delays.

As a condition precedent to an extension of Contract Time the Contractor must submit to the Engineer:

A preliminary request for an extension of Contract Time must be made in writing to the Engineer within ten calendar days after the commencement of a delay to a controlling item of work. If the Contractor fails to submit this required preliminary request for an extension of Contract Time, the Contractor fully, completely, absolutely and irrevocably waives any entitlement to an extension of Contract Time for that delay. In the case of a continuing delay only a single preliminary request for an extension of Contract Time will be required. Each such preliminary request for an extension of Contract Time shall include as a minimum the commencement date of the delay, the cause of the delay, and the controlling item of work affected by the delay; and Further, the Contractor must submit to the Engineer a request for a Contract Time extension in writing within 30 days after the elimination of the delay to the controlling item of work identified in the preliminary request for an extension of Contract Time. Each request for a Contract Time extension shall include as a minimum all documentation that the Contractor wishes the Department to consider related to the delay, and the exact number of days requested to be added to Contract Time. If the Contractor contends that the delay is compensable, then the Contractor shall also be required to submit with the request for a Contract Time extension a detailed cost analysis of the requested additional compensation. If the Contractor fails to submit this required request for a Contract Time extension, with or without a detailed cost analysis, depriving the Engineer of the timely opportunity to verify the delay and the costs of the delay, the Contractor

waives any entitlement to an extension of Contract Time or additional compensation for the delay.

Upon timely receipt of the preliminary request of Contract Time from the Contractor, the Engineer will investigate the conditions, and if it is determined that a controlling item of work is being delayed for reasons beyond the control of the Contractor the Engineer will take appropriate action to mitigate the delay and the costs of the delay. Upon timely receipt of the request for a Contract Time extension the Engineer will further investigate the conditions, and if it is determined that there was an increase in the time or the cost of performance of the controlling item of work beyond the control of the Contractor, then an adjustment of Contract Time will be made, and a monetary adjustment will be made, excluding loss of anticipated profits, and the Contract will be modified in writing accordingly.

The existence of an accepted schedule, including any required update(s), as stated in 8-3.2, is a condition precedent to the Contractor having any right to the granting of an extension of contract time or any monetary compensation arising out of any delay. Contractor failure to have an accepted schedule, including any required update(s), for the period of potential impact, or in the event the currently accepted schedule and applicable updates do not accurately reflect the actual status of the project or fail to accurately show the true controlling or non-controlling work activities for the period of potential impact, will result in any entitlement determination as to time or money for such period of potential impact being limited solely to the Department's analysis and identification of the actual controlling or non-controlling work activities. Further, in such instances, the Department's determination as to entitlement as to either time or compensability will be final, unless the Contractor can prove by clear and convincing evidence to a Disputes Review Board that the Department's determination was without any reasonable factual basis.

Section 7.5

CONSTRUCTION CONTRACT CLAIMS

7.5.1 Purpose

To describe the contract administration procedure to be followed for documenting and analyzing construction contract claims to insure comprehensive and supportable recommendations are developed for use in the resolution of claims.

7.5.2 Authority

Sections 20.23(4)(a), 334.048(3), 337.11(8), 337.185 and 337.221, Florida Statutes

Federal Aid Policy Guide (23 CFR 635.124)

FHWA Approved: August 31, 2011

7.5.3 Definitions

Basis for Estimate for a Contract Change Issue: Refer to Definitions in *CPAM Section 7.3.4 Supplemental Agreements and Unilateral Payments*.

Construction Contract Claim (Claim): A written demand submitted to the Florida Department of Transportation (Department) by the Contractor, in compliance with *Specification 5-12*, seeking additional monetary compensation, time, or other adjustments to the contract, the entitlement or impact of which is disputed by the Department. Refer to the flow chart of the claims process published on the State Construction Office website section for flowcharts.

Construction Program Manager: The Department's employee responsible for administering and managing the CEI Consultant contract.

Dispute: Refer to Definitions in *CPAM, Section 7.3.4*

Engineer's Estimate: Refer to Definitions in *CPAM, Section 7.3.4*

Entitlement Analysis: Refer to Definitions in *CPAM, Section 7.3.4*

Negotiated Settlement: Refer to Definitions in **CPAM, Section 7.3.4**

Statement of Claim Settlement Cost: The claim settlement costs are those costs disputed by the Department but paid solely to avoid the risk of additional costs associated with resolving the claim by dispute review board, arbitration or litigation. Claim settlement costs are the sum calculated by subtracting from the Claim **Supplemental Agreement** amount paid, that amount justified by the Engineer's Estimate and Entitlement Analysis percentages. Specifically, that amount justified by the Engineer's Estimate and Entitlement Analysis is the summation, for all claim issues, of the most recently amended Entitlement Analysis percentage for each claim issue, multiplied by the most recently amended Engineer's Estimate of cost impact for that issue. The **Statement of Claim Settlement Costs** is simply a page signed and dated by the engineer preparing it that lists the claim issues, shows the calculation described above and includes the following: the relevant amounts for each issue, the total amount justified, the total amount paid and the resulting claim settlement cost. Even though a contract adjustment may settle several disputed issues for amounts greater than justified in the Entitlement Analysis and Engineers Estimate, the contract adjustment will have only one **Claim Settlement Cost** which is the sum of all such costs for the issues settled in the contract adjustment.

7.5.4 Notice

Project Level Responsibilities

Specification 5-12 requires that the Contractor provide notification in writing to the Project Administrator (PA) when the Contractor intends to file a claim and documentation of the work effort resulting from such claims. The notice must be given before the Contractor begins any work on which the claim is based. The notification by the Contractor allows the PA the opportunity to mitigate the impacts of the claim or begin documenting the impacts and actual costs associated with the claim. Failure of the Contractor to notify the PA before beginning work on disputed items of work waives the Contractor's right to claim (refer to **Specification 5-12**). If the Contractor has failed to afford the Engineer the opportunity to keep strict account of the actual labor, material, equipment and time used by failing to provide written notice of intent to file claims before beginning the work on which the claim is based; then, the Contractor will be paid no claim settlement costs (see definition of **Statement of Claim Settlement Costs CPAM Section 7.5.3**). Specifically, the Contractor will be paid no more for each claim issue than the amount calculated by multiplying the amount of the most recent Engineer's Estimate for that issue multiplied by the percentage shown for that issue in the most recent Entitlement Analysis. Refer to **Guidance Document 7-3-A** for a description of an Engineer's Estimate and an Entitlement Analysis.

