

Dispute Resolution and Administrative Claim Process

Partnering. It is the intent of the **Owner** to partner all projects. The purpose of partnering is to develop a proactive effort and spirit of trust, respect, and cooperation among all stakeholders in a project. Partnering does not affect the terms and conditions of the Contract. The partnering process in this section is self-facilitated partnering performed by the project personnel. Costs associated with the self-facilitated partnering process are incidental to the Contract.

A. **Mitigation and Notice.** Mitigation of any issue, whether caused by the **Owner**, Contractor, third-party or an intervening event, is a shared contract and legal requirement. Mitigation efforts include, but are not limited to, re-sequencing work activities, acceleration, and substitution of materials. The Contractor and Engineer must explore and discuss potential mitigation efforts in a timely manner.

1. **Contractor Initial Oral Notification.** The Contractor shall provide immediate oral notification to the Construction Project Engineer (“the CPE”) upon discovering a circumstance that may require a revision to the Contract Documents or may result in a dispute. Upon notification, the CPE will attempt to resolve the identified issue as quickly as possible.

2. **Contractor Written Early Notice.** If the CPE has not resolved the identified issue within 2 working days after receipt of oral notification, the Contractor shall provide written notice to the CPE of any circumstance that may require a revision to the contract documents or may result in a dispute. This early notice must be given by the end of the second working day following the occurrence of the circumstance.

The CPE and Contractor shall maintain records of labor, equipment, and materials used on the disputed work or made necessary by the circumstance. Such records will begin when early notice is received by the CPE. Tracking such information is not an acknowledgement that the **Owner** accepts responsibility for payment for this disputed work.

If an issue is not resolved through the initial mitigation efforts, the Contractor may either abandon pursuing the claim or escalate to the Dispute and Administrative Claims Process.

B. **Dispute Resolution and Administrative Claims Process.** Whenever an issue is elevated to a dispute, the parties shall exhaust the **Owner’s** Dispute Resolution and Administrative Claim process as set forth below prior to filing an action in the Ohio Court of Claims. The following procedures do not compromise the Contractor’s right to seek relief in the Ohio Court of Claims.

All parties to the dispute must adhere to the Dispute Resolution and Administrative Claim process. The Contractor shall not contact **Owner’s** personnel who are to be involved in a Step 2 or Step 3 review until a decision has been issued by the previous tier. The **Owner’s** personnel involved in Step 2 or Step 3 reviews will not consider a dispute until the previous tier has properly reviewed the dispute and issued a decision.

Failure to meet any of the timeframes outlined below or to request an extension may terminate further review of the dispute and may serve as a waiver of the Contractor’s right to file a claim.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims by subcontractors and suppliers against

the **Owner** but not supported by the Contractor will not be reviewed by the **Owner**. Disputes and claims of subcontractors and suppliers against the Contractor will not be reviewed by the **Owner**.

The Contractor is to continue with all work, including that which is in dispute. The **Owner** will continue to pay for undisputed items of work.

The **Owner** will not make adjustments allowed by 2013 ODOT C&MS Section 104.02.B, 104.02.C, and 104.02.D if the Contractor did not give Initial Oral Notification and Written Early Notice as specified above. This provision does not apply to adjustments provided in 2013 ODOT C&MS Table 104.02-2.

1. Step 1 (On-Site Determination). The Construction Project Engineer will meet with the Contractor's superintendent within two (2) working days of receipt of the Contractor Written Early Notice. They will review all pertinent information and contract provisions and negotiate in an effort to reach a resolution according to the Contract Documents. The CPE will issue a written decision of Step 1 within seven (7) calendar days of the meeting. If the dispute is not resolved the Contractor may either abandon or escalate the dispute to Step 2.

2. Step 2 (**Owner's** Dispute Resolution Committee). The **Owner** shall establish a Dispute Resolution Committee (DRC) which will be responsible for hearing and deciding disputes at the Step 2 level. The DRC will consist of the **Owner** and his designees (other than the project personnel involved).

Within seven (7) calendar days of receipt of the Step 1 decision, the Contractor shall submit a written request for a Step 2 hearing to the **Owner**. The Contractor must within fourteen (14) calendar days of receipt of the request for a Step 2 hearing, submit the Dispute Documentation as follows:

- a) Submit three (3) complete copies of the documentation of the dispute to the **Owner**.
- b) Identify the Dispute on a cover page by county, project number and subcontractor or supplier name(s) if involved in the dispute.
- c) Clearly identify each item for which additional compensation and/or time is requested.
- d) Provide a detailed narrative of the disputed work or project circumstance at issue. Include the dates of the disputed work and the date of early notice.
- e) Reference the applicable provisions of the plans, specifications, proposal, or other contract documents in dispute. Include copies of the cited provisions in the Dispute Documentation.
- f) Include the dollar amount of additional compensation and length of contract time extension requested.
- g) Include supporting documents for the requested compensation stated above.
- h) Provide a detailed schedule analysis for any dispute involving additional contract time, actual or constructive acceleration, or delay damages. At a minimum, this schedule analysis must include the Schedule Update immediately preceding the occurrence of the circumstance alleged to have caused delay and must comply with accepted industry practices. Failure to submit the required schedule analysis will result in the denial of that portion of the Contractor's request.
- i) Include copies of relevant correspondence and other pertinent documents.

The **Owner** or his designee will prepare a written response to the Contractor's dispute and have sufficient copies for the Contractor at the hearing. Within fourteen (14) calendar days of receipt of the Contractor's Dispute Documentation, the DRC will conduct the Step 2 hearing with Contractor personnel who are authorized to resolve the dispute. The DRC will issue a written Step 2 decision within ten (10) calendar days of the meeting. If the dispute is not resolved, the Contractor may either abandon or escalate the dispute to Step 3.

3. Step 3 (Alternative Dispute Resolution). The Contractor shall submit a written Notice of Intent to File a Claim to the **Owner** within ten (10) calendar days of receipt of the Step 2 decision. In the notice, the Contractor shall request Alternative Dispute Resolution (ADR).

The dispute becomes a claim when the **Owner** receives the Notice of Intent to File a Claim.

a) Alternative Dispute Resolution (ADR). The **Owner** will then choose either binding arbitration as defined by ORC 5525.23 or mediation in the manner in which those methods are practiced in _____ **County** and allowed by law.

The **Owner** will coordinate the agreement of the parties to the ADR method, and the selection of a neutral third party or technical expert. The fees of the neutral third party or technical expert will be shared equally between **Owner** and the Contractor. The **Owner** will obtain a written agreement, signed by both parties, that establishes the ADR process. The neutral third party or technical expert will have complete control of the claim upon execution of the ADR agreement.

4. Interest on Claims. The **Owner** will pay interest in accordance with ORC Section 5703.47 on any amount found due on a claim which is not paid within 30 days of the **Owner's** Receipt of the Certified Claim.