

SECTION 1.11 CLAIMS

1.11.01 – General: When filing a claim, the Contractor must follow the procedures set forth in this Section. It is the intent of the Department to compensate the Contractor for actual increased costs caused by or arising from acts or omissions on the part of the Department which violate legal or contractual duties owed to the Contractor by the Department.

1.11.02 – Notice of Claim: In any case in which it is the Contractor's position that extra compensation is due to it for additional costs not clearly covered in the Contract and not incurred in performing extra work (as defined in Article 1.04.05 herein) which has been expressly ordered by the Engineer, the Contractor shall notify the Commissioner in writing (in accordance with the terms of C.G.S. Section 4-61, as revised) of its request for such extra compensation. Such written notice shall contain all pertinent information described in Article 1.11.05 below.

Once formal notice of a claim under C.G.S. Section 4-61 (b) as revised has been given to the Commissioner, the claimant may not change the claim in any way, in either concept or monetary amount, (1) without filing a new notice of claim and demand for arbitration to reflect any such change and (2) without the minimum period of six months after filing of the new demand commencing again and running before any hearing on the merits of the claim may be held. The only exception to this limitation will be for damages that continue to accrue after submission of the notice, in ways described and anticipated in the notice.

1.11.03 – Record Keeping: The Contractor shall keep daily records of all costs incurred in connection with its construction-related activities on behalf of the Department. These daily records shall identify each aspect of the Project affected by matters related to any possible, anticipated or current request for additional compensation, the specific locations where work is so affected, the number of people working on the affected aspects of the Project at the pertinent time(s), and the type and number of equipment on the Project site at the pertinent time(s). If possible, any potential or anticipated effect on the Project's progress or schedule should also be noted contemporaneously with the cause of the effect, or as soon thereafter as possible.

1.11.04 – Claim Compensation: The payment of any claim, or any portion thereof, that is deemed valid by the Engineer shall be determined in accordance with this Section.

(a) Compensable Items: The liability of the Department for claims will be limited to the following specifically-identified, compensable items, insofar as they have not otherwise been paid for by the Department, and insofar as they were caused solely by the actions or omissions of the Department or its agents:

- (1) Additional non-salary job site labor expenses.
- (2) Additional costs for materials.
- (3) Additional, unabsorbed job-site overhead.
- (4) An additional ten (10) percent of the total amounts of items identified in Subarticles (1), (2), and (3) above, as complete compensation for additional unabsorbed home office overhead and profit.
- (5) Additional equipment costs. Only actual equipment costs shall be used in the calculation of any compensation to be made in response to claims for additional Project compensation. Actual equipment costs shall be based upon records kept in the normal course of business and generally-accepted accounting principles. Under no circumstances shall Blue Book or other guide or rental rates be used for this purpose (unless the Contractor had to rent the equipment from an unrelated party, in which case the actual rental charges paid by the Contractor, so long as they are reasonable, shall be used).
- (6) Subcontractor costs limited to, and determined in accordance with, Subarticles (1), (2), (3), (4), and (5) above. Such subcontractor costs may only be paid for by the Department (a) in the context of a claims settlement or (b) if the Contractor has itself paid or legally-assumed, unconditional liability for those subcontractor costs.

(b) Non-Compensable Items: The Department will have no liability for the following specifically-identified non-compensable items:

- (1) Profit, in excess of that provided for herein.
- (2) Loss of anticipated profit.
- (3) Loss of bidding opportunities.
- (4) Reduction of bidding capacity.
- (5) Home office overhead in excess of that provided for in Article 1.11.04(a)(4) hereof.
- (6) Indirect costs or expenses of any nature.
- (7) Attorneys fees, claims preparation expenses, or other costs of claims proceedings or resolution.

1.11.05 – Required Claim Documentation: All claims shall be submitted in writing, and shall be sufficient in detail to enable the Engineer to ascertain the basis and the amount of each claim, and to investigate and evaluate each claim in detail. As a minimum, the Contractor must provide the following information for each and every claim asserted:

- (1) A detailed factual statement of the claim, with all necessary dates, locations and items of work pertinent to the claim.

