

110 CLAIMS

110-1 FILING A CLAIM.

When a contractor anticipates that work to be performed will result in incurred costs that are not covered by contract pay items or ordered by the Engineer as extra work (109-04), the contractor may choose to file a claim in accordance with SSHC Section 110. These anticipated costs may be associated with work by the contractor or its subcontractors. The contractor may also file a claim when costs are expected to be incurred due to unanticipated delays.

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When these situations occur, a prudent contractor will first discuss the expected costs or delays with the project engineer and area construction staff to provide an opportunity for resolution of the matter before proceeding with a claim. In some cases, the Area Construction Engineer will be able to recognize the contractor's position as legitimate and agree to compensation by supplemental agreement or force account, or to allow a time suspension or time extension as a means of offsetting the expected delay. However, in cases where an agreement cannot be reached, the claims process is a contractual remedy that allows for the mitigation or elimination of the claim conditions. The claims process also provides a recording-keeping process to track and account for the impact of the claim so that the contractor can be compensated when deemed appropriate by the Engineer.

110-2 NOTICE OF INTENT.

The first step in the claims process involves the contractor making ALDOT aware of its intent to file a claim. This notice of intent to file a claim describes the general nature of the claim, the declared reasons additional costs are due to the contractor, the affected operations and their locations, and the total cost of the claim, if known. If the contractor is basing its claim on a particular specification, plan note, plan detail or drawing, etc, a full explanation of this basis should also be included in the notice of intent.

If the contractor is asserting a delay claim, the notice of intent should identify which particular operations are delayed, the duration of the delay, and the potential effect on project completion.

Since the purpose of the notice of intent is to alert ALDOT of potential unanticipated conditions and to start the record keeping process, a notice containing vague or ambiguous statements should be returned to the contractor with a request for immediate clarification. Without this clarity, a claim can become more difficult to resolve due to misunderstandings and lack of records as work progresses.

The contractor's notice of intent is written to the State Construction Engineer with a copy being given to the project manager. A written or verbal notice of intent is required prior to beginning work on the contested work, prior to an anticipated delay, or immediately upon the discovery of an asserted delay. Verbal notices must be documented in writing by the contractor within three calendar days. Written notices may be submitted electronically.

The contractor may rescind its intent to file a claim with a notice of rescission and waiver being given in the same manner the notice of intent was submitted. The contractor automatically rescinds and waives its claim if it accepts any alternative resolution outside of the claims process. The Construction Bureau will formally close the claim after receipt of notice of the resolution.

110-3 RECORD KEEPING.

When a notice of intent is filed, the project manager should become familiar with SSHC 110 in order to prepare for the record keeping process. This process can be cumbersome but is necessary to compile and preserve an accounting of the records needed for review, analysis, and resolution of the claim.

Once work on a claim begins, the contractor must keep detailed daily records of all costs related to the work affected by the issue. This includes the nature of the work performed, where it occurred, and how it affected the project schedule. The contractor must document details of all labor, materials, and equipment used for the affected work. For delay claims, this documentation process often includes keeping records of idle equipment, demobilization and remobilization costs, or other interruptions of the contractor's work progression.

At the beginning of each work week, the contractor must provide a copy of the previous week's records to the project manager. The project manager will compare the contractor's records against similar records kept by project inspectors. Notification of any differences between the two sets of records will be provided to the contractor as soon as possible (typically within 3 days). However, ALDOT's full records will not be shared with the contractor until the contractor's full records documenting the entire claim are received.

No amendments to the claim are allowed after ALDOT shares its records. The contractor's right to a claim is waived if the contractor fails or refuses to keep or provide the required records.

ALDOT records are vital to the analysis and defense against a contractor claim. Complete, accurate, and detailed records should be kept similarly to force account records (see 109). Accurate records of the contractor's labor, equipment, and materials associated with the disputed work.

110-4 CLAIMS PROCESS.

ALDOT Claim Review. After the work associated with the claim has been completed, or at the end of the delay asserted by the contractor, the project manager, through the Area Construction Engineer, will document the claim end date with written notification to the State Construction Engineer. A copy of this notice should be provided to the contractor.

The contractor is allowed 90 calendar days from the claim end date to submit the completely documented claim to the State Construction Engineer. Contractor claims documents should also be provided to the Area Construction Engineer and the project manager. Required contractor documentation is described in 110-6 and SSHC 110.06.

After a review of the contractor's submitted claim documentation, the Area Construction Engineer will provide a recommendation to the State Construction Engineer. This recommendation should include an explanation of any differences in records kept by the parties, any disagreements in the work or operations tracked as part of the claim, along with any other information relevant to the basis of the recommendation. All claim records and supporting documentation compiled by the project staff are submitted with the recommendation.

The State Construction Engineer will review the submitted information and Area Construction Engineer recommendation. The Construction Bureau will work closely with the Area Office as it evaluates the claim. A notification of the State Construction Engineer's decision regarding a

resolution of the claim, or a request for additional information, will be sent to the contractor within 90 calendar days after receipt of the claim records.

Since claims can be very complicated and involve significant costs, ALDOT allows two additional levels of review by committees made up of knowledgeable individuals who were not involved in the design or construction of the project on which the claim occurred. These committees, described below, are usually successful in resolving claims to the satisfaction of the parties.

ALDOT Claims Committee. If the contractor disagrees with the decision of the State Construction Engineer, the contractor may request to present its claim to the ALDOT Claims Committee. This written request, along with six additional copies of the documented original claim must be made to the project manager, by certified mail, within 30 calendar days from the date of receipt of the State Construction Engineer's decision.

