



## 2-54.1 Background

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 per [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 by appropriate region construction section staff in consultation with the appropriate BPD staff. If the claim remains unresolved at the region level, an administrative review and determination will be made by the director of the BPD.

If the claim remains unresolved at the bureau level, an administrative review and determination will be made by the administrator'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.

## 2-54.2 Claim Process

Once the engineer has notice of a claim, the Claim Submittal Form, found in the pantry software, must be filled out and submitted to 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 following is a brief overview of the claims process, which is described in detail in [standard spec 105.13](#).

### 2-54.2.1 Step 1 (Std Spec 105.13.2, Notice of Claim) - 14 Calendar Days

The contractor must file a "notice of claim" within 14 calendar days of being notified of denial of a contract revision.

### 2-54.2.2 Step 2 (Std Spec 105.13.3)

The contractor must file the claim before final acceptance of the project. The claim must contain:

- Clear description of the claim
- Contractual basis of the claim
- Other relevant facts
- Reasons why WisDOT must pay
- Detailed breakdown of the extra costs

<sup>[1]</sup> These times may be extended upon agreement of both parties.

The contractor must certify the claim.

### 2-54.2.3 Step 3 (Std Spec 105.13.5)

The region has 28 calendar days <sup>[1]</sup> to perform its initial review, including a meeting with the contractor. The region has an additional 28 calendar days <sup>[1]</sup> to make its decision or the claim automatically goes to the Bureau of Project Development. The contractor has 28 calendar days to accept the decision of the region or appeal to the bureau. <sup>[2]</sup>

<sup>[1]</sup> These times may be extended upon agreement of both parties.

<sup>[2]</sup> Upon agreement of both parties, an Alternate Dispute Resolution (ADR) process may be utilized. See your BPD construction oversight engineer for assistance.

For non-local program projects "region" is defined as the review and decision by PDS project manager, then review and decision by PDS supervisor, then review and decision by PDS chief, in consecutive order.

For local program projects "region" is defined as the review and decision by management consultant and project manager jointly, then review and decision by local program chief, in consecutive order.

#### **2-54.2.4 Step 4 (Std Spec 105.13.6.2)**

The bureau has 28 calendar days <sup>[1]</sup> to perform its initial review. The bureau has an additional 28 calendar days <sup>[1]</sup> to make its decision. The contractor has 28 calendar days to accept the decision of the bureau or appeal to the WisDOT Claims Review panel. <sup>[2]</sup>

<sup>[1]</sup> These times may be extended upon agreement of both parties.

<sup>[2]</sup> Upon agreement of both parties, an Alternate Dispute Resolution (ADR) process may be utilized. See your BPD construction oversight engineer for assistance.

For both local program and non-local program projects "bureau" is defined as the review and recommendation by the regional consultant and project manager jointly, then review and decision by the local program chief, in consecutive order.

#### **2-54.2.5 Step 5 (Std Spec 105.13.7.2) - 74 Days**

The review panel will conduct a hearing of the contractor's appeal and will issue its decision within 60 calendar days from the date of appeal. The contractor has 14 calendar days <sup>[1]</sup> to accept or reject the panel decision. If the contractor rejects the decision, it may follow statutory process (make application to the State Claims Board).

<sup>[1]</sup> These times may be extended upon agreement of both parties.

#### **2-54.3 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 all 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.

[Figure 1](#) below shows a flow chart of the claims process for unresolved changes.

Figure 1 Claims Process for Unresolved Changes