Enforcement of the notice requirement is important in effective management of claims. If

the Contractor indicates verbally during the prosecution of the work that added costs are being incurred, or changes to the contract document are occurring, the PA should instruct the Contractor to provide the required written notice of the intent to file any claims. **A record of any verbal notices or possible notices should be recorded on the *Daily Report of Construction, Form No. 700-010-13* in the "Comments" section. It should be made clear to the Contractor that adequate written notice of intent to file a claim is required if the claim or any portion of the claim is to be considered by the Department.**

If told by contractor that a claim will be forthcoming, document DWR and notify your PA.

The PA can accept a notification of intent to file a claim only from the prime Contractor. The notice of intent should contain:

- (1) A statement as to what changed, including a description of the nature and extent of the change.
- (2) An indication of who directed or what caused the change.
- (3) A description of how the change has or will impact the Contractor, including reference to any impacted critical activities on the Contractor's latest accepted schedule update.
- (4) A statement of damages, or an estimate of damages, if available, detailing the amount of compensation, time and/or other adjustment to the contract that is being requested.

7.5.5 Claim Recognition

Project Level Responsibilities

The PA is responsible for recognizing a claim situation, and usually makes the initial determination whether an adjustment or a demand made by the Contractor is contested and processed as a claim, or is resolved by a routine **Supplemental Agreement**. **The recognition of a claim or an adjustment with the potential to escalate to a claim is extremely important so that steps can be taken to resolve the claim in a timely manner.** Although claims occur for many different reasons, they are usually based upon an adjustment or alleged adjustment in the Contractor's operation.

Immediately double your efforts to document the contractor's labor, equipment and materials

7.5.6 Coordination

(A) Project Level Responsibilities

After receiving the Contractor's written notice of intent to claim or becoming aware of a possible claim, the PA notifies the Resident Engineer.

(B) Resident Level Responsibilities

The Resident Engineer will inform the District Construction Engineer (DCE) of the notice of intent to claim. When a written notice of intent to claim is received, a copy of the notice should be sent to the DCE immediately,

When a written notice of an intent to claim is received, the Resident Engineer shall immediately send a copy of the notice to any Third Party involved (County, Utility owner or others).

(C) District Level Responsibilities

The DCE will inform the FHWA Transportation Engineer when a notice of intent to claim and/or when a written claim has been received from the Contractor on FHWA Full Oversight projects. A copy of the notice of intent to claim and/or a copy of the written claim received from the Contractor on FHWA Full Oversight projects will also be sent to the State Construction Office.

The DCE will inform the State Construction Office, the Office of General Counsel (attention: Special Counsel to Construction) and District Chief Counsel on all projects where the DCE has received the notice of intent to claim and the amount of the claim is estimated to be \$150,000 or more.

7.5.6.1 Claims Involving a Utility

(A) Project Level Responsibilities

If a claim involves a utility, the PA must also immediately notify the affected utility owner that the Contractor has notified the Department of its intention to file a claim. This notification may be verbal, but must be immediately followed by a letter signed by the Resident Engineer as described below.

(B) Resident Level Responsibilities

The Resident Engineer must immediately notify by letter the affected utility owner that the Contractor has notified the Department of its intention to file a claim (refer to **Sample Letter No. 1, Utility Company Notification, Guidance Document 7-5-A**).

7.5.6.2 Assistance

7.5.6.2.1 District Utilities Office

Resident Level Responsibilities

If a claim involves a utility, the District Utilities Office shall be asked to provide a review of all pertinent documents to assist with determining if the claimed changed condition was caused by the Utility's failure to perform work in accordance with the utility work schedules or other relocation agreements..

7.5.6.2.2 Office of General Counsel

(A) Resident Level Responsibilities

The Office of General Counsel shall be asked to provide legal review of all pertinent documents and to identify potential legal liabilities, rights, obligations and confidentiality. For additional assistance on difficult claims, the Office of the General Counsel may be contacted in accord with the district's guidelines on such contacts. The DCE shall approve any request for review by the Central Office.

(B) District Level Responsibilities

The DCE will set the district's guidelines on when such contacts are appropriate. The Office of the General Counsel can be contacted as follows:

Telephone: Voice: (850) 414-5265
Fax: (850) 414-5264
FDOT Office of the General Counsel
Attention: Special Counsel to Construction
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0458

7.5.6.3 Coordinating Claim Response Development with FHWA and

State Construction Office Staff on Federal Aid Participation (F.A.P.) Projects Including Full Oversight Projects and Delegated Projects

Resident Level Responsibilities

On Federal Aid projects, the extent of Federal Aid participation is determined on a case-by-case basis. For this reason it is important that early coordination be made with the FHWA and with the FHWA's representatives required in the ***Federal Aid Policy Guide (23 CFR 635.124)***. The Resident Engineer should discuss the merits of the claim and the basis for the Department's position on the claim, with the FHWA Transportation Engineer and the State Construction Office. For more on F.A.P. dollar amount determinations see ***CPAM Claim Settlement, Section 7.5.11***.

7.5.7 Minimum Documentation

Justification for all contract claims for which payment includes Claim Settlement Costs, requires, at a minimum, three (3) pieces of written documentation. The first two are drafted by the project level staff while the last is drafted by the resident engineer's staff. Justification for contract claims for which payment does not include Claim Settlement Costs, requires at a minimum the Entitlement Analysis and Engineers Estimate.

