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 ensure comprehensive and supportable recommendations are developed for use in the resolution of claims.

7.5.2 Authority

Sections 20.23(3)(a) and 334.048(3), Florida Statutes

7.5.3 References

337.11(~~8~~9[AB1]), 337.185 and 337.221, Florida Statutes

Federal Aid Policy Guide (23 CFR 635.124)

FHWA Approved: May 11, 2015

7.5.4 Definitions

Refer to the Introduction section of this ***Manual*.**

7.5.5 Notice

Project Level Responsibilities

Specifications 5-12 and 8-7.3.2 requires that the Contractor provide written 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. Written ~~N~~notice must be given before the Contractor begins any extra[AB2] work on which the claim is based. N~~The n~~otification by the Contractor is required, and enables ~~allows~~ the PA, ~~the opportunity~~ to mitigate the impacts of ~~the~~a delay[AB3] claim or begin documenting the impacts and actual costs associated with the claim. ~~Failure of t~~The Contractor's failure to notify the PA before beginning extra work on disputed items of work waives ~~the Contractor's~~ all rights to the Contractor's claim (refer to ***Specifications 5-12 and 8-7.3.2***). 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, the Contractor will be paid no claim settlement costs (see definition of ***Statement of Claim Settlement Costs CPAM ~~Section 7.5.4~~Introduction***). 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 Department shall enforce[LKL4][KL5] the written notice requirement ~~is required and~~which ~~is~~ important in effective management of claims. If the Contractor verbally indicates ~~verbally~~ that added costs are being incurred during the prosecution of the work, ~~that added costs are being incurred,~~ or changes to the contract document are occurring, the PA ~~should~~ shall inform~~instruct~~ the Contractor that written notification must be provided to preserve the claim for consideration by the Department.~~to immediately provide the required written notice of the intent to file a or any claims. Any verbal notices should be recorded immediately on the ***Daily Work Report*** in the "Comments" section and must be immediately[LKL6][KL7] followed by a letter or other documented correspondence signed by the PAon . If the Contractor says the impact of the claim is ongoing, record[LKL8][KL9] any information inconsistent with that view. It should shall be made clear to the Contractor that adequate[LKL10][KL11] 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.~~ Written notification is essential to preserve the scope of the claim issues.~~because the verbal notification may[RS12] state "X" is the being impacted but later argue that it informed you verbally that "X," "Y," and "Z" were being impacted[AB13].~~

The PA can only accept a written[AB14] notification of intent to file a claim ~~only~~ from the prime Contractor. The notice of intent should [AB15]~~,~~[RS16][AS17][LR18]contain the following information. If the Contractor's written notice does not contain this information, request the Contractor to clarify or expand upon its initial claim notification.~~:~~

(1) A statement as to what changed, including a description of the nature, specific location[AB19], 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.

(5) Whether the claim is for delay, extra work or a combination of delay and extra work[AB20].

~~(4) Time frame expectation~~

7.5.6 Claim Recognition

Project Level Responsibilities

The PA is responsible for recognizing a claim situation, and usually[LKL21][KL22] 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***, ***Work Order***, [LR23]or increased quantity where there is an existing pay item. 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.

7.5.7 Coordination

Project Level Responsibilities

After receiving the ~~required~~ Contractor's required written notice of intent to claim or becoming aware of a possible claim, the PA ~~will~~ shall~~must~~ notify the Resident Engineer[LKL24][KL25].

Resident Level Responsibilities

The Resident Engineer shall~~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~~ shall 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).

District Level Responsibilities

The DCE shall ~~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 Project of Division ~~Interest~~ Involvement (PODI) projects. A copy of the notice of intent to claim and/or a copy of the written claim received from the Contractor on FHWA PODI projects ~~will~~ shall also be sent to the Director, ~~State Construction~~ Office of Construction.

~~It is required T~~The DCE shall~~is required to will~~ inform the Director, Office of Construction~~State Construction Office~~[LKL26][KL27], the Office of General Counsel (attention: Special Counsel ~~to~~for Construction), District Chief Counsel and the Office of Inspector General 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.

7.5.8 Claims Involving a Utility

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. Notification to the utility may initially be verbal, but the verbal communication must be immediately followed by a letter signed by the Resident Engineer as described below.

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***).

7.5.9 Assistance

(A) 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.

(B) Office of General Counsel

Resident Level Responsibilities

~~Where legal issues are involved~~[AB28][RS29][AS30]~~,~~ ~~T~~tThe Office of General Counsel shall be requested~~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 accordance with the ~~d~~District's guidelines on such contacts. The DCE shall approve any request for review by the Central Office.

