VDOT
Virginia Department of Transportation

# Construction and Maintenance Claims

# and

# Notice of Intent to File Claim (NOI)

(January 2017)

Governance Document

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# PREFACE

This manual serves as a guide for Virginia Department of Transportation (VDOT) personnel who may be involved in the documentation and administration of construction and maintenance Claims and Notices of Intent (NOIs). It defines the terms "Claim", "NOI" and "attorney/client privilege" material and explains the handling of these documents. Analyzing a Claim or NOI is an ongoing process from preliminary issue identification, development of a Claims Diary, to the reviewing the submission of the Claim or NOI by the Contractor through final disposition by payment or rejection. There are example letters of response to the Contractor and flow charts for Claim submittals and time frames for necessary actions. Emphasis is placed on specific actions required of the Contractor and of VDOT by Section 33.2-1101 through 33.2-1105 of the *Code of Virginia* as well as the 2016 VDOT Road and Bridge Specifications (also referred to herein as the Specifications)**.**

This Claims Manual supersedes all previous instructions concerning the handling of "NOIs" and "Claims".

1-1-2017

# INTRODUCTION

VDOT awards hundreds of contracts each year for the construction and maintenance of the Commonwealth's extensive transportation network. Ideally, each contract is developed so that all factors have been considered. Unfortunately, the construction process is not an exact science. Uncertainties are a fact of life in the construction industry and contractual agreements must be flexible enough to address changes or unanticipated conditions as they occur.

The VDOT ***Road and Bridge Specifications,*** which are an integral part of construction and maintenance contracts awarded by VDOT, has specific language that addresses changes or unforeseen conditions as they occur. Usually, VDOT and the Contractor are able to agree on the impact of a change or changed conditions. The matter may be resolved by Change Order or force account for additional compensation or time extension. Occasionally, VDOT and the Contractor do not agree on the impact or even the actual occurrence of an unanticipated condition. In such instances, the Contractor must submit a written, documented request for additional time for contract performance or additional monetary compensation for performance of work or both. Depending on the time of submission, this request is called a "NOI" or a "Claim".

# ABBREVIATIONS AND ACRONYMS

| | |
|---|---|
| AAG | Assistant Attorney General |
| AASHTO | American Association of State Highway and Transportation Officials |
| ACE | Area Construction Engineer |
| CABB | Contractor Advertisement Bulletin Board |
| CM | Construction Manager |
| CPM | Critical Path Method |
| DA | District Administrator |
| DBE | Disadvantaged Business Enterprise |
| DCE | District Construction Engineer |
| EEO | Equal employment opportunity |
| FHWA | Federal Highway Administration |
| FOIA | Freedom of Information Act |
| FS | Federal Specifications, General Services Administration |
| ITE | Institute of Transportation Engineers |
| MBE | Minority Business Enterprise |
| NOAA | National Oceanic and Atmospheric Administration |
| NOI | Notice of Intent (to file a claim) |
| SCE | State Construction Engineer |
| SIA | Schedule Impact Analysis |
| SP | Special Provision |
| SPCN | Special Provision Copied Note |
| VDOT | Virginia Department of Transportation |
| VEP | Value engineering proposal |
| WBE | Women Business Enterprise |

# TERMS

In this manual the following terms and pronouns used in place of them shall be interpreted as follows:

**Area Construction Engineer –** For the purpose of this manual, the Area Construction Engineer is the person responsible for project administration and decision-making.

**Attorney/Client Privilege Material –** Correspondence, reports and evaluations identified as Attorney/Client Privilege Material prepared in anticipation of litigation for a NOI or a Claim. This material is privileged and is exempt from the Freedom of Information Act (FOIA). Example: A Contractor would not be permitted to view or make copies of attorney/client privilege material or work product (see definition) held by VDOT.

Normally any correspondence to VDOT's attorney falls within this privilege. Typically, internal correspondence discussing matters raised by a Contractor in a NOI or as to matters or issues that the Inspector or author deems to be a prelude to litigation are privileged material. To become attorney/client material, however, the correspondence must be addressed directly to the AAG, VDOT's attorney. Correspondence on which the attorney is copied only has, in some instances, been considered not to be attorney/client privilege material. Correspondence generated after a NOI that is not directed to the attorney, direct or copied, may be considered as work product and afforded, some protection from disclosure. The attorneys' review of the material sent to them is to see if VDOT's analysis or review makes sense or is consistent with the contract or law.

Email addressed to the AAG is privileged and does not have to be disclosed under FOIA. However, if this type email is "forwarded" to others in an unprotected email, then it will be produced with the other email under FOIA. Also, it is harder to file "Attorney/Client" email separately; therefore, it may be produced unintentionally under a FOIA request. A hard copy of the e-mail should be placed with the other attorney/client privilege material.

Please also review the sample letter from the AAG included within the Appendix of this manual, which further discusses the general recommendations for handling all records associated with a NOI. Specific recommendations and legal advice should be sought from the AAG.

**Certification of Claims –** The Contractor shall submit a certification with the notice of claim using the format provided in Section 105.19 of the Specifications (all Contracts effective with the July 2016 advertisement). This certifies that the Claim is a true and accurate representation of additional costs and /or delays incurred by the Contractor in the performance of the required contract work. Any statements made, known to be false, shall be considered a violation of the Virginia Governmental Frauds Act, punishable as allowed by the Virginia Code for a Class 6 Felony.

**Change Order –** A written order issued by the Engineer or his designee to the Contractor that specifies changes in the plans, quantities or both, within the scope of the contract and that establishes the basis of payment and time adjustments for the work affected by the changes.

**Claim –** A written request submitted by a Contractor for additional time for completion of the contract or for additional monetary compensation for performance of work. A request is not a Claim unless filed within 60 days after the Final Estimate date. The Final Estimate date is the date set forth in a letter from the Department to the Contractor.

**Claim Analysis –** Term describing the procedure of investigating and documenting the validity of a Contractor's Claim. This procedure begins after payment of the Final Estimate and consists of reviewing data from the NOI analysis and any new data that may be available. District and Construction Division representatives perform this analysis. It may include a hearing before the Commissioner or designee.

**Contract –** The written agreement executed between VDOT and the Contractor that sets forth the obligations of the parties involved, including, but not limited to, the performance of the work, furnishing of materials and labor, and basis of payment. The contract includes the *Road and Bridge Specifications*, supplemental specifications, special provisions, special provision copied notes, plans, standard drawings; change orders; and Change Orders and agreements that are required to complete the construction of the specified work in an acceptable manner, including any authorized extensions. All of which constitute one instrument. Oral representations or promises are not considered a part of the contract.

**Contract Documents (Order of Priority) –** The plans, standard drawings, Specifications, supplemental specifications, special provisions, special provision copied notes, and other Contract Documents defined in Section 103.06 are part of the contract. A requirement occurring in one is as binding as though occurring in all. They are intended to be complimentary and to describe and provide for a complete work. In case of a discrepancy, and as shown in Section 105.12 of the Specifications, the following order of priority will apply, with the highest governing item appearing first and the least governing item appearing last:

1. Special provision copied notes. The Contract items, units and unit prices listed in the Contract's Schedule of Items have the same status as special provision copied notes.
2. Special provisions
3. Plans
4. Supplemental Specifications
5. Specifications

6. Standard Drawings. (including all revisions issued through the date of Advertisement.

Calculated dimensions, unless obviously incorrect, will govern over scaled dimensions. Sketches, drawings, general notes and other written information that are not included in special provisions or special provision copied notes used in No Plan and Minimum Plan Concept projects will have the same status as plans.

**CPM –** Critical Path Method of scheduling contract work. As stated in the VDOT *Post-Award Scheduling Guide*, the CPM is a scheduling technique that utilizes activity durations and network logic to calculate the schedule for an entire project. A CPM schedule is a network-based schedule that graphically depicts the timing of activities, inter-relationships among the activities, and the project critical path. Every project, regardless of size or complexity, has a critical path; however, only a critical path method schedule identifies the critical path.

**Disincentive –** A monetary deterrent used to discourage the Contractor from exceeding the Contract time limit.

**Engineer –** The Chief Engineer, who acts directly or through his authorized representative. The representative acts within the scope of the particular duties or authority given to him. This may include the Area Construction Engineer, Construction Manager or Inspector.

**Extra Work –** An item of work that is not provided for in the contract as awarded but that is found to be essential to the satisfactory fulfillment of the contract within its intended scope.

**Final Estimate Date –** For the purpose of filing Claims, the Final Estimate date is the date set forth in a letter from the Department to the Contractor.

**Force Account Work –** Prescribed work of a contractual status performed by the Contractor and compensated for as specified in Section 109.05 of the Specifications.

**Freedom of Information Act (FOIA) –** A law that ensures that the public has ready access to records. There are a number of exceptions, two of which are particularly applicable: written opinions of attorneys and any other writing protected by the attorney/client privilege and memoranda, working papers and records compiled specifically for litigation (work product). The second exception is the reason that the diary must be disclosed; it is not prepared in anticipation of litigation. However, comments on NOI to file a Claim and analysis of Claims and notices do not have to be disclosed because they are prepared after a response to threatened litigation (legal proceedings).

**Hearing –** Contractor's forum to appeal to Commissioner and present data that may or may not have been previously submitted.