(A) Project Level Responsibilities

- 1) An Entitlement Analysis showing the percentage entitlement for each of the various claim issues and the reasons supporting the contractor's entitlement (refer to ***CPAM Guidance Document 7-3-A***). For those claims in excess of \$150,000 draft Entitlement Analysis should be prepared and submitted to the DCE for review prior to finalization of the claim documentation.
- 2) An Engineer's Estimate, which will be stated in dollars for extra work and days for any impacts to controlling items of work or critical path activities (see definitions in ***CPAM, Section 7.3.4 and CPAM Guidance Document 7-3-A***). For those claims in excess of \$150,000 draft Entitlement Analysis should be prepared and submitted to the DCE for review prior to finalization of the claim documentation.

(B) Resident Level Responsibilities

- 3) A ***Statement of Claim Settlement Cost***, identifying those costs the Department does not believe it owes the Contractor but is willing to pay to avoid the risks

associated with not resolving the claim (see definitions in **CPAM, Section 7.5.3**).

For all claims, the Entitlement Analysis and the Engineer's Estimate shall be done before starting negotiations with the Contractor. It is advisable, but not mandatory, that the Entitlement Analysis and the Engineer's Estimate be committed to writing before starting negotiations with the Contractor. It is mandatory that the Entitlement Analysis, the Engineer's Estimate and a **Statement of Claim Settlement Cost** (if there are any) shall be committed to writing before sending the contract change document to the Contractor for signature.

(C) District Level Responsibilities

For those claims in excess of \$150,000 the draft Entitlement Analysis and Engineers Estimate prepared and submitted to the DCE by the Resident Engineers staff shall be submitted to the District Chief Counsel for review prior to finalization of the claim documentation.

7.5.7.1 Comprehensive Documentation

(A) Project Level Responsibilities

To be worthwhile, documentation must include all relevant facts and be objective in its coverage. Frequently the most valuable sources of information are the daily and weekly construction project reports of the **Project Diary** which are produced by the Department's CEI project staff. **CPAM Section 5.1** provides guidance for completing these reports and should be reviewed by the project CEI staff carefully when a claim situation arises to insure that they are complete and factual.

Specifications 5-12 and **100** require specific content in the Contractor's written notice of intent to claim including information on equipment, delays, and the reason for the claim. In addition to the normal, required daily documentation specified above, a claim file should be established for every "Notice of Intent" filed by the Contractor. The PA shall review these notices along with **Specifications 5-12** and **100**. Where the contractor's notice of intent to claim is incomplete or untimely the PA shall notify the contractor of that defect in writing. Both the Contractor's notice of intent to claim and the PA's response shall be included in the claim file. The weekly statements of cost provided by the Contractor pursuant to **Specification 5-12** should also be reviewed as received, with notations indicating any conflicts or inconsistencies with the Department's project records or observations of project personnel. The weekly statements of cost with appropriate notations should be placed in the claim file along with the independent records maintained by project personnel. If the

Contractor fails to provide the weekly statements of cost, the PA or designee shall notify the Contractor in writing of their obligation under the contract documents to keep such records and provide them weekly to the Department. Copies of this correspondence shall be included in the claim file. The claim file is also to include any notifications to utilities or property owners that are affected by the claim as well as any correspondence received from the Contractor relating to the identified claim issue(s).

(B) Resident Level Responsibilities

The Resident Engineer should also review the *Project Diary* documents for completeness when a claim or disputed work is involved. For a list of the *Project Diary* documents see the definition of *Project Diary* in *CPAM Section 5.1.4, Project Diary*.

7.5.7.2 Concurrent Documentation

Project Level Responsibilities

Concurrent documentation is often a major factor in determining the weight or impact of a given document during administrative and legal considerations. **A brief note on the daily report of construction, which was made at the time of a particular occurrence, will often have more validity than a carefully worded, memo to the file prepared weeks or months after the fact.** Project personnel are to make notes and comments on the *Project Diary* reports and documents (see definition *CPAM Section 5.1.4*) to describe events or record their observations of the situation at the time of occurrence, and take dated photographs or video records of the conditions. These notes should be objective and professional, relating to the facts, without bias or opinions.

7.5.7.3 Record of Contractor's Equipment, Labor and Material

Project Level Responsibilities

When the PA receives a notice of intent to make a claim from the Contractor, the Contractor's equipment, labor and material used on the disputed work must be documented. The PA must keep an accurate record of the types of equipment, including equipment serial numbers, and lengths of time each piece of equipment is used in performing disputed work, required to be on standby, or idled because of the disputed work. The number of workers, their job classification and time spent in performing the work related to the claim must be recorded as well as material types and quantities of each material type used. On larger projects, with multiple claims, location of crews by foreman

and station number should be recorded on the daily construction project report. Accurately tracking this information will allow the Contractor's statement of damages to be verified upon submittal.

This is where the inspector's documentation is relied upon!!!

7.5.7.4 Claim File

(A) Project Level Responsibilities

Once a claim situation has been identified by receipt of a written notice from the Contractor of the Contractor's intention to make a claim, the PA should establish a separate file and keep copies of all documents related to the claim.

(B) Resident Level Responsibilities

The Resident Engineer and PA may share the same file if they work in the same office. These claim files will serve as the primary source of information relating to the claim. These files should be kept current and orderly, such that a review of the files will provide a full understanding of the claim and a logical progression of events. Contact the District Chief Counsel or the Office of the General Counsel to determine if and how these claim files or other related files should be stamped or marked to be treated as "Attorney's Work Product." Such claim files are privileged information to assure the confidentiality of the Department's claim analysis and recommendations during certain claim settlement investigations undertaken with direction of legal counsel.