District Level Responsibilities

The DCE will set the ~~d~~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~~for Construction
605 Suwannee Street, Mail Station 58
Tallahassee, Florida 32399-0458

7.5.10 Coordinating Claim Response Development with FHWA and State Construction Office Staff on Federal Aid Participation (F.A.P.) 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. The Resident Engineer ~~should~~ shall~~will~~ 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 7.5.21***.

7.5.11 Minimum Documentation

Justification for all contract claims for which payment includes Claim Settlement Costs, requires, at a minimum, three (3) pieces of written documentation[LKL31][KL32]. 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.

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~~ shall 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 a draft Engineer's Estimate ~~should~~ shall~~must~~ be prepared and ~~is required to be~~ submitted to the DCE for review prior to finalization of the claim documentation.

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 7.5.4***).

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. [TC(33)]~~For documents prepared prior to achieving a negotiated agreement with the Contractor, prepare the documents to minimize their later use against the Department should a settlement of the claim not be achieved.[AB34] Also, where the Department has concluded that the Contractor did not preserve the claim, it is recommended to avoid creating records inconsistent with that conclusion.[AB35]~~

District Level Responsibilities

For those claims in excess of $150,000 the draft Entitlement Analysis and Engineer's

Estimate will be prepared and submitted to the DCE by the Resident Engineer's staff and shall be submitted to the District Chief Counsel for review prior to finalization of the claim documentation.

7.5.12 Comprehensive Documentation

Project Level Responsibilities

~~To be worthwhile, d~~Claim 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 ensure that they are complete and factual.

Specifications 5-12, 8-7.3.2 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~~ shall be established for every "Notice of Intent" filed by the Contractor. The PA shall review these notices along with ***Specifications 5-12, 8-7.3.2*** and ***100***. Where the Contractor's notice of intent to claim is incomplete or untimely, the PA shall notify the Contractor in writing of the~~at~~ deficiency.~~ect 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~~ must 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~~ must 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~~file must 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).

Resident Level Responsibilities

The Resident Engineer ~~should~~ shall 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***.

7.5.13 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 Work Report***, 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~~~~are required to~~shall 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~~, clear and concise,~~ ~~and~~ professional, relating to the facts, and without bias or opinions.

7.5.14 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 or impacts[AB36]. 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~~ shall 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.

7.5.15 Claim File

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~~pursue[AB37] a claim, the PA ~~should~~ must establish a separate file and keep copies of all documents related to the claim. Files must be created for each written notice from the Contractor of their intention to make a claim. Many Contractor~~'~~s provide a unique numerical identification number for each of their

claims. If the Contractor is not providing such a unique identifier, provide one as part of the creation of the claim file[AB38].

Resident Level Responsibilities

The Resident Engineer and PA ~~may~~ should 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 shall ~~should~~ be kept current and orderly, such that a review of the files at any given time 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.

7.5.16 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~~ will 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~~ shall 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~~are required shall ~~to~~ review those sources and document the[AB39] findings. ***Guidance Document 7-5-B*** provides a listing of these sources.

7.5.17 Contractor's Submission of Claim

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~~shall be enforced. Refer to ***CPAM Section 7.5.11(3)~~5~~*** for a discussion of the calculation of compensation when the Contractor has failed to file a timely notice of intent to

claim[AB40][RS41]. 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~~ shall 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 sole responsibility to submit claims. Claim packages will not be accepted from a subcontractor unless the Contractor incudes a cover letter accepting the validity of the claim including, where applicable, the required written certificate of claim.[AB42]

(2) It is ~~incumbent upon~~ the Contractor's sole responsibility 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~~ must[AB43][RS44][AS45] specifically[AB46] explain how the Contractor was impacted and what the monetary and time[AB47] costs associated with the impacts were. The impacts and cost ~~should~~ must[AB48][RS49][AS50] be certified in accordance with ***Specification 5-12.9***[AB51] 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) With the exception of claims certified in accordance with Specification 5-12.9, if adequate detail is not provided in the Contractor's submission of the claim package, the PA ~~should~~ shall 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~~ shall also be clearly provided to the Contractor. The Contractor should determine the amount of damages claimed to be~~asserted~~ due in a claim ~~situation~~[AB52]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.

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,~~r~~: ~~T~~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~~ ~~must~~shall 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.

7.5.18 Analysis of Claim Packages

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.

Resident Engineer ~~Level~~ Responsibilities

On claims of $150,000 or more, informational copies of the complete claims package shall also be sent [AB53][RS54][AS55]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~~ shall 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.

District Level Responsibilities

The DCE shall approve any request for review [AB56]by the Central Office, in accordance with the guidelines of ***CPAM 7.5.9(B).*** described herein.

(A) 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 shall~~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 must~~shall identify and document, where possible, what the ~~correct~~ facts are believed to be, with references to other backup documentation.