**Incentive –** A monetary amount(s) used to encourage the Contractor to complete work prior to date(s) specified in the Contract.

**Inspector** - The Engineer's authorized representative who is assigned to make detailed inspections of the quality and quantity of the work and its conformance to the requirements and provisions of the Contract.

**Liquidated Damages -** Compensatory damages, as set forth in the contract, paid by the Contractor to VDOT when the Contractor fails to complete the project within the time limit specified in the contract. For courts to support liquidated damages, the following conditions must be met:

1. The contract must make time an essential part of the contract by explicit reference to the stated time requirement. Failure to complete the project on time is a breach of contract and can make the Contractor liable to the Department for damages. (See Sections 108.06 and 108.07 of the Specifications.)
2. Liquidated damages must represent a reasonable forecast of damages incurred by VDOT. These damages include additional costs of items such as administration, engineering, supervision and inspection of the project.

**Material Information –** Any data, knowledge, or facts that identify physical characteristics, limitations, restrictions or other pertinent information related to the project site or construction of a proposed project. Prospective bidders as well as the successful Contractor shall have ready access to any material information of which VDOT has knowledge, unless it is attorney/client privilege material or otherwise exempt from the Freedom of Information Act.

**Notice of Intent to File Claim (NOI) –** A written statement by a Contractor that informs the Engineer of its intent to seek additional time and/or monetary compensation. It must be given to the Department at the time of occurrence of the event or beginning of the work upon which the claim is based and state the nature of the claimed damages and the act or omission by VDOT that caused the damage.

**NOI Analysis -** The term "NOI Analysis" describes the procedure of investigating and documenting the validity of a Contractor's NOI. The procedure begins with the initial investigation of the NOI by the ACE with support from the Construction Division as may be required and continues until the notice is resolved or payment of the Final Estimate is made.

**Payment of the Final Estimate –** Final payments will become due and the Final Estimate for payment within 90 calendar days after final acceptance.

**Plans –** The approved plans and standard drawings and profiles, typical cross sections, computer output listings, supplemental drawings or exact reproductions thereof, and all

subsequent approved revisions thereto that show location, character, dimensions and detail of the work specified in the contract.

**Revisions -** For the purpose of this manual, a change to the contract, which may or may not be negotiated by a Change Order.

**Specifications –** A general term that includes all directions, provisions and requirements contained in the Road ***and Bridge Specifications*** and those that may be added or adopted as supplemental specifications, special provisions or special provision copied notes. All are necessary for the proper fulfillment of the contract.

**Work Product or Privilege –** Material developed in anticipation of litigation, including the NOI Analysis.

# CLAIM AVOIDANCE AND PRECAUTIONARY MEASURES

Contractors and taxpayers generally are better served when potential contract disputes are resolved at an early stage. VDOT personnel must always act promptly and responsibly. When a problem is encountered during the course of construction, every effort must be made to address and resolve the problem as quickly as possible. At the same time, VDOT's representative must be careful not to give direction in such a manner that it appears that VDOT has assumed responsibility for or dictated the Contractor's operations. All important issues should be addressed in writing, and prospective bidders and parties to on-going contracts should be made aware of relevant information as it becomes available to VDOT.

While claim issues typically arise due to a difference of opinion between the Contractor and VDOT's representatives, **VDOT representatives need to be objective** in considering potential resolutions to a problem. This includes not allowing personality conflicts to cloud judgment during consideration of a contract issue, or pointing fingers and assigning blame for a circumstance. Personnel connected with projects administered by VDOT are encouraged to regard each project as a potential source of Claims, and to maintain complete and accurate project records in accordance with Appendix C of the Construction Manual. VDOT representatives should not instruct a Contractor on the advisability of submitting a Claim, nor indicate in any manner an opinion on possible favorable action by higher authority. If the Contractor indicates its intention to file a Claim, the Contractor's attention should be directed to Section 105.19, particularly the changes, differing site conditions, time extensions, and suspension of work and Claim clauses. The Contractor should also be reminded of the time limitations for filing as shown in section 105.19 of the Specifications. Any significant deviations from the sequence in the Contractor's schedule can provide VDOT personnel with an indication of difficulties on the project, allowing investigation of a potential problem at the earliest possible time.

The following suggestions are offered to VDOT personnel for their guidance and action on construction projects:

1. VDOT personnel should keep in mind that the Contractor determines the method of construction, unless the plans or specifications specify a particular method to be followed. VDOT personnel should avoid making statements such as "I made this placed this concrete in four hours." Or, "We built a special form." This conversation habit suggests that VDOT has taken over or directed the Contractor's operations. A better way to phrase this information is "The Contractor placed the concrete in four hours." Or, "The Contractor built a special form."
2. Where it is mandated or implied by the plans and specifications that the Engineer will give direction, VDOT must act promptly. For example, a standard note that appears on construction plans states that, "If during construction, the culvert invert elevations shown on the plans are found to differ significantly from the elevations of the stream or swale in which the culvert is to be placed, the VDOT

Drainage Designer must be consulted before installing the culvert." As another example, Section 105.03 of the ***Road and Bridge Specifications*** requires that VDOT complete the review of shop drawings submitted by the Contractor within a designated time. In all such cases, VDOT personnel must make every effort to respond promptly so that the Contractor does not incur any unnecessary delays.

3. Work performed by the Contractor should be inspected in a timely manner. Unacceptable work must be rejected without delay indicating to the Contractor exactly what is being rejected and why. Delay or inaction resulting in a failure to reject non-complying work within a reasonable time may imply acceptance by VDOT.
4. The Engineer should put his directives in writing. Difficulties often arise when verbal orders regarding items such as additional or extra work, or concerning the acceptability of work or materials, are not verified in writing. VDOT personnel must be careful to obtain all necessary approvals before issuing such directives.
5. A Contractor who makes a verbal Claim should be advised in writing or verbally to proceed with the contract and that he may file a NOI to file Claim as set forth in the Specifications. Verbal notifications to the Contractor shall be noted in the project documentation, including in project Daily Work Reports.
6. Project financing (such as the overall budget or the amount of contingency available) **should never** be discussed with the Contractor.
7. Correspondence from the Contractor in which a questionable statement is made should be answered in writing. The questionable statement should be denied, corrected, or clarified in writing. This procedure should be followed when correspondence makes a Claim or apparently is written to form the basis of a Claim.
8. The Contractor and project personnel should be properly briefed on the plans and specifications of projects that have unusual or unique materials methods of construction. The preconstruction conference is an excellent opportunity to review key contract requirements with both project personnel and the Contractor.
9. Settlement of claims or potential claims through Change Orders and time extensions should be made promptly for valid changed conditions and delay situations. Sometimes the settlement of valid issues is left until project completion. Normally, such delay of settlement is not in VDOT's best interest. If a Contractor is not granted a time extension for a valid delay when it occurs, it later may submit a Claim for additional costs incurred for acceleration of work in order to meet the original completion date.
10. The Department should disclose all information relevant to a proposed or ongoing project as it becomes available. This information may be any data, knowledge, facts, etc., that identify physical characteristics, limitations, restrictions, or other pertinent information related to the project site or constructability of the proposed project. Examples are soil borings, utility agreements, R/W agreements, requirements specifying exclusive source

(proprietary) materials, and coordination of work with other Contractor's sharing the work site. It is critical that prospective bidders (prior to the receipt of bid) as well as the successful Contractor (after contract award) have ready access to any information VDOT possesses that is relevant to the construction of a project.

When disclosing this information, please be sure to make necessary disclaimers, if appropriate. For example, if the prospective bidder/Contractor asks to see all information VDOT has on soil testing and the information VDOT has is not complete or is estimated only, or was performed several years prior, VDOT needs to make the prospective bidder/Contractor aware that it is not "guaranteeing" the information.

**VDOT personnel must always act promptly and responsibly to resolve problems as quickly as possible as outlined in Section 105.03 of the current Road and Bridge Specification.**

# WHAT IS A NOI?

The Specifications and the Code of Virginia provide the Contractor with a procedure to seek additional time and/or monetary compensation for the performance of extra work, changed conditions or disagreements due to interpretation of the contract requirements.

A NOI to file Claim is a written notification by the Contractor of his intention to seek extra time and/or additional monetary compensation due to a changed condition, delay, or other related event. The Contractor must submit this initial written request in accordance with Section 105.19 of the Specifications. An oral NOI by the Contractor is not sufficient. The Contractor's written NOI should be addressed to the ACE. The NOI should be prepared and delivered by the Contractor to the ACE as soon as the Contractor becomes aware of a changed condition or problem situation. The Contractor's NOI should follow this format:

1. Label the written request "Notice of Intent to File Claim."
2. Summarize the act or omission.
3. List the specifications, plans, or contract items that are in question.
4. Indicate the type of damages (time and/or monetary compensation).
5. This itemized summary should be as detailed as possible. (Refer to the section on "Project Documentation" for a description of the type of information that should be provided.)