The claims committee is composed of four ALDOT employees, appointed by the Transportation Director. For Federal Aid projects the Transportation Director will advise the Federal Highway Administration of the time, date, and location of the hearing, and will invite the FHWA to send an observer.

The contractor and ALDOT employees having pertinent knowledge relative to the specific claim under consideration will be invited to a claims committee meeting at a mutually convenient day and time. The meetings will normally be conducted as follows:

1. The Contractor or contractor's representatives will be given an opportunity to present the claim and respond to any questions that may arise.
2. ALDOT representatives will then be allowed to present information and documentation which supports their action on the claim.

After all documentation has been received and reviewed by the claims committee, a recommendation is given to the Transportation Director. After review, the Transportation Director advises the claims committee chairman of the final decision. The committee chairman notifies the State Construction Engineer who reports the decision to the area construction office. The area construction office notifies the contractor by certified mail.

ALDOT Claims Appeal Board. The contractor may appeal the results of the claims committee decision to the ALDOT Claims Appeal Board. The appeal and request to present to the claims appeal board must be made within 30 days of the notice of the claims committee decision. The claims appeal board consists of three primary members selected by the Transportation Director

and the Alabama Road Builders Association. The cost of compensation and expenses of the claims appeal board members is shared equally by ALDOT and the contractor. The Transportation Director is not bound to the claims appeal board report and recommendations. The Board will not hear issues beyond the original claim.

The Claims Appeals Board consists of three members, with alternates appointed by the Transportation Director and the Alabama Road Builders' Association. For Federal Aid projects, the FHWA will be invited to send an observer. At least one board member must be a licensed Professional Engineer in Alabama. The Contractor pays 50% of the board presentation expenses.

The written recommendation of the Board will be sent to the Transportation Director following the presentation. The Claims Appeal Board's recommendation may be accepted, modified, or denied by the Director. After receiving the recommendation of the Claims Appeal Board, the Transportation Director has 45 calendar days to report the decision to the contractor.

The Transportation Director's decision in the resolution of all claims is final. After the Transportation Director makes the final ruling on a claim, a supplemental agreement is processed to make payment for any amount deemed payable and any contract time due. The contractor's share of the cost for the Claims Appeal Board is subtracted from any money due the contractor or from the final estimate if no money is due as a result of the claims process.

110-5 CLAIM COMPENSATION.

[SSHC 110.05](#) provides listings of costs that may be compensable in the claims process and examples of those that are non-compensable.

110-6 REQUIRED CLAIM DOCUMENTATION.

All claims must be submitted in writing with enough detail for ALDOT to determine the basis and amount of each claim. [SSHC 110.06](#) provides a list of required documentation that must be submitted by the contractor. Information submitted as a part of this process will only be used to analyze and resolve the claim.

110-7 AUDITING OF CLAIMS.

All claims against ALDOT are subject to audit by the ALDOT's external auditor at any time after filing. The audit may start after ten days' notice to the contractor, subcontractor, or supplier, who must cooperate fully. If these parties fail to keep and provide adequate records for

verification, any unverifiable portion of the claim will be waived and cannot be recovered. [SSHC 110.07](#) lists the minimum documentation that must be made available to the auditors by the contractor.

CLAIM PROCESS SUMMARY AND FLOWCHART

The overall contractor claim process is outlined below. See sections above for additional detail.

Notice of Intent:

- ▼ Contractor encounters work not covered by the contract and concludes that extra compensation is due.
- ▼ Contractor provides written or verbal claim notice prior to work start.

Documentation:

- ▼ Contractor and project staff keep detailed records.
- ▼ Contractor provides its records to the project manager for comparison review.
- ▼ Failure of contractor to keep or provide records is interpreted as the claim being waived.
- ▼ ALDOT does not provide its records to the contractor until after the work is complete and all contractor records are received.

End of Claim Period:

- ▼ Notification of the claim end date is provided to the State Construction Engineer and the contractor after the work associated with the claim is complete.
- ▼ Contractor submits claim documentation
- ▼ Claim is waived if documentation is not submitted within 90 days.

ALDOT Review and Response:

- ▼ Area Construction Engineer submits project records and its recommendations to the State Construction Engineer.
- ▼ State Construction Engineer reviews the claim and Area recommendations and responds to the contractor within 90 days.

Dispute Resolution:

- ▼ Contractor makes an appeal to the ALDOT Claims Committee if it disagrees with the State Construction Engineer.
- ▼ Failure to request within 30 days indicates acceptance of the decision.

Claims Committee:

- ▼ Contractor and subcontractor representatives present their claim to the committee.
- ▼ Claims committee makes a recommendation to the Transportation Director.

Transportation Director's Decision:

- ▼ Transportation Director reviews the committee's recommendation and makes a final decision.
- ▼ Contractor makes an appeal to the ALDOT Claims Appeal Board if it disagrees with the Transportation Director.

Claims Appeal Board:

- ▼ Contractor and subcontractor representatives present their claim to the board.
- ▼ Claims Appeal Board makes recommendation to the Transportation Director, who has 45 days to report the final decision to the contractor.
- ▼ The Transportation Director's decision is final and binding.

Final Decision and Payment:

- ▼ Supplemental agreement is processed for payment or contract time due.
- ▼ All claims are subject to an audit by ALDOT's external auditor.

Claim Process Flow Chart

