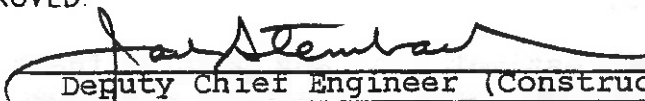


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| TO: Director, Preliminary Plan Review Bureau | <h1>ENGINEERING INSTRUCTION</h1> <p>NEW YORK STATE DEPARTMENT OF TRANSPORTATION</p> |
| Distribution: <input checked="" type="checkbox"/> Main Office <input checked="" type="checkbox"/> Regions <input type="checkbox"/> Special | SUBJECT: SUBMISSION OF CONTRACTORS' CLAIMS UPON FINAL ACCEPTANCE. Subject Code: 7.30 Code: <u>EI 76-20</u> Date: <u>2/18/76</u> |
| APPROVED:  Deputy Chief Engineer (Construction) | Supersedes: |

Assistant Commissioner B. Sack's memorandum to all Regional Directors dated December 19, 1975, describes the effect of a recent change in Court of Claims Rule 13, requiring a Verified Answer by the Department to a Contractor's verified statement of claim within 40 days of filing.

To meet this deadline, the Office of Legal Affairs will require a response from the Region within 25 days of the filing of any contract claim covering each specific Cause of Action, the accuracy of all stated facts and allegations, whether and how any related payments had been made, and the disposition of any previous disputed work letters or similar matters. While documentation will not be needed at that time, the Region's response will require careful and time consuming research.

In order to provide sufficient lead time for investigation, review, disposition, and response to contractor claims, the following procedure should be implemented immediately:

1. Upon final acceptance or receipt from the contractor of a request for an uncompleted work agreement, the contractor's attention should be directed in writing to Section 109-11, Final Agreement, of the 1973 Specifications or, where appropriate, to the similar section on page 72 of the 1962 Specifications as modified by Addendum 49. This Section prescribes that the final agreement will not be drawn and finalized until all claims have been presented and all accounts for extra work and materials have been rendered, considered and, if agreed to, made a part of such final agreement. The contractor should be requested to submit such material promptly and to indicate in his response the anticipated date of such submission. In the meantime, the final should be processed without delay. The purpose of this notification and request is twofold:
 - a. To encourage timely submission of all claims to insure adequate consideration and response.
 - b. In the event of noncompliance with the request by a contractor, it can be cited in the State's defense.

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Subject: SUBMISSION OF CONTRACTORS' CLAIMS UPON FINAL ACCEPTANCE

2. Contractors should be given an opportunity to review final quantities to insure against inadvertent omissions and to provide a timely opportunity for the reconsideration of any disputes or claims, as prescribed by Engineering Instruction 72-40. Generally, to save time, it is desirable to submit completed portions of the final for the Contractor's review, as it is being progressed, rather than to wait until the entire final is completed.

3. At each point when the final estimate, or any portion thereof, is submitted for the contractor's review, such submission shall be in writing with specific reference to the provisions of Section 109-11 and the contractor should be requested to promptly advise of any exceptions, disputes or claims he may have relative to the proposed final payments. This may be modified by the Region, where reviews with the contractor are continual on an informal basis, to be initiated at major intervals.

4. Any such exceptions which represent inadvertent omissions or are deemed by the Engineer to be valid within the contract provisions may be incorporated in the Final Estimate. All other claims should be referred to the Regional Office promptly upon receipt.

5. The Region should investigate all exceptions in detail as they are received, collect and organize related documentation and develop a written report addressing each claim item or Cause of Action. During the course of this review, the Region may feel that certain claimed items have validity or the contractor may indicate that he would waive all claims upon a settlement of certain issues. Such matters should be referred to the Construction Subdivision for review with the Office of Legal Affairs and approval agencies.

6. The contractor's statement of exceptions to the final quantities, or composite of submittals, and the Region's report thereon should be sent, no later than at the time of the Region's submission of the Final Agreement, to the Office of Legal Affairs, with a copy to the Construction Subdivision. The Construction Subdivision will supplement the Region's report where necessary.

7. It may be anticipated that some contractors will continue to defer the submission of their claims to some point within the prescribed 40 day period after receipt of final payment or beyond that period by returning the final check. In such instances, the Office of Legal Affairs should be promptly notified of the receipt by the Region of any claim directly from sources other than the Main Office, and the Region should expedite its review and report to the Office of Legal Affairs and the Construction Subdivision within 25 days of the receipt thereof from any source.