Acknowledgement should be made to the Contractor in writing within five days of the receipt of a NOI. (See flow chart for Submission and Disposition of Notices of Intent.) If the NOI lacks sufficient detail, the Contractor should be advised of any additional information that must be provided. The Contractor should be made aware that all necessary information should be provided promptly so VDOT can properly document and resolve the problem. Sample letters acknowledging receipt of a NOI are in the Appendix. Copies of the ACE's acknowledgement letter should be sent to the following parties:

1. DA
2. DCE
3. CM
4. Inspector
5. AAG
6. SCE

In the letter acknowledging a NOI, the ACE should explain to the Contractor the position of VDOT concerning the issue in question. (See example in the Appendix.) The acknowledgement letter should advise that the Contractor is required to maintain daily records concerning the NOI (in accordance with 105.19: *"…Contractor shall furnish the Engineer an itemized list of materials, equipment, and labor…"*). The necessary types of records submitted to VDOT should be discussed with the Project Inspector. These records shall be submitted to the Inspector on a daily basis for

comparison (in accordance with 105.19: *"The Contractor and the Engineer shall compare records and bring them into agreement at the end of each day*". The ACE will send follow-up correspondence to the Contractor if the Contractor does not submit required documentation.

The documentation and investigation of a NOI is referred to as "NOI Analysis." This analysis determines the validity of the Contractor's Claim that a changed condition, delay, or disagreement of interpretation of the contract requirements has occurred. It is important to note that the Inspector should immediately begin keeping written notes and records of everything affected by a changed condition, delay, or differing interpretations of contract requirements even before he or she becomes aware of the Contractor's intention to file a NOI.

It is VDOT's goal to resolve legitimate NOIs as soon as possible, and compensate the Contractor if appropriate. Resolution and compensation may be handled by Change Orders.

# TYPES OF NOTICES OF INTENT TO FILE CLAIMS AND CLAIMS

This section covers situations or events for which NOIs and Claims might be submitted. The specifications, in most cases, will cover the situation. Special provisions may be inserted into the proposal documents to inform bidders of an unusual situation, and will supersede or modify the specification sections listed herein. Both the Specifications and the contract documents should be used in the administration of the contract and NOI.

When Notices of Intents are received they should be acknowledged and forwarded as outlined in "What is a NOI?" Claims should be acknowledged and handled as outlined in "What is a Claim?" Further, documentation and record keeping must begin immediately if not started already, as outlined in "Project Documentation".

## Time Extensions

| Issue | Description | Spec. Reference |
|---|---|---|
| Extra Work | Additional time for work that was not anticipated. | Section 104.02 & Section 109.05 |
| Coordination Delays by Other Contractors | Additional time for third party interference that resulted from work being performed by others within or adjacent to the project under which the NOI or Claim is being submitted. (Example: A grading Contractor does not complete his contract on time, thus delaying the paving Contractor.) | Section 105.09 |
| Coordination Delays by Other Entities | Additional time based on interference or delays within or adjacent to the project by others such as utilities, cities, counties or railroads. | Section 105.08 |
| Approvals | Additional time based on delays in processing shop drawings, plan revisions, Change Orders or other Contractor submittals requiring VDOT decisions. | Section 105.03 |
| Right of Way Access | Additional time based on a lack of access to the project or portions of the project. | Sections 107.04, 517.03 or Special Provisions |
| Material Shortage | Additional time based on a national shortage or national unavailability of materials needed to complete the project. | Section 106.12 |
| Weather | Additional time based on unusually severe weather for which a shutdown was not issued. | Section 108.04 |

## Changed Conditions

| Issue | Description | Spec. Reference |
|---|---|---|
| Differing Site Conditions | If subsurface or ground conditions are encountered that were not anticipated in the contract. (Example: Underground storage tanks or contaminated soil found during construction.) | Section 104.03 |
| Suspensions of Work Ordered by the Engineer | If work is suspended or delayed by the Engineer for an unreasonable length of time or not originally anticipated. (Example: Inspection delays that are unreasonable.) | Section 108.05 |
| Significant Changes in the Character of the Work | The term "significant change" is to be construed to apply to circumstances such as the following: Where the character of work changed due to the use of different materials or procedures. (Example: A bridge repair contract calls for Class 1 surface preparation and latex overlay. Once work starts, the deck is discovered to be more deteriorated than anticipated and will require extensive Class 3, full depth surface preparation. The required additional work is time consuming and labor intensive.) | Section 104.02 |
| Major Items | A major item of work, as defined in the contract, increases or decreases more than 25% of the original contract quantity. (Example: Borrow excavation is shown by the contract to be a major item. Based on a contract quantity of 20,000 cubic yards, the Contractor located a suitable borrow site. As work progresses, a larger than expected amount of regular excavation is found to be unsuitable for use as embankment material. The actual required quantity of borrow excavation is 30,000 cubic yards. The Contractor has to locate an additional borrow site to supply the extra 10,000 cubic yards of borrow excavation. The result is a contract overrun of a major item by 50 percent. The Contractor incurs unanticipated costs in locating an additional borrow site.) | Section 104.02 |
| Piling | When overruns and underruns of piling amount to more than 25% of the original bid quantity, even if such item has not been designated as a major item. | Section 104.02 |

| | | |
|---|---|---|
| Impact and Delay | Unforeseen conditions beyond the control of the Contractor and beyond what a prudent Contractor could have anticipated. (Example: Striking of the railroad industry would cause time delays and impact other areas as well in a domino effect.) | Section 108.04 |
| Acceleration | Extra costs associated with attempting to recover lost time or maintain a project schedule in spite of unforeseen conditions or delays. The Contractor may accelerate his operations due to the Engineer's insistence that the project be completed in accordance with the contract time limit in spite of the existence of excusable delays that are unrecognized (known as constructive acceleration). Extra costs could include labor, equipment or work hours (overtime wages). | Directive by the Engineer (ACE) |

# NOI ANALYSIS

Once the ACE has acknowledged receipt of a NOI from the Contractor, several important steps should be taken immediately. These steps are summarized below:

1. A copy of the NOI should be sent to the appropriate VDOT personnel, FHWA (if Federal Oversight Project) and AAG. (See "What is NOI" for more specifics.).
2. Ensure the project staff is informed of the NOI and is proceeding to provide adequate documentation of all events related to the issue in question (Refer to "Project Documentation").
3. Perform a NOI analysis. (See Figure 1 Flow chart for "NOI Analysis")

NOI analysis is a general term used to describe the procedure of investigating and documenting the facts and merit involving the Contractor's NOI. All available data related to the problem is gathered and studied, and a recommendation is developed detailing VDOT's position concerning the Contractor's request. The ACE develops the initial investigation and recommendations.

The first step of the investigation should be the identification of the basis of the Contractor's NOI. The next step involves a thorough review of all contract documents. Such documents include the applicable Specifications, the plans, contract, minutes of the project showing and all other pre-bid meetings. During the review of the contract documents, all plan notes, special provisions, and specifications that address the basis of the NOI should be listed. While examining the contract documents, the reviewer should address the following questions:

1. Was the NOI filed properly and in a timely manner in accordance with Road and Bridge Specifications, Section 105.19?
2. Is the contract language clear and specific?
3. Is the language open to different interpretations?
4. Are there conflicting contract requirements?
5. What should a prudent Contractor have anticipated when bidding?

The investigation should continue with a review of all documentation related to the issue in question. Documentation should include the project diaries, correspondence, memos, reports, change orders, and any field directives. Interviews with project personnel may be necessary. During the documentation review, anything that supports or refutes the Contractor's NOI should be noted. Any deficiencies in project documentation should be brought to the attention of the Inspector, CM or ACE.

A key part of the documentation review process is to organize the relevant documents in a chronological order. Include copies of key contract provisions, relevant plans, specifications, photographs, record of contractor's resources (personnel and equipment), and all other relevant documents. Often the analysis of more complicated NOIs may continue beyond the initial

document review. Therefore, it is very useful to establish an organized collection of relevant documents that can easily be supplemented as additional correspondence is accumulated related to the issue.

Often NOIs include Contractor's reservation of rights for a time extension due to delays. The gathering of documentation should include a timeline of events related to the issue, including days when work was, or was not, progressed on items related to the issue.

The following points should be covered in the summary of the initial analysis of the NOI:

1. What amounts does the Contractor claim, including a summary of direct and indirect cost, and any sub-contractor "pass-through" claims?
2. What specific issues or events give rise to the NOI? Has the Contractor been specific in denoting the timeframe, location or other specific information regarding the subject of the NOI?
3. What is required by the contract? Is the work associated with the NOI included with the contract or is it work that could not reasonably be contemplated by the contractor at the time of bid? Is the work associated with the NOI the result of site conditions that are different than what the Contractor should have anticipated?
4. NOIs requesting a time extension:
    - Upon review of the issue, determine the source(s) of responsibility for the alleged delay?
    - If necessary, determine the apportionment of the delay to the project. Occasionally, there could be a shared responsibility for the Contractor's alleged delay. For example, a delay could be jointly shared by the Contractor's lack of production, late submission of a submittal, the Owner adding additional work to an activity, weather, or other conditions.
    - How will the delay affect the overall completion of the project? Is the work associated with the NOI on the Contractor's current critical path? If the work does not impact the overall project completion date, it is possible that a time extension is not justified. A Contractor could experience delays to an operation that results in inefficiencies and additional cost, but not a time extension to the contract completion date.
    - Could the delay have been anticipated? If so, did the Contractor take steps to mitigate the delay or provide advance notice to the Owner when the potential delay was identified?
    - Is the type of delay addressed by the specifications? VDOT contracts address a number of types of delay for certain events such as Force Majeure, weather, and utility delays.
    - What items of work will be affected by the delay? Review the Contractor's schedule and the current progress of the project to identify what associated activities are affected by the delay.