7.5.7.5 Sources of Documentation

Project Level Responsibilities

Good documentation comes from many sources and in various forms. Some of the most important types of documentation are excerpts from the contract documents specifically related to the claim issue. These should be made part of the supporting documentation in the claim file. When notice of intent to file a claim is given to the Department, the first thing that the PA must do is research the contract documents to determine exactly what the contract says with respect to the claim. All pertinent drawings, notes, specifications, and special provisions should be included or referenced in the claim file. Project personnel must remain aware of the many sources, which can provide information regarding a claim, and make the required effort to review those sources and document the findings. **Guidance Document 7-5-B** provides a listing of these sources.

7.5.8 Contractor's Submission of Claim

(A) Project Level Responsibilities

The Contractor's notice requirements and the content of the Contractor's written claim submission, including the Contractor's certification of the truthfulness of that written claim submission, are stated in **Specification 5-12**. These requirements are to be enforced. Refer to **CPAM Section 7.5.4** for a discussion of the calculation of compensation when the Contractor has failed to file a timely notice of intent to claim. At some point, either after completing the work or resolving the situation over which the Contractor has submitted a notice of intent to file a claim, the Contractor should submit a claim package to the PA stating the amount of compensation and contract time or other adjustments to the contract that are being requested.

- (1) The PA should encourage the Contractor to submit the claim package for review as soon as possible. It is the prime Contractor's responsibility to submit claims. Claim packages will not be accepted from a subcontractor.
- (2) It is incumbent upon the Contractor to provide a complete claim package. The claim package should state the Contractor's position and the alleged reasons for the claim. The claim package should explain how the Contractor was impacted and what the costs associated with the impacts were. The impacts and cost should be certified in accordance with **Specification 5-12** to be accurate and complete to the best of the Contractor's knowledge and stated in enough detail to support the resolution of any claim determined to have merit.
- (3) If adequate detail is not provided in the Contractor's submission of the claim package, the PA should clearly specify the additional information needed, and return the claim package to the Contractor. If the PA finds the claim to be without merit, the reasoning for this determination should also be clearly provided to the Contractor. The Contractor should determine the amount of damages asserted due in a claim situation and present those damages to the PA for review.
- (4) For claims against utilities, upon receipt of any written notice of intent to claim or any written claim package materials from the Contractor: the PA shall immediately discuss the merits of the claim with the Resident Engineer. A copy of the written notice of intent to claim and or any written claim package materials from the Contractor shall be sent to the Resident Engineer.

(B) Resident Level Responsibilities

- (5) For claims against utilities, upon receipt of any written notice of intent to claim or any written claim package materials from the Contractor: the Resident Engineer shall forward a copy of the Contractor's intent to claim notice and any related claim materials received from the Contractor to the utility owner. Refer to **Sample Letter No. 1, Utility Company Notification, (Guidance Document 7-5-A)**. After discussing the merits of the claim with the PA, a copy shall also be sent to the DCE.
- (6) For claims against utilities, upon receipt of a complete claim package, the Resident Engineer should consult with the District Utility Engineer and shall notify the utility owner in writing that the claim package has been received. The intent of this letter is to allow the utility owner the opportunity to investigate and negotiate a settlement directly with the Contractor if desired. Refer to **Sample Letter No. 2, Utility Company Notification, (Guidance Document 7-5-C)**. With that notification letter the Resident Engineer shall also forward a copy of the Contractor's claim package to the utility owner.

7.5.9 Analysis of Claim Packages

(A) Project Level Responsibilities

Upon receipt of a complete claim package, the PA will review the claim and compile any additional documents deemed relevant and forward to the Resident Engineer for review.

(B) Resident Level Responsibilities

On claims of \$150,000 or more, informational copies of the complete claims package shall also be sent to the Office of the General Counsel, the Office of the Inspector General, and the State Construction Office through the appropriate channels. The reviewer should first prepare a draft entitlement analysis to determine if the claim is valid, and then, if entitlement is recognized, prepare a draft Engineer's Estimate to determine the extent of compensation. To perform these two steps, the reviewer must have all necessary facts relating to the claim available. Refer to **Guidance Document 7-3-A** for a description of an Engineer's Estimate and an Entitlement Analysis.

(C) District Level Responsibilities

The DCE shall approve any request for review by the Central Office, in accordance with the

guidelines of **CPAM 7.5.6.2.2** described herein.

7.5.9.1 Establishing the Facts

Project Level Responsibilities

The availability of facts will vary depending on the level of review. As a claim is processed for higher level review, all pertinent facts must be provided to the next level. The first level of review for a claim will usually be at the PA's level. It is at this level that all facts are documented from project records and the original Entitlement Analysis and Engineer's Estimate are produced.

The initial source of information and facts are contained in the Contractor's claim package. The project records must be reviewed to determine if the facts presented by the Contractor can be verified, and to determine if the Contractor's information is incomplete or misleading. Relevant additional information and any conflicting information should be identified. The reviewer should separate the facts into three categories: those the Department and the Contractor agree on; those which are unsubstantiated or incomplete; and those which are disputed by the Department.

For facts, which are disputed, the reviewer should identify what the correct facts are believed to be, with references to backup documentation.

Gathering and establishing of the facts should be done before beginning the two-step review process. The facts will need to be available to adequately perform each step.

7.5.9.2 Entitlement Analysis

Project Level Responsibilities

The reviewer must first determine whether the claim has any basic merit, or whether it should be denied because there is no basis for entitlement. Input from the Office of the General Counsel should be obtained at this point to assess the potential legal liability. The reviewer should make this determination on the individual merits and available facts pertaining to the claim situation. When determining claim entitlement, the reviewer should address the following questions for each claim issue.

- (1)** Did the Contractor provide the required notice of intent to claim?
- (2)** Was there a change to the original contract requirement that led to the claim?