A statement of whether each requested additional amount of compensation or extension of time is based on provisions of the Contract or on an alleged breach of the Contract. Each supporting or breached Contract provision, and a statement of the reasons why each such provision supports the claim, must be specifically identified.

- (2) The specific, detailed circumstances that gave rise to the claim.
- (3) The date(s) on which any and all events resulting in the claim occurred, and the date(s) on which conditions resulting in the claim first became evident.
- (4) The amount(s) of additional compensation sought and a break-down of the amount(s) into the categories specified as payable under Article 1.11.04 above.
- (5) The name, function, and pertinent activity of each Department official, employee or agent involved in or knowledgeable about events that give rise to, or facts that relate to, the claim.
- (6) The name, function, and pertinent activity of each Contractor's or Subcontractor's official, employee or agent involved in or knowledgeable about events that give rise to, or facts that relate to the claim.
- (7) Specific identification of any pertinent document, and detailed description of the substance of any material oral communication, relating to the substance of such claim.
- (8) If an extension of time is sought, the specific dates and number of days for which it is sought, and the basis or bases for the extension sought. A critical path method, bar chart, or other type of graphical schedule which supports the extension must be submitted.
- (9) Excerpts from manuals or other texts which are standard in the industry, if available, which support the Contractor's claim.

1.11.06 – Auditing of Claims: All claims filed against the Department shall be subject to audit by the Department or its agents at any time following the filing of such claim. The Contractor and its subcontractors and suppliers shall cooperate fully with the auditors. Failure of the Contractor, its subcontractors, or its suppliers to maintain and retain sufficient records to allow the Department or its agents to fully evaluate the claim shall constitute a waiver of any portion of such claim that cannot be verified by specific, adequate, contemporaneous records, and shall bar recovery thereunder. Without limiting the foregoing requirements, and as a minimum, the Contractor shall make available to Department or its agents the following documents in connection with any claim it submits:

- (1) Daily time sheets and foreman's daily reports.
- (2) Union agreements, if any.
- (3) Insurance, welfare, and benefits records.
- (4) Payroll register.
- (5) Earnings records.
- (6) Payroll tax returns.
- (7) Records of property tax payments.
- (8) Material invoices, purchase orders, and all material and supply acquisition contracts.
- (9) Material cost distribution worksheet.
- (10) Equipment records (list of company equipment, rates, etc.).
- (11) Vendor rental agreements, and subcontractor invoices.
- (12) Subcontractor payment certificates.

- (13) Canceled checks (payroll and vendors).
- (14) Job cost report.
- (15) Job payroll ledger.
- (16) General ledger, general journal (if used), and all subsidiary ledgers and journals, together with all supporting documentation pertinent to entries made in these ledgers and journals.
- (17) Cash disbursements journal.
- (18) Financial statements for all years reflecting the operations on this Project.
- (19) Income tax returns for all years reflecting the operations on this Project.
- (20) Depreciation records on all company equipment, whether such records are maintained by the company involved, its accountant, or others.
- (21) If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
- (22) All documents which reflect the Contractor's actual profit and overhead during the years that the subject Project was being performed, and for each of the five years prior to the commencement of the Project.
- (23) All documents related to the preparation of the Contractor's bid, including the final calculations on which the bid was based.
- (24) All documents which relate to the claim or to any sub-claim, together with all documents which support the amount of damages as to each claim or sub-claim.
- (25) Worksheets used to prepare the claim, which indicate the cost components of each item of the claim, including but not limited to the pertinent costs of labor, benefits and insurance, materials, equipment, and subcontractors' damages, as well as all documents which establish the relevant time periods, individuals involved, and the Project hours and the rates for the individuals.

1.11.07 – Exemption from Freedom of Information Act Requests: Any documents or other materials examined or obtained by the Department or its agents under this Section 1.11 shall be deemed by the Department to be commercial information submitted in confidence and not required by statute, and shall therefore be deemed by the Department to be exempt from disclosure to any third parties who make requests for such materials under the Connecticut Freedom of Information Act.