- Are there other concurrent delays? If other delays are also impacting the project completion date, it is possible that these delays are "offsetting". From a damages perspective, often concurrent delays only entitle a Contractor to a time extension and no recovery of additional cost for extended cost.

5. For NOIs requesting monetary compensation:
   - What is the claimed cost to the prime Contractor?
   - What is the claimed cost to the subcontractor?
   - What is the claimed cost to the material suppliers?

After completing a summary of the issue in question, the reviewer should make a recommendation concerning the NOI. The reviewer should determine whether or not there is a valid basis to the Contractor's request. The initial NOI analysis may yield one of the following recommendations:

1. The Contractor's request is both *reasonable* and *proper*, and a Change Order for money or time extension is processed immediately to correct the situation. The result is a prompt resolution of the conflict. It is preferred to resolve the NOI promptly and completely. However, occasionally the direct costs are readily identifiable, but the validity for a time extension remains in dispute. It is recommended to process a Change Order to resolve the direct cost items, and reduce the Contractor's NOI to only the time extension component of the claim if both cannot be resolved promptly.
2. There appears to be merit to the Contractor's NOI. However, all details are not readily available and VDOT and the Contractor may not agree concerning the impact of the problem of the project. For example, when unanticipated foundation conditions are encountered on a project, additional soil borings, analysis, and foundation redesign may be required. If a definitive scope of work for the changed condition cannot be determined, it may be necessary to process all additional work related to the problem situation on a force account basis and an appropriate time extension may be granted to the Contractor. When there appears to be merit to the NOI but compensation will be delayed, the Contractor should be notified of VDOT's intentions in order to preserve a good working relationship, and to limit the potential for a constructive acceleration claim.
3. The Contractor's NOI does not appear to be justified. A review of the situation indicates that the problem as outlined in the Contractor's request is within the scope of work as detailed by contract agreement and/or the issue is one for which the Contractor bears responsibility.

The ACE's initial investigation of the Contractor's NOI should be completed within 15 days from receipt of a NOI from the Contractor. Input should be sought from the Construction Division's Claims Analyst, or the AAG if necessary. Once this review is completed, the ACE or DCE may settle all valid issues by Change Order within his or her approval authority. Otherwise, the completed review should be forwarded to the DA, the AAG and the SCE. The DA should complete a review

of the NOI within 30 days after receipt from the Contractor. The DA has the authority to settle valid issues within his approval authority. If the issue remains unresolved, the District investigation is to be forwarded to the AAG and the SCE. (Attention: Claims Analyst.)

The Claims Analyst will investigate and advise the SCE of his findings. Within 45 days from the receipt of the NOI from the Contractor, the SCE will prepare a response to the DCE. In the response, the SCE may recommend that VDOT settle all valid issues through Change Order or force account. Copies of the SCE's review should be co-addressed to the AAG. If the NOI issues are resolved at any step of this process, all appropriate persons (AAG, DA, SCE, DCE and ACE) should be notified.

On Federal Oversight Projects, the ACE is responsible for informing the FHWA of impending changes in the contract work as soon as it is practical after the need for the change has been recognized. Effort should be made to obtain a commitment from the FHWA's Engineer for concurrence before any Change Orders are processed on federal-aid projects. This is best handled by using a "FHWA Conceptual Approval" form and submitted to FHWA to obtain an initial approval to the concept of the pending Change Order. Terms of third party agreements should also be in compliance. In addition, VDOT personnel should be aware that their Change Order and force account approval authority is subject to procedures designed to control contract cost overruns.

The NOI analysis is an ongoing process. The procedure begins with the initial investigations of the NOI by the ACE, DCE, with support from the Construction Division as required and should be reviewed periodically as new information becomes available. The NOI analysis continues until the matter is resolved or the Final Estimate Date has passed. After the Final Estimate Date, any analysis of a Claim that may result from any unresolved issues is referred to as "Claim Analysis".

VDOT and the Contractor may have disagreements concerning the initial submission of a NOI and the impact of the problem on the project. However, as work proceeds and documentation is compiled, it sometimes becomes apparent there is merit to the NOI. In such cases, VDOT should continue to work for a resolution of the issue. It is desirable to settle all valid NOIs promptly.

Remember, *all documents and correspondence related to the NOI Analysis is VDOT's protected work product*. These documents and correspondence should be sent to the AAG for legal questions and assistance. All NOI Analysis correspondence should be addressed to the ACE and the AAG and marked "Attorney/Client Privilege". No document marked Attorney/Client Privilege should be sent to anyone outside of VDOT and/or its legal counsel, unless specifically permitted in advance by the ACE.

After the ACE contacts the AAG, the AAG will provide guidance as to the administration of the NOI. The appendix to this manual includes an example of the typical guidance provided by the AAG, which includes direction that:

- Confidential correspondence to the AAG should be kept separate and labeled as privileged.

- VDOT should prepare a NOI Analysis and advise the AAG as to the people who will be involved and the person overseeing the task.
- VDOT and its agents preserve all documents (paper and electronic) that may be related to the NOI, and that VDOT provide the name(s) of the person(s) responsible.

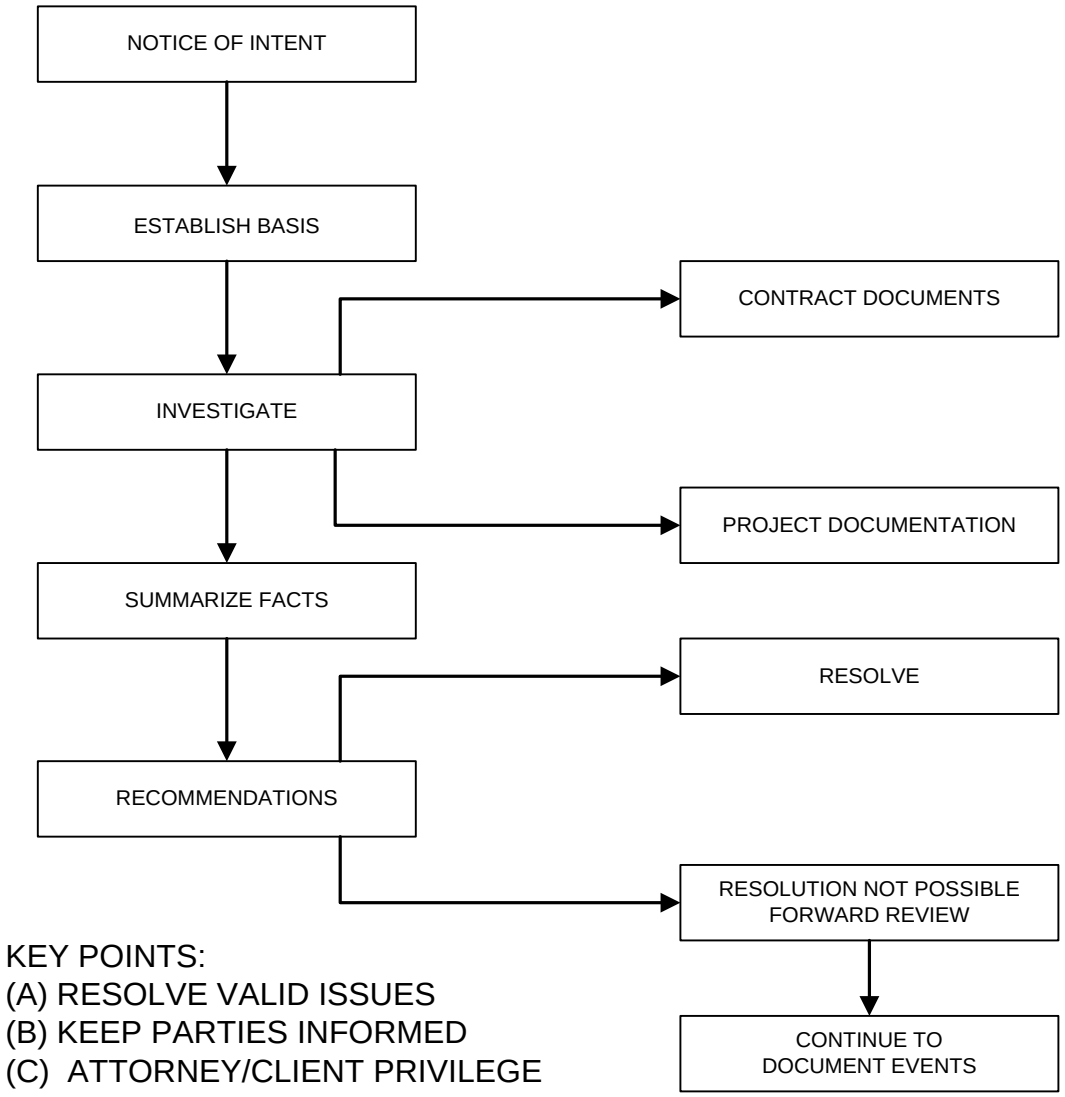
The ACE, DCE, DA, and if necessary the Construction Division and AAG should be kept informed of relevant changes in status of the NOI. When corresponding with the Construction Division concerning a NOI, refer to the NOI number. The NOI number is the Order Number + the next numerical number of NOIs filed on the Project.