- (3) Who or what caused the identified change?
- (4) What were the impacts to the Contractor due to each identified change?
- (5) Were the impacts unexpected or unreasonable?
- (6) Could the Contractor have avoided any adverse impacts through proper action?
- (7) Was it reasonable to have anticipated the identified changes at the time of bid?
- (8) Did the Contractor attempt to mitigate the claim or its effects?
- (9) Was complete claim documentation provided in the timeframe outlined in the contract or in accord with **Specification 5-12**?
- (10) Determine any percentage of entitlement on each claim issue as follows:

When the items above completely support the Contractor's position, percent entitlement would be one hundred percent. When the items above completely refute the Contractor's position, the percent entitlement would be zero percent. When items above support only a partial entitlement based on the fact that the Contractor was partially responsible for the claim issue state the partial percentage of the total cost and time impacts the Contractor is entitled to recover along with the reasons supporting the contractors entitlement.

7.5.9.3 **Extent of Compensation**

This will be determined by you PA, based largely on your documentation.

Project Level Responsibilities

Determining the extent of compensation is the second step in the analysis of a claim package after it has been determined that the Contractor has some entitlement for the claim. In this step the reasonable costs the Contractor incurred must be determined.

The Contractor is responsible for providing a claim package, which includes a detailed breakdown of the costs incurred. These costs should relate to the impacts on the construction identified in step one which established the basis for eligibility. The State Construction Office's Senior Construction Accountant may be contacted if the reviewer is unfamiliar with the Contractor's method of cost justification. Follow district policy on making this contact (See **CPAM Section 7.5.6.2.3**).

In determining the extent of compensation due in a claim situation, only the actual costs incurred by the Contractor are reimbursable, up to a reasonable amount. Compensation is not computed on a force account basis unless expressly provided for in the contract documents. The following costs are frequently included in claim submissions:

Operating Equipment Costs: Compensation must be based on a supportable length of time for the equipment operation cost. The Contractor should provide the basis for the ownership or rental costs, and the operating costs. Equipment costs are to be determined as **per Specification 4** of the applicable contract specifications.

Idle Equipment Costs: If idle equipment was identified as an impact in the eligibility step, then compensation must be based on a supportable length of time that required equipment was idle, and the actual ownership or rental costs incurred by the Contractor. Based upon the situation, it may be cheaper to keep idled equipment on the project site if demobilization and remobilization of that equipment will cost more than the idle equipment charges. Idle equipment charges must be determined **in accord with Specification 4** of the applicable contract specifications. Idle asphalt plants should only be compensable for delays if the plant is dedicated to the project. If the asphalt plant provides asphalt to multiple projects or sells commercially and not dedicated to the project, it would not be compensable for delays. If a claim includes costs for a non-dedicated idle asphalt plant, the costs should be removed from the subject claim.

Labor Costs: Compensation will be paid for actual costs based on documented work hours and certified payroll statements. Lost labor efficiency based on work elements performed out of sequence or over longer time frames than originally scheduled may be considered with proper documentation. Labor costs are to be determined **as shown in Specification 4** of the contract specifications.

Material Costs: Compensation will be paid for the actual cost of materials being used, based on a supportable quantity of materials and invoices showing the materials costs. A markup may be allowed **as shown in Specification 4** of the contract specifications.

Unit Price Costs: Compensation may be based on a unit price including material, labor, equipment overhead, and profit. If this method is used, the number of units involved should be verifiable and the unit price should be reasonable. The Contractor should be required to provide a breakdown of the unit price. Items priced at a unit price must be separated from other items in the claim since overhead and profit cannot be included twice. **Lump sum items shall not be accepted without detailed itemization stating the quantities and unit prices the lump sum item was based upon.**

Delay Damages: If delay was identified as an impact in the eligibility step, then compensation will be paid in accord with **Specification 4-3** for the delay. The Contractor should separately identify all associated delay costs so they can be verified and a determination made as to their reasonableness. The granting of additional contract time must be reasonable and supportable based on delays in the controlling items of work.

Indirect Costs, Expenses and Profit: Compensation for all indirect costs, expenses and profit of the Contractor, including but not limited to overhead of any kind, whether jobsite, field office, division office, regional office, home office, or otherwise will be paid in accord with **Specification 4-3**. Care should be used to insure that profit is not allowed more than once, such as applying a profit markup to total cost which includes unit price items already allowing for profit. Anticipated profits should not be allowed due to the difficulty in verifying whether or not such profits are under the realm of Contractor risk. Profits or markups on the additional expenses Contractor's incur as a result of a disruption/delay claim are not allowed.

These costs are to be provided by the Contractor and may be subject to audit by either the Department's Senior Construction Accountant or the Department's Inspector General's staff.

Prime Contractor Markups on Subcontract Invoices: Markups are to be allowed as per **Specification 4-3**.

Interest: Compensation should not be allowed for any interest added to a Contractor's claim except as provided in the **Specification 9-9** for interest payments after the settlement of the claim.

Insurance and Bond Premium: General Liability Insurance and Bond will be allowed as per **Specification 4-3**.

7.5.9.4 Negotiations and Resolution Processing

For any contract change involving monetary compensation see **CPAM Section 7.3.7**.

7.5.10 Claims Against Utility Performance

Project Level Responsibilities

This section applies only to claims against the utility owner or its agents.

(1) If the utility owner, having been notified under **CPAM Section 7.5.8(6)** of this procedure, fails to reach an agreement with the Contractor by 60 days after receipt of such notice, the Resident Engineer should schedule negotiations with the Contractor. Prior to negotiations the Resident Engineer shall notify the utility owner of time and location of the scheduled negotiations. Refer to **Sample Letter No. 3, Utility Company Notification, (Guidance Document 7-5-D)**. A copy of the **Utility Company Notification** letter shall be sent to the Office of Comptroller-General Accounting Office, Locally Funded Agreement Section.

(2) Representatives of the utility owner who may be in attendance at the negotiations meeting may present facts relating to the conditions that existed.

It should be made clear, however that negotiations at this point are between the Department and its contractor.

