

## SECTION 254 Contract Claims

### 254.1 Background

There are three components to consider when a contractor requests a change order:

1. **Entitlement:** If a contractor is seeking additional compensation or additional contract time, they must show a contractual basis of entitlement. Is payment or contract time already covered under the existing contract? Entitlement must be decided first before discussing the remaining components.
2. **Impact:** If the parties agree that there is a basis of entitlement, the contractor must provide evidence that their work activities are affected. It is possible for a contractor to have entitlement, but not have their work impacted. If there is no impact, there is no need for additional compensation or time.
3. **Cost:** Cost should only be discussed and negotiated after determining that the contractor has a basis of entitlement and confirming that their work is impacted.

In the mutual interest of all parties, WisDOT vigorously promotes resolution at the most immediate opportunity, and advocates timely submission of claims and responses to them. Objective claim analysis requires reconstruction of circumstances and events that occurred before submission of the claim. This analysis becomes more difficult with the more time that has elapsed since the events that caused the claim.

The purpose of a claim may be to recover extra costs due to changes in scope, differing site conditions, or delays. These instances should be easily identifiable by both the engineer and contractor, so the contractor is required first to request a revision to the contract under [standard spec 104.2](#) and [standard spec 104.3](#). If a revision is not agreed, the contractor may proceed using the claim process.

[Standard spec 105.13](#) provides that the contractor must notify the engineer, in writing, of intent to file a claim for extra compensation. This notice must be filed before beginning any work that may provide a foundation for the claim. If the contractor does not notify the engineer in this manner, the department may deny the claim.

All parties involved in a dispute or claim are strongly encouraged to resolve the issue at the project level and within the terms of the contract. If the issue remains unresolved at the project level, and a claim is filed, it will be considered the department's claim review panel.

If the claimant is dissatisfied with the decision of the claim review panel, the decision may be appealed to the secretary of the Department of Transportation or directly to the State of Wisconsin Claims Board. The decision of the secretary may also be appealed to the state Claims Board.

### 254.2 Claims Process

Once the engineer has notice of a claim, notify the appropriate Bureau of Project Development (BPD) construction oversight engineer. For projects subject to federal oversight, WisDOT must notify FHWA early during the claims process, as well as request concurrence for the settlement amount resulting from the process.

The claims process is described in detail in [standard spec 105.13](#).

### 254.3 State Claims Board

The Claims Board is composed of a representative of the governor, a representative of the Department of Administration, a representative of the Department of Justice, and the chairpersons of the senate and assembly committees on finance or their designees. The legislature has provided that whenever a claim upon which legislative action is necessary is presented, it must first be filed with the State Claims Board (Wisconsin statutes 15.105(2), 16.007 and 16.53). The board may, upon its own motion, and must, upon the request of the claimant, schedule claims for hearing. The board must give the claimant at least a 10-day notice of the hearing date. The board is not bound by common law or the rules of evidence and may hear testimony having reasonable value of evidence, excluding that which is immaterial, irrelevant, or unduly repetitious.

The board reports its findings and recommendations to the legislature for action. If it finds that the state is legally liable, or that the claim involves the casual negligence of any office, agent or employee of the state, or that the estate ought to pay, the board drafts a bill covering its recommendations and findings and submits the bill to the Joint Committee on Finance at the earliest possible time. The board's findings and conclusions are submitted to the claimant within 20 days after their determination.

After the Claims Board has acted, the legislature considers the claim. If it refuses the claim, the claimant may pursue a remedy by filing suit against the state (Wisconsin statute 775.01). The claimant must post a \$1,000 bond to indemnify the state for costs if the judgment goes against the claimant. There is a limitation period imposed on the payment of claims by the Wisconsin Constitution, article 8, section 2, which provides that no money may be appropriated for the payment of claim unless it is filed within six years after the claim has accrued. In addition, the state may plead the state's six-year statute of

limitations on contract actions (Wisconsin statute 893.43). The date that the claim accrues is held to be the date that the indebtedness actually arises, not the date the legislature refused to pay the claim.

There is one exception to this procedure. If the board unanimously finds that payment of less than \$4,000 is justified, it may order the amount paid on its own motion.