Site Manager is used to track all Notices of Intent from their origination to resolution. Appendix H of the Site Manager User Manual shows how the NOI is entered into Site Manager, and is included in this manual as part of the Appendix. The appendix also shows how the Site Manager Reporting Tool (SMART), which can be accessed through the Construction Division's site within "insidevdot", can be used to query the Site Manager Database by project or by District and produce a report showing the NOI status and details. Reliable information must be entered into Site Manager in a timely manner.

To summarize, the following steps outline a NOI analysis:

1. Establish the basis of the Contractor's NOI.
2. Investigate the NOI. Review all bid documents and project documentation. If project documentation is inadequate, the project inspector should be advised of necessary corrective measures.
3. Develop a chronological summary of all facts and events that pertain to the issue under review.
4. Make a recommendation.
    - Resolve all valid NOIs up to the maximum approval authority allowed. Resolution (money or time) may involve a Change Order or force account.
    - If the NOI does not appear valid or approval would exceed authority, promptly forward the completed NOI analysis to the next level of authority for review.
5. Keep all parties to the process informed of correspondence, changes, possible resolution, etc. that relate to the NOI. These parties are the ACE, DCE, and may include the Construction Division, and the AAG. For federal oversight-aid projects, the FHWA should be advised of NOIs and pending changes in contract work, and the FHWA Engineer's approval should be sought before any Change Orders are processed.
6. All correspondence related to the NOI analysis should be addressed or co-addressed to the Attorney General's Office and clearly labeled "Attorney/Client Privilege" and filed separately from other project records.

## NOTICE OF INTENT ANALYSIS




KEY POINTS:
(A) RESOLVE VALID ISSUES
(B) KEEP PARTIES INFORMED
(C) ATTORNEY/CLIENT PRIVILEGE

**FIGURE 1: NOI ANALYSIS**

## SUBMISSION AND DISPOSITION OF NOTICE OF INTENT (NOI) TO FILE CLAIM

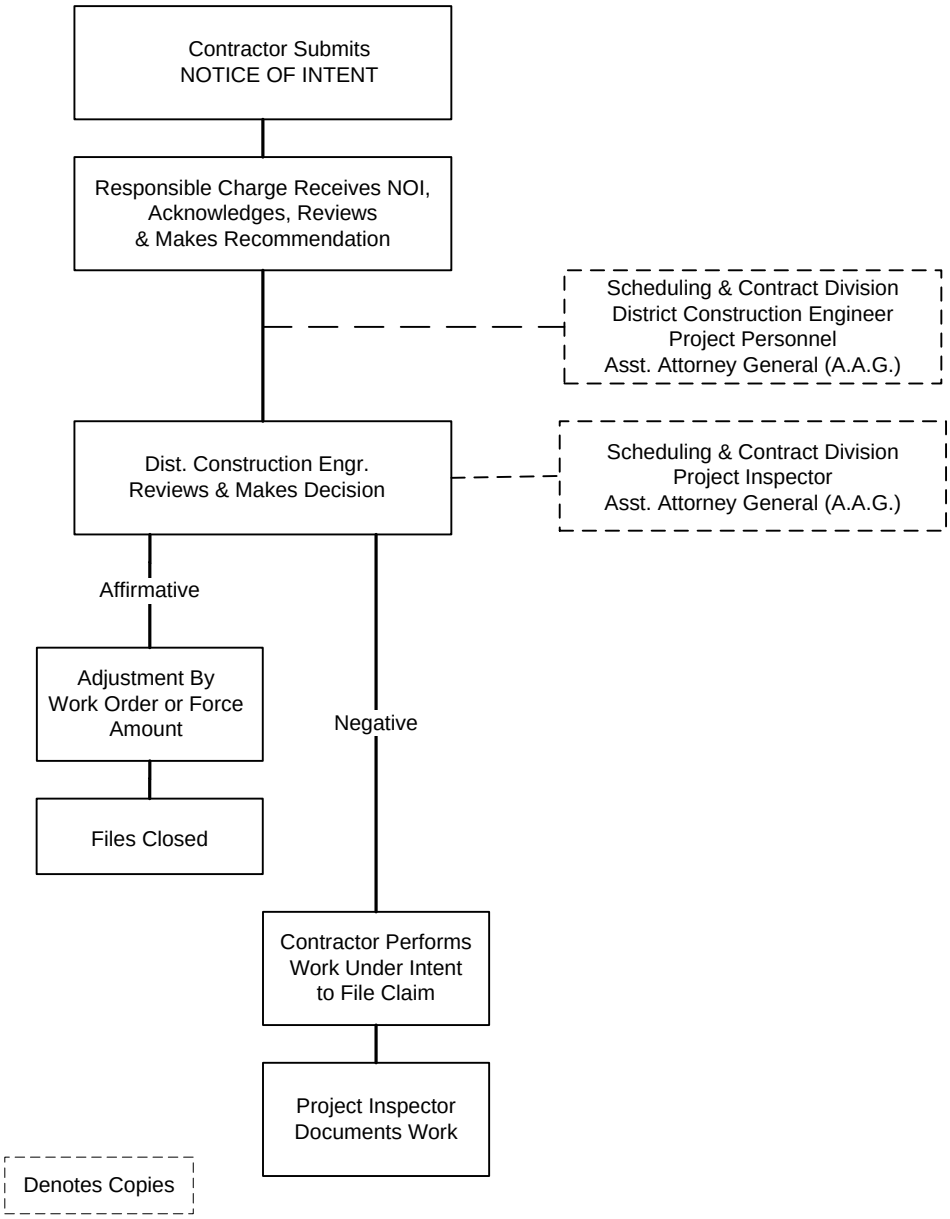



**FIGURE 2: SUBMISSION AND DISPOSITION OF NOI TO FILE A CLAIM**

# PROJECT DOCUMENTATION

The need for clear, factual documentation of project events cannot be overemphasized and becomes even more critical on a project when a Contractor submits a NOI. It should be kept in mind that Contractors sometimes submit vague, non-specific NOIs that do not comply with the timely submission requirements set forth in Section 105.19 of the ***Road and Bridge Specification***s. Even though an improperly submitted NOI may not be acknowledged as acceptable by VDOT, the Contractor may still attempt to pursue the issue.

The simplified instruction to "*put everything in writing*" applies here. To be effective, documentation must be prepared during the construction process. Records created after the fact generally will not receive consideration. Reliable, detailed documentation is essential in the review of a Contractor's Claim. Without proper documentation, VDOT has no way to verify or refute a Contractor's request for additional time and/or monetary compensation. If the Contractor is not providing records as required by the Specifications, the ACE should give him written notification of the problem. Further, the ACE may remind the Contractor that "*Failure on the part of the Contractor to afford the Engineer proper facilities for keeping a record of actual costs will constitute a waiver of a claim for such extra compensation except to the extent that it is substantiated by the Department's records".* This text from Section 105.19 is important in that it obligates ***both*** the Contractor and the Department to keep record of the actual costs, and that the cost records are reconciled at the end of each day. The reconciliation process is not an "admission" or obligation on the part of the Department to pay the additional compensation requested.

Once the ACE has acknowledged receipt of a Contractor's NOI, the CM and/or Inspector should be advised promptly. The project staff should then meet with the Contractor's representative to discuss the disputed item of work or delay. The purpose of meeting is to obtain an understanding of the issues involved and to discuss expectations of records to be maintained and how often records are to be compared. The minutes of the meeting will be part of the initial investigation of the NOI and will become a part of the Claim's Documentation Process. The type of records maintained will be dictated by the nature of the Claim or Contractor's request. For this reason, only general guidelines for documentation can be made. However, as required by Section 105.19 *"the Contractor shall furnish the Engineer an itemized list of materials, equipment, and labor for which additional compensation will be claimed."* Regardless of the specific nature of a NOI, there are certain procedures that should always be observed when documenting such requests. These procedures are summarized as follows:

- Attorney/Client Privilege Material and Work Product – Under the Freedom of Information Act (FOIA), project files are subject to review by the Contractor or his legal counsel. Documents, records, or correspondence initiated by the Department in the process of the analysis of a Claim or NOI are considered to be VDOT's work product. These documents must also be submitted to the Attorney

General's office to be considered Attorney/Client Privilege Material. Documents co-addressed to the Attorney General expressing opinions by VDOT personnel (Inspector, CM, ACE, etc.) as to the merits of a NOI or Claim may also be considered Attorney/Client Privilege Material. For example, opinions on whether or not there were enough personnel and equipment on the project, whether the Contractor could have expended more effort, or an opinion that VDOT was liable or responsible for the issues in the controversy should be addressed to the AAG for consideration as Attorney/Client Privilege.

- **Opinions should not** be placed in the Site Manager records or in correspondence that is not marked Attorney/Client privileged. These are not exempt from FOIA.
- **Facts** such as weather conditions, labor and equipment summaries, materials used, test reports, etc., should be incorporated into Site Manager and the project files. The records of facts are not privileged, and should be made available to both sides of the dispute. While two parties may not agree as the resultant action, or analysis of the events, the facts of the events should not be in dispute.

Correspondence addressed to or received from the Contractor is also not privileged.