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

(B) 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~~ shall be obtained at this point to assess the potential legal liability. The reviewer ~~should~~ shall make this determination on the individual merits and available facts pertaining to the claim situation. When determining claim entitlement, the reviewer ~~should~~ shall address the following questions for each claim issue.

(1) Did the Contractor provide the required written 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 ***Specifications 5-12 and 8-7.3.2***?

~~(9)~~(10) Are any aspects of the claim excluded pursuant to the terms of the contract? For example, current delay by the Contractor, anticipated contractor profits, acceleration not requested in writing by the Department.

(~~10~~11) 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 Contractor's entitlement.

(C) Extent of Compensation

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 solely responsible for providing a claim package, which must include~~s~~ 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 State Contract Administration Specialist may be contacted if the reviewer is unfamiliar with the Contractor's method of cost justification.

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~~ must provide the basis for the ownership or rental costs, and the operating costs. Equipment costs are to be determined as per ***Specification 4~~-3.2.1~~*** [AB57]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 accordance with ***Specification 4~~-3.2.1~~*** [AB58]of the applicable contract specifications. Idle asphalt plants ~~should~~ will 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~~ must be removed from the ~~subject~~ [AB59]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~~-3.2.1~~*** [AB60]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~~ must be verifiable and the unit price should be reasonable. The Contractor is~~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~~5-12.6.2*** [AB61]for the delay.

The Contractor ~~should~~ must separately identify all associated delay costs so they can be verified and a determination made as to their reasonableness[LKL62][KL63]. 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* 4-3.2.1**[AB64]. Care should be used to ensure 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~~ will 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~~prohibited.

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

Prime Contractor Markups on Subcontract Invoices: Markups are to be allowed as per ***Specification 4-3.2.1(4)(a)***. [AB65]

Interest: Compensation is not allowed~~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 Premium will be allowed as per ***Specification 4-3***.

7.5.19 Negotiations and Resolution Processing

For any contract change involving monetary compensation see ***CPAM Section 7.3***~~.~~.

7.5.20 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*** of this procedure, fails to reach an agreement with the Contractor by 60 days after receipt of such notice, the Resident Engineer ~~should~~ shall 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.

(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 for which the Utility was found to be responsible. 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 reimbursement for the claim is not settled with the utility [AB66]within 60 days, the matter shall be referred to the Office of General Counsel for litigation. A copy of the referral notification to the Office of General Counsel shall also be sent to the Office of the Inspector General[LKL67][KL68] 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***.

7.5.21 Claim Settlement

(A) 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.

(1) FHWA Projects of Division Interest

District Level Responsibilities

The DCE shall prepare a letter asking for FHWA concurrence with the District's recommendations on P~~O~~o~~o~~DI[AB69][TC(70] projects. Refer to ***Sample Letter*** to FHWA Requesting Concurrence and Participation in a Claim Settlement, (***Guidance Document 7-5-F***).

The FHWA will sign the letter indicating their disposition of the Department's request. This will be expressed in days and dollars. 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 ~~d~~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 ***FHWA-FDOT Stewardship and Oversight 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.

(B) F.A.P. Projects w~~W~~ith Claim Settlements of $200,000 or More

For any 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.

Resident Level Responsibilities

For claims over $200,000 and claims the ~~d~~D[AB71][RS72]istrict anticipates will be over $200,000, the Resident Engineer will notify the Director, Office of Construction~~State Construction Office~~[LKL73][KL74] of the claim by memo as soon as the Resident Engineer becomes aware of it.

District Level Responsibilities

The DCE ~~will~~ shall keep the Director[LKL75], 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 ~~d~~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 shall ~~will~~ be sent to the Director, Office of Construction for concurrence. The Director shall~~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.

(C) 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 highest level of management involved in the negotiations, including and up to the Department Secretary ~~District Director of Operations will~~ shall 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~~A copy of this certification shall~~must~~ be placed~~n~~ in all the contract claim files mentioned in ***CPAM 7.5.11*** and ~~attach~~ a copy of it shall~~must~~ be attached to all copies of the contract changes used to pay the claim settlement which are distributed with back-up documentation in accord with ***CPAM 7.3***. 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 claim settlement cannot be resolved at the District level, then the dispute shall be escalated to the Director, Office of Construction along with a written recommendation of action, prepared by the D~~istrict Construction~~ CE~~ngineer~~, based on a review of the Engineer's Estimate and Entitlement Analysis. If the settlement is escalated beyond this point, it shall be accompanied by a similar recommendation prepared by the Director, Office of Construction or subsequently, by the Chief Engineer.

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[LKL76] review the request. The OIG may perform[LKL77] 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.

7.5.22 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~~***Supplemental Agreement*** to pay the claim in accordance with ***CPAM Section 7.3***.