(3) If necessary following negotiations, the Resident Engineer will initiate a request for funds and a **Supplemental Agreement** as appropriate to settle the claim and, within 60 days, make any necessary demands against the utility owner for reimbursement of costs the Utility was found responsible for.. Refer to **Sample Letter No. 4, Utility Company Notification of Demand for Reimbursement, (Guidance Document 7-5-E)**. A copy of the **Supplemental Agreement** and **Utility Company Notification** letter shall be sent to the Office of Comptroller-General Accounting Office, Locally Funded Agreement Section.

(4) If the claim is not settled within 60 days, the matter shall be referred to the District Counsel for litigation. A copy of the referral notification to the District Counsel shall also be sent to the Office of the Inspector General and to the Office of Comptroller-General Accounting Office, Locally Funded Agreement Section.

(5) The collection of all funds due to the Department must be in accordance with the collection effort provisions outlined in **Procedure No. 350-060-303, Accounts Receivable**.

7.5.11 Claim Settlement

7.5.11.1 Federal Aid Participation (F.A.P.) Projects With Claim Settlements Less Than \$200,000

Claims on F.A.P. projects having claim settlements less than \$200,000, which do not involve claims for acceleration or delay, and are not the result of arbitration, court judgment or administrative review, shall be proposed for Federal Aid participation.

The Office of Inspector General, if asked by the FHWA Division Administrator, must review

and evaluate any claim submitted to the FHWA for participation with an audit.

(1) FHWA Full Oversight Projects

District Level Responsibilities

The DCE shall prepare a letter asking for FHWA concurrence with the District's recommendations on Full Oversight projects. Refer to **Sample Letter** to FHWA Requesting Concurrence and Participation in a Claim Settlement, (**Guidance Document 7-5-F**).

The FHWA will stamp a copy of the Department's request letter. On the stamped portion, they will indicate their disposition of the Department's request. This will be expressed in days and dollars. The stamped copy of the letter will be returned to the DCE with a copy to the State Construction Office. The DCE shall note reasons for non-concurrence and any appeal made on the district copy.

(2) Delegated Projects

District Level Responsibilities

The District Construction Engineer will determine FHWA participation on delegated projects. This will be done at the time of recommending approval for the Supplemental Agreement. The guidelines contained in the latest version of the **Florida Federal Aid Partnership Agreement, Procedure No. 700-000-005**, as well as past precedents and **CPAM Section 7.3.11** shall be used in determining Federal Aid participation.

7.5.11.2 F.A.P. Projects With Claim Settlements of \$200,000 or More

F.A.P. projects that have delay and/or acceleration claims, claim settlements totaling \$200,000 or more and claims involving arbitration, court judgments, or administrative board review shall be submitted to the FHWA for concurrence. The Office of Inspector General, if asked by the FHWA Division Administrator, must review and evaluate any claim submitted to the FHWA for participation with an audit.

(A) Resident Level Responsibilities

For claims over \$200,000 and claims the district anticipates will be over \$200,000, the Resident Engineer will notify the State Construction Office of the claim by memo as soon as the Resident Engineer becomes aware of it.

(B) District Level Responsibilities

The DCE will keep the Director, Office of Construction advised of the progress in resolving the claim by forwarding to the State Construction Office copies of the Contractor's correspondence on the claim and copies of all letters from district personnel to the Contractor, offering or confirming a resolution of the claim.

The DCE shall prepare a formal request for FHWA participation, setting forth in writing the legal and contractual basis for the claim, together with the cost data and other facts supporting the settlement. The request will be sent to the Director, Office of Construction for concurrence. The Director will either send the claim back to the District for further review/clarification or forward the claim package to the FHWA with a letter of concurrence.

7.5.11.3 Claim Settlement Greater Than \$500,000

District Level Responsibilities

For each claim resolution resulting in a **Supplemental Agreement** or other contract modification that increases the value of the contract by more than \$500,000, the District Director of Operations will certify in writing that there are no facts or circumstances relating to the settlement, **Supplemental Agreement**, or other contract modification that would indicate that such was affected by any improper influences or by any improper intervention on behalf of the Consultant or Contractor by any state officer, state employee or any other person outside the Department. Place a copy of this certification in all the contract claim files mentioned in **CPAM 7.5.7.4** and attach a copy of it to all copies of the contract change used to pay the claim settlement which are distributed with back-up documentation in accord with **CPAM 7.3.16**. On Federal-Aid contracts only send a copy to the District Federal-Aid coordinator. Refer to **Sample Letter, Claims Settlement Certification, (Guidance Document 7-5-F)**.

If a written request is submitted to the Department's Inspector General by the District Secretary or the Director, Office of Construction, then the Inspector General shall perform an independent audit on a claim which results in a settlement, **Supplemental Agreement** or other contract modification which increases the value of the contract by more than \$500,000 and shall determine whether the claim has been processed in accordance with all applicable laws, rules and procedures.

Claim Settlements greater than \$500,000 require the advance approval of the Chief Engineer.

7.5.11.4 Settlement Supplemental Agreement

Resident Level Responsibilities

Once the Department has agreed on a resolution, participation has been solicited from FHWA and the availability of funds has been certified by the Comptroller's Office, the Resident Engineer's staff shall process a supplemental agreement to pay the claim in accord with **CPAM Section 7.3**.

7.5.11.5 Court Ordered Claim Settlement

District Level Responsibilities

Upon receipt from the Department's attorney of a properly executed "Final Judgment" related to a court ordered payment, the DCE will produce a **Receiving Report and Invoice Transmittal (RRIT), Form No. 350-060-02**. The date of the Judge's signature of the "Final Judgment Against FDOT" must be placed on the line labeled "DATE SERVICES RECEIVED." The words "FINAL JUDGMENT MADE AGAINST FDOT" shall be typed in above the "DATE SERVICES RECEIVED" line. **Note:** the RRIT for a Claims Settlement must be properly coded for FHWA participation and non-participation by FHWA or the DCE's staff personnel. The RRIT will be executed by the DCE's staff personnel on the "SUBMITTED BY" line and by the DCE or his delegate on the "APPROVED FOR PAYMENT" line. The executed RRIT, the properly executed Final Judgment, and a cover memorandum from the DCE to the Department's Comptroller stating that this is an "URGENT CLAIM SETTLEMENT RESULTING FROM A FINAL JUDGMENT AGAINST FDOT" will then be submitted. The DCE will also send a copy of this package to the Department's attorney who had advised the district on this claim settlement.