Attorney/Client Privilege Material is confidential and is not subject to disclosure under FOIA. To ensure that all attorney/client privilege material remains confidential and is not subject to review by a Contractor or his attorney, all such material should be clearly identified "Attorney/Client Privilege" when drafted. Correspondence should be addressed to the AAG and other appropriate parties. The ACE will inform the AAG as to who, or whom will have access to the privileged records and who will be overall responsible for the records. Further, all such correspondence should be filed independently from other project records and should not be placed in other files. By maintaining these separate files, VDOT does not run the risk of accidentally turning over confidential material to the Contractor or his legal counsel. Eliminating the need to separate Attorney/Client Privilege Material from routine project correspondence at a later date also saves a great deal of time and effort.

- **Claim Diary** – On complex projects, a construction Claim can become quite involved. Once a NOI is acknowledged by VDOT, consideration should be given to establishing a diary solely for documentation related to pending Claims to assist in Claim review. In order to save time and avoid duplicate record keeping, cross-referencing to Site Manager is acceptable. The Site Manager Reporting Tool (SMART) allows the user to create a query report listing all DWR comment, or narrative, entries for a project. From this report, the user can search for key words (i.e. "delay", or "interference"), and "flag" or copy key dates and events into the Claim Diary.
- **Numbering** – Once a NOI is received, the Inspector or CM is to assign a number to the notice, and enter it into Site Manager (see Appendix). The NOI number is the Order Number + and the next numerical number of NOIs filed on the Project. All correspondence should refer to this number, except correspondence sent to

the Contractor. The Contractor should also reference this number in all further documentation related to this NOI.

- **SiteManager** – Once the NOI number is established and acknowledged by VDOT, it should be entered into SiteManager under the NOI tracking module as a new NOI. Each month prior to generating a project estimate, the open NOIs should be reviewed and updated as necessary (see Appendix).

As discussed earlier, the Contractor's request is usually for additional time, additional compensation, or a combination. The following recommendations for general record keeping will assist in the development of a detailed and effective Claim Diary. The items listed below may not apply, depending on the particular project and circumstances involved:

1. The apparent cause of ***all*** delays should be noted. Detailed observations of the impact of any delay on the Contractor's operations should be noted. A summary should be made of equipment, labor, subcontractors, or other Contractor resources that were idle, slowed, or did not arrive on site as scheduled. The reports should also note if other work is incomplete and could be performed during the delay(s), or impacted period(s).
2. Often project delays are such that work is able to continue, but at a slower rate than anticipated due to unexpected restrictions. In such cases, a study should be conducted of production rates and job efficiency during unhampered production for comparison with disrupted periods of work. Production rates should be recorded in work units such as cubic yard per hour. Labor (including names of the persons performing the work), equipment (make, model, year and condition) and materials involved in the study should be recorded.
3. When any extra or added work is performed, there should be a daily accounting of labor, equipment and material used to perform the work in question. If the work is performed as part of, or in relation to a NOI, the records must be reconciled daily with those of the Contractor's and should be signed or initialed by a Contractor's representative. Labor accounting should include a description of work performed, where it was done, as well as a comprehensive summary of labor classifications used and the total personnel hours for each classification. Labor rates and hours worked should be verified with the Contractor's payroll records. Equipment accounting should include the type, model and serial number, date of manufacture, hours operated, hours idle, where it was working, and type of work done. Equipment owned by the Contractor and rented equipment should be differentiated. It is important to verify that rental rates are representative of the contractor's actual cost by invoices or payment receipts. For Force Account work, rental rates should be in accordance with Section 109.05(b) of the Specifications. All relevant purchase orders, delivery tickets, and test reports should be retained. This type of accounting should also be kept for all appropriate subcontract activity. Photos, and sketches detailing work locations with stations and offsets if available, should also be developed daily and retained.

4. Statements in the diary should be specific. An entry such as "The Contractor seems to feel that there is no cause for delay" should be written "Mr. Jones stated that he is not worried; and that he will make-up for lost time in June or July with more men on the job." A general conclusion as to the effect of a conversation is not helpful. However, a statement of the conversation and the participants involved can be very valuable.
5. Photographs or videos should be used daily. To emphasize the size or magnitude of an item being photographed, use a hard hat, tape measure, or other device to give the picture scale. Photographs should be clearly labeled to indicate the date taken, photographer and location. Electronic image files may be stored on a laptop or desktop computer, but are safer stored on VDOT's server, or at least backed up to another media. Color copies of photos may also be printed and retained in the project written records. Photos pertaining to a NOI should be flagged for, or copied to, the Claim Diary.
6. Minutes or memoranda of all project related meetings should be maintained. Internal VDOT correspondence, including emails and notes from relevant telephone conversations also should be kept as well as all correspondence between the Contractor and VDOT.
7. Deviations in approved and updated progress schedules as they compare with actual progress should be noted when they become apparent. Changes in the logic or sequence of work should be recorded. Maintaining a log of progress schedule changes could be useful if a detailed analysis is required. The VDOT *Post-Award Scheduling Guide* also should be reviewed and the procedures followed by the project staff.
8. Failure of the Contractor to install work in accordance with the contract (Plans and Specifications) should be documented. Specific details related to the nonconformity of the work in question should be given. For example, rather than stating that a section of curb and gutter has been rejected because it was too rough, give the actual straight edge results as they compare to the requirements of the specifications.
9. A log should be kept of all submittals and shop drawings.
10. A project visitors' log should be maintained on projects. The name, title, date, time in and time out, and purpose of the visit should be recorded.
11. If project supervision is obviously inadequate, it should be noted. Once again, an opinion or general conclusion is not helpful. Be specific, citing only the facts and conversations as they actually occurred. Comparison of the number of supervisor hours and the number of supervisors to the total personnel hours is helpful. Also, incidents of re-work, missed deadlines, deliveries to the wrong location, or other signs of apparent mismanagement on the part of the Contractor should be recorded.
12. Detailed descriptions of site conditions should be given; emphasizing how they differ from what normally had been encountered, the conditions described in the plans and contract documents or expected on the project.

13. Evidence of mechanic's liens and unpaid subcontractors and suppliers should be noted.
14. Actual results of material tests, field density tests, concrete cylinder compression tests, etc. should be referred to as necessary. Samples should be retained for future use when deemed appropriate.
15. A list of witnesses for VDOT, including their title, home address, phone number and a summary of their expected testimony will be a valuable asset in investigating any NOI or any subsequent formal Claim.
16. A copy should be maintained of all original bid documents. This would include the plans, proposal, addenda, Contractor's Advertisement Bulletin Board (CABB) questions and response, and minutes of the project showing and any other pre-bid meetings.

Effective documentation creates a clear, factual record of project events as they occur. With such records readily available for review, a Contractor's NOI or any subsequent Claim can be evaluated objectively. Reasonable requests can be approved without delay and unreasonable requests can be successfully denied. Also, by detailing the entire project, including issues and events related to the Contractor's performance, and also organizing these records into a Claim Diary, the full breadth of the NOI can be analyzed. In many cases, while VDOT may be responsible for unplanned delays and impacts, the Contractor or other parties also cause concurrent delays which could reduce the damages that VDOT considers for payment. In other words, detailed project records could save the Department a significant amount of money, whereas inadequate records may end up costing the Department.

**Rules for Effective Project Documentations:**

1. When in doubt, ask a question, put it in writing, or take a picture.
2. Stick to the facts.
3. Imagine the report you write being examined by an attorney, and possibly during a trial or deposition.
4. Create an organized Claim Diary, when significant delays or issues are encountered, an impeding NOI is threatened, and not later than immediately when the NOI is submitted.

# WHAT IS A CLAIM?

The contract includes procedures for a Contractor to seek additional time and/or monetary compensation for disagreement in interpretation of contract requirements and/or the performance of extra work or due to changed conditions. This procedure is called a "Claim". To initiate a Claim, the Contractor must give VDOT prompt written notice at the time of the occurrence of the changed conditions or situation or disagreement in question. The NOI makes VDOT aware of a questionable situation or disagreement and requires the Contractor and VDOT to reconcile the actual cost records daily. The NOI is also important because it gives VDOT the opportunity to take actions to mitigate the delay or potentially alter the plans or contract to help lessen the delay and/or the added cost. NOIs unresolved after payment of the Final Estimate may continue to be pursued by the Contractor by the submission of a Claim.

Within 60 days after the Final Estimate date, the Contractor may submit to VDOT a written Claim for such amount as it deems it is entitled, setting forth the facts upon which the Claim is based. (See Claims Procedures.)

The primary differences between the NOI and a Claim are in the details and support documentation provided. A NOI is submitted at the onset of the problem. The Contractor may only be able to indicate the type of additional costs it believes will be incurred as well as the labor, equipment and material that will be required to perform extra work. The total cost impact of the problem may be unknown at the time. With a Claim, the project is complete and the Contractor is presumably in position to be able to provide all the support documentation of events as they actually took place in order to substantiate the Claim.

Although the Specifications and state law require timely submission of a NOI as a prerequisite to submitting a Claim per Section 105.19(a), Contractors occasionally fail to comply with this requirement: Claims may be submitted to VDOT even though the Contractor failed to give VDOT a written NOI at the time of occurrence of the problem. It should be noted that Section 105.19(a) specifically states "Failure to submit such notice of intent shall be a conclusive waiver to such claim for damages by the Contractor." Or, the items listed in the Claim may vary from the issues identified in the original NOI. For these reasons, it is important that the Inspector, CM and ACE keep detailed project records and a Claim Diary if for any reason a Claim is expected.