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 with a supplemental agreement; then a unilateral payment may be used to make that payment as outlined in the discussion of unilateral payments ~~or supplemental agreements~~ in ***CPAM 7.3***.[LR78]

7.5.23 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 shall ~~will~~ also send a copy of this package to the Department's attorney who had advised the D~~d~~istrict 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. If the Contract is still open, it may be possible to pay the Final Judgement by Supplemental Agreement if funds are available or can be made available. A copy of this cover letter ~~will~~ shall also be sent to the Department's Attorney and the DCE.

7.5.24 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 payment may be used to make that payment as outlined in the discussion of unilateral payments or supplemental agreements in ***CPAM 7.3***.

7.5.25 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***.

7.5.26 Acknowledgement of Resolution/~~Recision~~Recission

The PA is responsible for ensuring all claims filed on a project have been resolved by supplemental agreement, rescinded by the Contractor, or any outstanding Notice of Intent or claim submitted with the ***Final Estimates Documentation*** and marked as Pending on ***Form 700-050-20***, ***Final Plans and Estimates Transmittal.***

For all claims that are resolved or rescinded by the Contractor before Final Acceptance, the PA shall send a letter (**Guidance Document 7-5-H**) to the Contractor acknowledging that the claim is resolved or has been rescinded and the Department

considers that specific claim closed. After Final Acceptance, the District Final Estimates Manager will follow the procedures outlined in ***Review and Administration Manual Chapter 5*** to ensure any pending claims are qualified or regular acceptance is received to indicate full settlement of all issues and claims on the contract.[LR79]

~~7.5.26~~7.5.27 Claim Records [LR80]Storage and Retention

Resident Level Responsibilities

All of the claim files mentioned in ***CPAM 7.5.11*** 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***, related supplemental documentation, related review analysis, related recommendations, related settlement or denial documentation, related letters, related certifications and 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 shall ~~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:

Subject: Notification of Claim to Utility Company No. 1

Financial Project ID:	XXXXXX-X-XX-XX
FAP No.:	XXX-X (XX)
Contract No.:	XXXXXXX
Local Description:	
County:	XXXXXXXXXXX

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 maintain 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. Standard Plans
    5. Developmental Specifications
    6. Supplemental Specifications
    7. Standard Specifications
    8. Contract Bid Proposal and Bid Tabulations
    9. Technical Special Provisions

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
    15. Unilateral Payments

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 Recordings

Guidance Document 7-5-C

SAMPLE LETTER NO. 2
UTILITY COMPANY NOTIFICATION

XYZ Utility Company DATE:

Subject: Notification of Claim to Utility Company No. 2

Financial Project ID:	XXXXXX-X-XX-XX
FAP No.:	XXX-X-(XX)
Contract No.:	XXXXXXX
Local Description:	
County:	XXXXXXXXXXX

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 achieved 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 the aforementioned time period, 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

(a) SAMPLE LETTER NO. 3
UTILITY COMPANY NOTIFICATION

Date

XYZ Utility Company

Subject: Notification of Claim to Utility Company No. 3

Financial Project ID:	XXXXXX-X-XX-XX
FAP No.:	XXX-X-(XX)
Contract No.:	XXXXXXX
Local Description:	
County:	XXXXXXXXXXX

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, The Department intends 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, The Department intends 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

Office of Inspector General
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:

Subject: Demand for Reimbursement

Financial Project ID: XXXXXX-X-XX-XX
FAP No: XXX-X-(XX)
Contract No: XXXXXXX
Local Description:
County: XXXXXXXXXXXX

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
FAP No:	XXXX-XXX-X
County:	
Contractor's Request No:	XXXXXXXXXXX

Enclosed is a copy of the Department's evaluation of the subject claim. Our analysis concludes that the Contractor's claim is justified in the amount of $ _____.

The Department respectfully requests 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, 20XX, on 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 _____, 20XX.

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

Guidance Document 7-5-H

SAMPLE LETTER
RESIDENT ENGINEER CLAIM SETTLEMENT/RESCCENISSION RESPONSE

Date:

Contractor NAME/ADDRESS
TOWN, STATE, ZIP CODE

SUBJECT: Time Extension Request
Financial Project ID:
Project No.:
State Job No:
Contract No.:
F.A.P. No.:
County:

Dear Sir or Madam:

This letter is to acknowledge receipt of the recission of the Notice of Intent to Claim submitted by XXX to the Department on (date) . (Copy attached) This resceinsssion was received by the Department on (date).

or

This letter is to acknowledge receipt of your signed Supplemental Agreement (Number XXX) which settles your Claim in full (Insert all NOI numbers and corresponding claim descriptions settled by this Supplemental Agreement here). Your signed Supplemental Agreement was received by the Department on (date).
[LR81]

Sincerely,

Project Administrator

cc: District Construction Engineer