Upon receipt of the package of documents from the DCE, the Department's Comptroller will calculate the amount of any post-judgment interest due and forward the package to the State Comptroller for payment with a letter stating the judgment amount and the amount of any post-judgment interest which may be due. A copy of this cover letter will also be sent to the Department's Attorney and the DCE.

7.5.12 Claim Denial

District Level Responsibilities

The DCE shall send a letter to the Contractor denying the claim after consulting with the

Office of General Counsel.

If any issues contained in the Contractor's claim merit full or partial pay but the Contractor refuses to settle that portion of the claim; then a unilateral supplemental agreement may be used to make that payment as outlined in the discussion of unilateral payments or supplemental agreements in **CPAM 7.3**.

7.5.13 Claim Appeal

District Level Responsibilities

When the Contractor will not accept the District's denial or settlement offer on a claim, then the appeal process will be governed by the contract.

Note: If the contract contains **Specification 8-3.7 Disputes Review Board**, then the appeal process must be handled by the Disputes Review Board before the Contractor can take the issue to arbitration or litigation as outlined in **Specification 8-3.7**.

7.5.14 Claim Records Storage and Retention

Resident Level Responsibilities

All of the claim files mentioned in **CPAM 7.5.7.4** are to be combined into a single claim file and any of the following items not already included in that file are to be added to it including the claim package, the Entitlement Analysis, the Engineer's Estimate, the **Statement of Claim Settlement Costs**, any related supplemental documentation, any related review analysis, any related recommendations, any related settlement or denial documentation, any related letters, any related certifications and any other related correspondence. This claim file shall be stored with the other project records. If a Consultant CEI was used on the project, the file should be given to the Construction Program Manager for storage. File retention, disclosure, exemptions, and privileges are subject to existing Florida law.

A flow chart of the claims process is shown on the State Construction Office website section for **CPAM**.

Guidance Document 7-5-A

SAMPLE LETTER NO 1 UTILITY COMPANY NOTIFICATION

XYZ Utility Company

DATE:

RE: Financial Project ID: XXXXXX-X-XX-XX
FAP No.: XXX-X (XX)
Contract No.: XXXXXXXX
Local Description:
County: XXXXXXXXXXXXX

Dear Sir or Madam:

Please be advised that the Florida Department of Transportation has been notified by (Contractor's Name), the Contractor for the above referred project that they intend to submit a claim for additional compensation due to a changed condition caused by your company's alleged failure to perform work in accordance with the utility work schedules or other relocation agreements.

Pursuant to Florida Law your company may be responsible for these additional costs. This office will furnish you additional information in regard to the circumstances the Contractor is claiming. The Department will keep records to document the conditions we observe during the period in question.

Sincerely,

Resident Engineer

cc: Contractor
Project Administrator
District Construction Engineer
District Utilities Engineer
Director, Office of Construction
Office of General Counsel
District Chief Counsel

Guidance Document 7-5-B

RESOURCES OF INFORMATION AND DOCUMENTATION

1. CONTRACT DOCUMENTS

1. Special Provisions
2. Plan Notes
3. Plan Drawings
4. Roadway and Traffic Design Standards
5. Developmental Specifications
6. Supplemental Specifications
7. Standard Specifications
8. Contract Bid Proposal and Bid Tabulations

2. PROJECT RECORDS

1. Daily and Weekly Reports of Construction
2. Test Reports
3. Progress Estimates
4. Daily Ledger
5. Weekly Estimate Worksheets
6. Utility Diaries
7. Record of Preconstruction Reports and Records
8. Various Construction Reports and Records for Items of Work
9. Time Extensions
10. Change Orders
11. Supplemental Agreements
12. Shop Drawings
13. Work Progress Schedules and Revisions
14. Records of Equipment, Labor and Material Used on Claim Related Work

3. CONTRACTOR'S RECORDS

1. Time Sheets
2. Certified Payrolls
3. Material Invoices
4. Equipment Rental Invoices
5. Subcontracts
6. Prequalification Records

Guidance Document 7-5-B

4. CORRESPONDENCE

1. Contractor's Notice of Intent to File Claim
2. Correspondence to and from Contractor
3. Correspondence to and from Designer
4. Inter-Department Correspondence and Memos
5. Correspondence to and from FHWA
6. Inspection Reports

5. MISCELLANEOUS

1. Phone Records
2. Meeting Minutes
3. Photographs
4. Statements of Witnesses
5. Weather Data
6. As-Built Schedules
7. Estimates Desk Review
8. Designer's Files
9. Specifications and Estimates File
10. Utility Files
11. Video Tapes

Guidance Document 7-5-C

**SAMPLE LETTER NO. 2
UTILITY COMPANY NOTIFICATION**

XYZ Utility Company

DATE:

RE: Financial Project ID: XXXXXX-X-XX-XX
FAP No.: XXX-X (XX)
Contract No.: XXXXXXXX
Local Description:
County: XXXXXXXXXXXXX

Dear Sir or Madam:

By letter dated _____ from _____, you were advised that (Contractor's Name), the Departments Contractor for the referenced project, had notified us of its intent to submit a claim for additional compensation due to a changed condition caused by your company's alleged failure to perform work in accordance with the utility work schedules or other relocation agreements. The Department has received a detailed statement of claim from the Contractor. We, request that you respond directly to the Contractor to settle the matter, and notify this office within 15 days as to your position concerning this claim.

If both you and the Contractor agree that negotiations are progressing but a final settlement has not been reached within 60 days, then a time extension (up to 60 days, 120 days total) may be requested.