Field personnel are reminded that Claims, unlike NOIs, can only be resolved by the SCE, Commissioner or their designee (with concurrence from FHWA if federal funds are involved). Therefore, it is important to communicate the issues to SCE and Claims Analyst along with field recommendations immediately. This process is called Claims Analysis and consists of reviewing NOI data and any new data that has surfaced. (Claims review and analysis are covered in detail in "Claims Analysis".)

# CLAIMS PROCEDURES

Upon completion of the contract and within 60 days after the Final Estimate date, the Contractor may submit a Claim in writing to the Engineer through the ACE. The Final Estimate date is set forth in a letter from the DCE to the Contractor at the time the Final Estimate is submitted to the Fiscal Division for vouchering. Only the SCE, or the Commissioner (or their designee) can actually settle a Claim. The ACE should check the Claim for the following elements:

1. Make sure the proper NOI(s) were filed at the time(s) of the incident(s) or occurrence(s).
2. Accompanied by "Certification of Claim"
3. The written request should be labeled "Claim".
4. The act or omission should be summarized.
5. Specifications, plans or contract item for the disagreement, act of omission or commission item should be listed.
6. Type and amount of damage requested (time/monetary compensation) should be indicated. Requests for time should be supported with SIAs, as described in the VDOT Post Award Scheduling Guide.
7. Equipment, labor and materials, with supporting data and records of actual project costs for each used should be itemized.

When a Claim submission has not been filed in accordance with VDOT guidelines, the ACE should confer immediately with the DCE and the Claims Analyst of the Construction Division. The Claims Analyst will respond promptly to the DCE and ACE concerning action that should be taken.

For an incomplete Claim submission, the ACE should acknowledge the receipt of the Claim (within 5 days of receipt) with a request for additional information and a statement detailing the Claim as understood by VDOT. Copies should be sent to:

1. Construction Division (SCE)
2. DA
3. DCE
4. AAG

For a complete request, the ACE should acknowledge the receipt of the Claim (within 5 days of receipt) from the Contractor and furnish copies to those listed above. The Claims Analyst will coordinate the investigation of the Claim upon receipt by the SCE. The DA will be responsible for the direct investigation and written recommendations to the SCE and the AAG within 40 days of the receipt of the Claim from the Contractor.

This final submittal from the DA must include a complete evaluation of each item: NOIs, CPM schedules and SIAs (if time involved), supporting documentation and specification references justifying the recommendations.

The Claims Analyst will review the Claim and recommendations of the DA and will obtain necessary assistance from other Divisions and the AAG before making a determination regarding the Claim. The Claims Analyst should make his report to the SCE within 54 days after the Department's receipt of the Claim including the Analyst's recommendation and the District's recommendations regarding the Claim. Copies of this report should be furnished to the ACE, DCE, DA and AAG.

The SCE will review the Claims Analyst's report and make a recommendation to the Commissioner (or designee).

Within 90 days of receipt of the Claim, the SCE, Commissioner, or designee must advise the Contractor by registered mail regarding VDOT's decision concerning the Claim. This 90-day period may be extended another 30 days by agreement between VDOT and the Contractor.

If the Contractor is dissatisfied with VDOT's decision, it may request an appearance before the Commissioner to present the Claim and discuss material previously submitted. The Contractor has 30 days from the date of receipt of VDOT's decision to request a hearing. However, the Commissioner and Contractor may schedule the meeting to be held after 30 days but before the 60th day.

If a hearing before the Commissioner is requested, the SCE, or Claims Analyst coordinates any review process that the Commissioner deems appropriate for his analysis including, but not limited to, additional reviews by the project staff, ACE, DA, and the SCE. The SCE or Claims Analyst compiles a "Claim Briefing" from documentation in Central Office, District, Construction Division files, and the Contractor's Claim. This briefing is helpful when discussing the hearing with those who will be attending. The SCE or Claims Analyst presents the briefing to the Commissioner and AAG before the hearing, coordinates the time of the hearing with the Commissioner's office, notifies the persons who will be attending and records the minutes of the hearing.

After the hearing, the Commissioner will respond by notifying the Contractor of his decision, within 45 days of the date of the hearing. This time limit may be extended up to 30 days by mutual consent of both parties. If the offer is accepted, the AAG and Governor may have to approve the settlement (depending on the dollar value) and payment will be made through appropriate channels. The case is then closed and no further action is taken.

If the Commissioner's offer is rejected, the Contractor may choose to litigate. The Contractor has one year from the receipt of the Commissioner's decision in which to file litigation.

# CLAIMS ANALYSIS

Once the Contractor has submitted a Claim to the ACE and it has been acknowledged, the analysis process should begin immediately. (See "Claims Procedures" time frames.)

1. Notification of the Claim should be sent to the DA, the SCE and the AAG.
2. Project staff should be informed of the Claim and should provide the Claim Diary, and any additional documentation of all events related to the Claim including documents prepared for the NOI when it was analyzed.
3. ACE, DCE and Construction Division personnel should follow the same Claims Analysis procedure.

The NOI analysis (see "NOI Analysis") should be reviewed carefully for conclusions that were drawn, based on the information that was available and compared to any new data that has been presented or discovered since that time. Questions that should be asked include:

1. Does any new information change the conclusions drawn originally?
2. Is the contract language clear or subject to differing interpretations?
3. Are there conflicting contract requirements?
4. What should a prudent Contractor have anticipated when bidding and planning operations?

The project diary, correspondence, memos, reports, Change Orders, force accounts, field directives, work products, correspondence from the Attorney General's Office and any available new data should be reviewed. Interviews with project personnel may be beneficial. When the document review and interviews have been completed, a chronological summary of all events related to the Claim should be made (this should be based on the Claim Diary). At a minimum, the following information should be noted in the analysis (although the list is not exclusive).

1. Description and evaluation of what is claimed by the Contractor for each item.
2. Original contract requirements including supporting documentation of specification references.
3. Schedules and SIAs, for Claims requesting time extensions should answer these questions:
    - Determine the source of responsibility for the alleged delay?
    - Could the delay have been anticipated? If so, did the Contractor take steps to mitigate the delay or provide advance notice to the Owner when the potential delay was identified?
    - Is that delay addressed in the Specifications? Often the contract will address delays for certain events such as Force Majeure, weather, etc.

- What items of work were affected by the delay? Review the Contractor's schedule and the current progress of the project to identify what associated activities are affected by the delay.
- How did the delay affect the overall completion of the project? Is the work associated with the NOI on the Contractor's as-built critical path? If the work did not impact the overall project completion date, it is possible that a time extension is not justified. A Contractor could experience delays to an operation that results in inefficiencies and additional cost, but not a time extension to the contract completion date. In scheduling terms, time should be extended only to the extent that the delay affected the Contractor's critical path of operations.
- How closely did the Contractor hold to the schedule of operations? When using the Contractor's schedule to analyze the time impact of claim, it is important to verify that the work generally followed the Contractor's schedule. If not, it is often necessary to correct the Contractor's schedule to reflect the actual sequence of construction or develop an independent as-built schedule to determine if the claimed issue impacted the critical path and overall project completion date.
- How could the Contractor have used idle equipment and employees during delays?
- What did the Contractor do to mitigate the damages?

4. Statement of cost the Contractor is claiming. This may include an estimate of damages for extended cost due to delays. Often these costs include extended jobsite and home office overhead cost. The Contractor and VDOT should have reconciled the costs on a daily basis, in accordance with 105.19.

After completing the Claim summary, the reviewer should make a recommendation by determining whether or not there is a valid basis to the Contractor's Claim. The result of the Claim analysis may yield one of the following recommendations:

1. The Claim is reasonable. The SCE will review, concur and recommend approval of time extension and/or payment to the Commissioner.
2. There is merit to the Claim but VDOT and the Contractor still differ on the time extension and/or monetary compensation. This may be resolved by the hearing before the Commissioner. Concurrence is requested from FHWA at this time. (Agreement at the Commissioner level will require approval from the AAG and the Governor).
3. The Claim is not valid and is denied. The Contractor may accept this conclusion or may request a hearing before the Commissioner.
4. There is merit to only a portion of the Claim. Payment should be made to the Contractor for portions of a Claim that have merit. The Contractor may decide to pursue the remaining amount through the Claims process, litigation, may or agree to settle or drop the unresolved part of the claim.