If you and the Contractor fail to reach a settlement within 60 days and any requested time extension or fail to reach a settlement within 120 days, the Department will negotiate a settlement with the Contractor and seek reimbursement from your company of any costs that you are responsible for.

Sincerely,

Resident Engineer

cc: Contractor
Project Administrator
District Construction Engineer
District Utility Engineer
Director, Office of Construction
Office of General Counsel
District Chief Counsel

Guidance Document 7-5-D

**SAMPLE LETTER NO. 3
UTILITY COMPANY NOTIFICATION**

Date

XYZ Utility Company

RE: Financial Project ID: XXXXXX-X-XX-XX
FAP No.: XXX-X (XX)

Contract No.: XXXXXXXX
Local Description: XXXXXXXXXXXXX
County: XXXXXXXXXXXXX

Dear Sir or Madam:

By letter dated _____ we advised your company that _____ (Contractor's Name), the Departments Contractor for the referenced project, has submitted a detailed statement of claim for additional compensation due to a changed condition caused by your company's alleged failure to perform work in accordance with the utility work schedules or other relocation agreements.

INSTRUCTION: **USE ONLY 1** OF THE 2 FOLLOWING PARAGRAPHS

Sixty days from the date of that letter have elapsed and we have not received any notification that your company has reached an agreement with the Contractor on a settlement of this claim. During this period we have not received a time extension request from your Company, stating that your company and the Contractor agree that negotiations are progressing and that a settlement is expected within the next 60 days. Accordingly, we intend to proceed with the negotiation of a settlement with the Contractor on this claim.

- OR -

Since 120 days from the date of that letter have elapsed and we have not received any notification that your company has reached an agreement with the Contractor on a settlement, we intend to proceed with the negotiation of a settlement with the Contractor on this claim.

Please be advised that representatives of the Department and the Contractor will meet at (Time) on (Date) at (location of meeting) to negotiate a settlement with the Contractor. We urge your attendance since the Department will seek reimbursement from your company of any costs that you are responsible for.

Sincerely,

Resident Engineer

cc: Contractor
Project Administrator
District Utility Engineer
District Construction Engineer
Director, Office of Construction
Office of General Counsel
District Chief Counsel
Office of Comptroller, Attention: General Accounting Office, LFA Section

Guidance Document 7-5-E

**SAMPLE LETTER NO. 4
UTILITY COMPANY NOTIFICATION OF DEMAND FOR REIMBURSEMENT**

XYZ Utility Company

DATE:

RE: Financial Project ID: XXXXXX-X-XX-XX
FAP No.: XXX-X (XX)

Contract No.: XXXXXXXX
Local Description: XXXXXXXXXXXXX
County: XXXXXXXXXXXXX

By letter dated (_____) your company was advised that (Contractors Name) the Departments Contractor for the referenced project, has submitted a detailed statement of claim for additional compensation due to a changed condition caused by your company's alleged failure to perform work in accordance with the utility work schedules or other relocation agreements.

A settlement meeting was held on (Date) between representatives of your firm, the Contractor and the Department's representatives in an attempt to settle the claim. The meeting resulted in an impasse between your firm and the Contractor.

The Department has reviewed the claim from the Contractor and has determined that the Contractor's claim is justified. The Department has entered into an Agreement with the Contractor to provide additional compensation in the amount of (\$ AMOUNT) to resolve the Contractor's claim associated with the changed condition caused by your company's failure to perform work in accordance with the utility work schedules or other relocation agreements.

The Department has also determined that your company is liable for costs in the amount of (\$ AMOUNT) and hereby demands reimbursement to the Department.

Sincerely,

Resident Engineer

cc: Contractor
Project Administrator
District Utility Engineer
District Construction Engineer
Director, Office of Construction
Office of General Counsel
District Chief Counsel
Office of Comptroller, Attention: General Accounting Office, LFA Section

Guidance Document 7-5-F

SAMPLE LETTER TO FHWA REQUESTING CONCURRENCE AND PARTICIPATION IN A CLAIM SETTLEMENT

Date

FHWA Division Administrator
Federal Highway Administration
545 John Knox Road, Suite 200
Tallahassee, Florida 32303

Attention: _____ (Transportation Engineer)

Subject: Recommendation for FHWA participation in a claim settlement
Financial Project ID.: XXXXXX-X-XX-XX

Contract No.: XXXXXXXX
F.A.P. No.: XXXX-XXX-X
County: XXXXXXXXXXXXX
Contractor's Request No.: XXXXXXXXXXXXX

Enclosed is a copy of the Department's evaluation of the subject claim. Our analysis concludes the following claim for \$ _____ is justified.

We respectfully request FHWA concurrence and participation.

Sincerely,

District Construction Engineer

cc: Director, Office of Construction
Resident Engineer
District Federal-Aid Coordinator

Guidance Document 7-5-G

**SAMPLE LETTER
CLAIMS SETTLEMENT CERTIFICATION**

Pursuant to Section 337.221, Florida Statutes, the following certification is made as to the terms of Supplemental Agreement No. _____, dated Month XX, XXXX, on the Florida Department of Transportation Contract No. XXXXX:

I, (NAME), District Director of Operations, hereby acknowledge, attest and affirm that I have made reasonable inquiry and, based upon my personal knowledge as to the negotiations and circumstances; there are no facts or circumstances relating to Supplemental Agreement No. _____ that would indicate that the agreement was affected by any improper influences or by any improper intervention on behalf of the Contractor, by any state officer, state employee, or any other person outside the Department.

(NAME)
District Director of Operations

Sworn to and subscribed to me this _____ day of _____, XXXX.

Notary Signature

Commission Expires on _____, XXXX.

Distribution: District Federal-Aid Coordinator (on Federal-Aid contracts only)
All contract claims files mentioned in CPAM Section 7.5.7.4
Attach to all copies of the contract change used to pay the claim settlement
which are distributed with back-up documentation