## SUBMISSION AND DISPOSITION OF CONSTRUCTION/MAINTENANCE CLAIMS

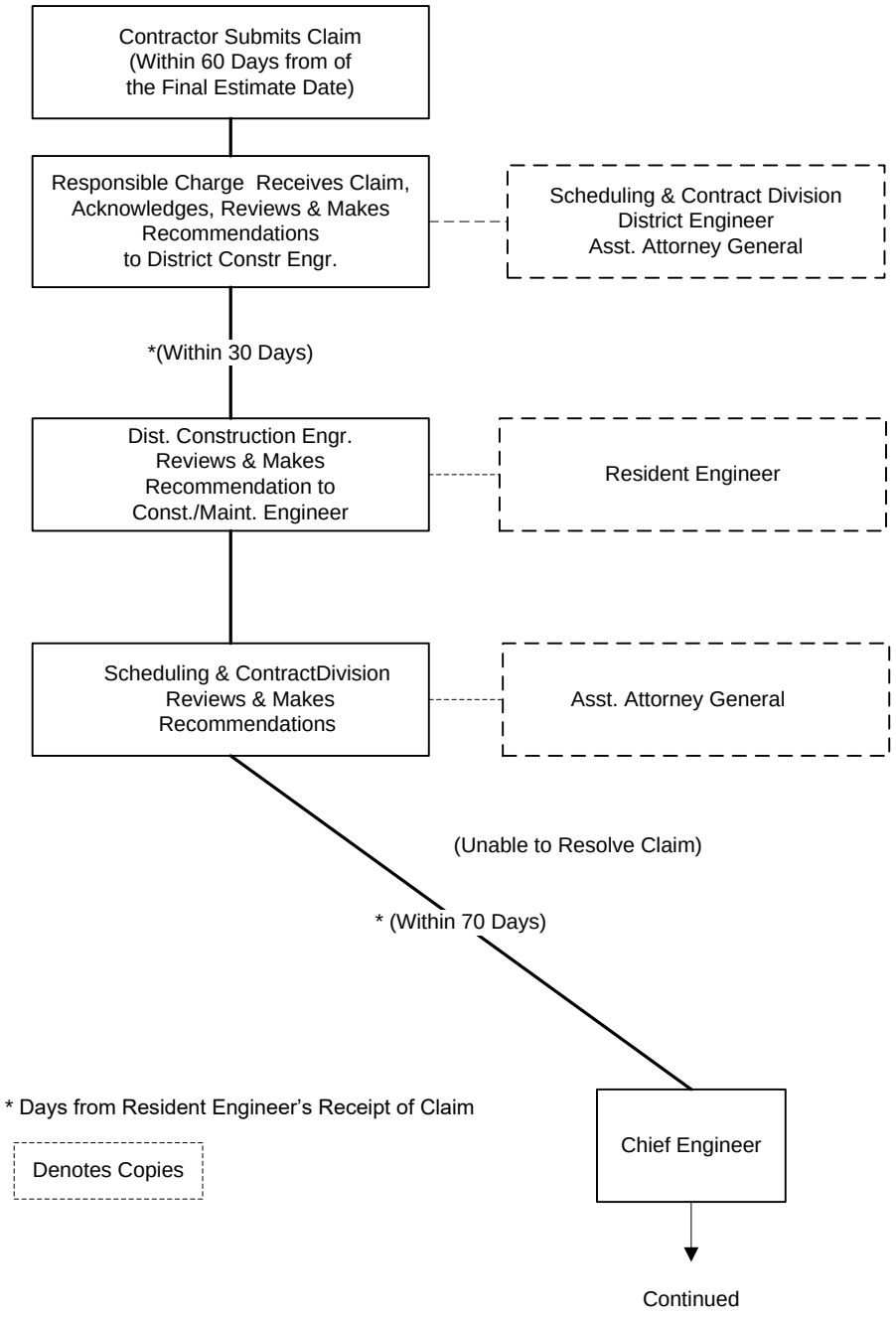



**FIGURE 3: SUBMISSION AND DISPOSITION OF CONSTRUCTION/MAINTENANCE CLAIMS (CONT'D)**

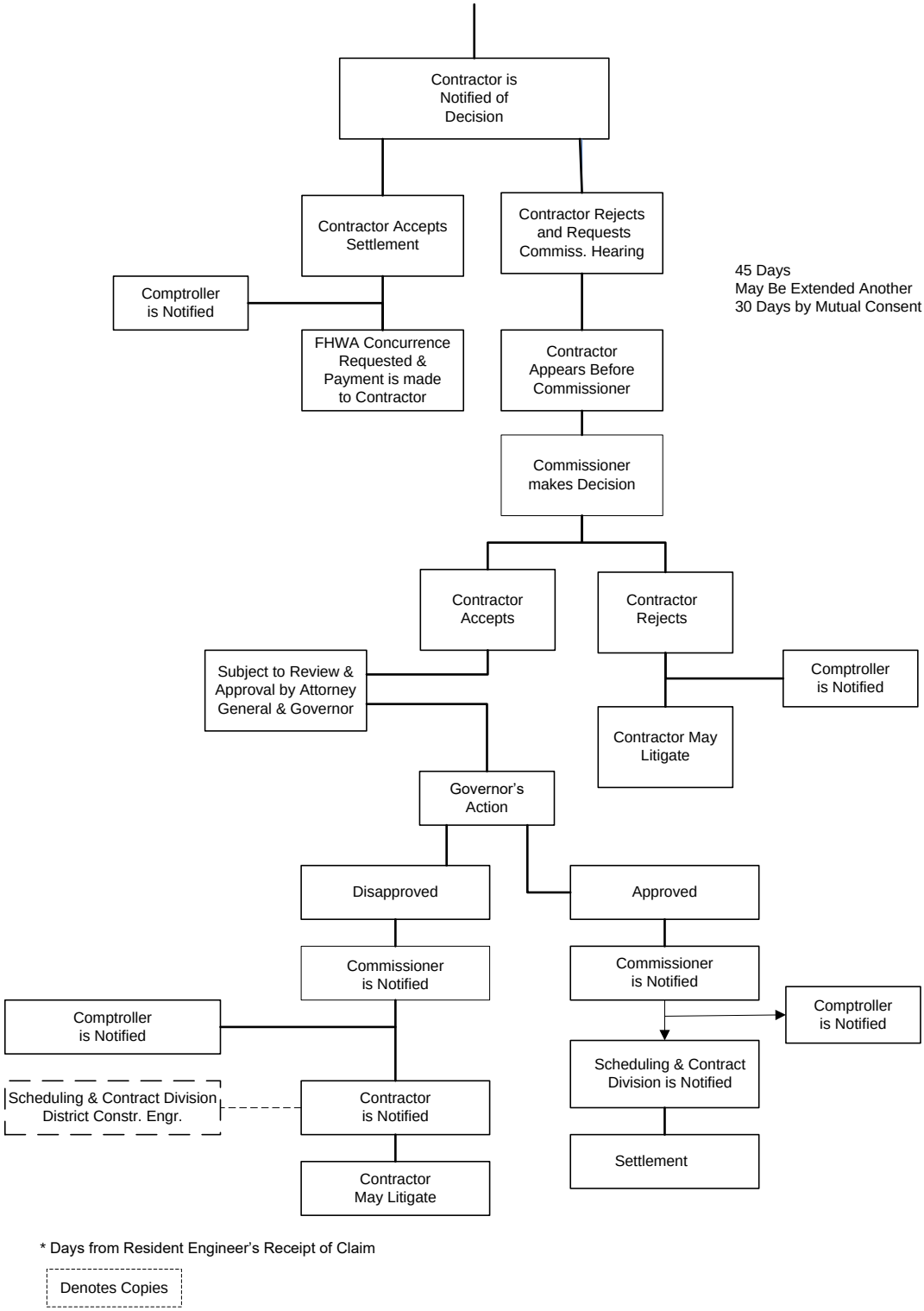



**FIGURE 4: SUBMISSION AND DISPOSITION OF CONSTRUCTION/MAINTENANCE CLAIMS**

# TESTIFYING FOR THE DEPARTMENT

This discussion is based on testifying as a witness for VDOT in the event a Claim is not settled satisfactorily at the Commissioner level. Generally, two types of witnesses are called in court cases. The first is an expert witness called upon for general and expert knowledge in a particular field. This would not necessarily mean the witness had knowledge of the actual case or project being tried in court. The second type of witness, and the one discussed here, is the fact witness. A fact witness is one that has factual knowledge of the project.

As a witness, you may be asked to provide sworn testimony in two different settings: At a trial or prior to a trial, at the setting called a deposition. A deposition is a form of discovery, the process through which parties in a lawsuit obtain information from the other party.

When preparing for testimony either at a trial or at deposition, you, as the witness, should be made aware of the specific legal issues involved. You also should make the attorney aware of engineering aspects of the case if the attorney is not fully aware of them. It is important that you are prepared, but do not attempt to testify to anything for which you are not qualified or do not feel comfortable discussing. These concerns should be discussed with the attorney, in depth, prior to trial. Always discuss with the attorney representing VDOT how your testimony should be presented. The attorney may have advice that differs from the recommendations in this section. Once a deposition or trial testimony has started, you will have limited opportunity to ask questions of your attorney, so be sure to understand the process prior to beginning the testimony.

During a deposition, a witness may be asked a wide range of questions about the witness' educational background, employment history, and other general information in addition to providing information about the matter in dispute. As such, it is not uncommon for a deposition to take several hours, if not a whole day. Depositions are taken outside the court area but are the same weight as if you were testifying in the presence of the judge. The same caveats, which apply for court appearances, apply for depositions. Attorneys conducting depositions are generally interested in the following:

- Learning more about the facts and issues in dispute in the matter, including verifying various events and interpreting written documents, such as correspondence.
- Gauging how credible and informative the witness might be if the witness provides testimony at a trial.
- Establishing a record of testimony that can be referred to if the witness provides contradictory testimony during a trial.

When testifying at a trial, it is important to remember that your function is to provide information for the fact-finder, i.e., the judge or the jury. Each side's attorney will want this information to be presented in such a way as to help their side's case, of course, but your main objective should be to be truthful and present your testimony in a manner that is understandable and convincing to

the fact-finder. If VDOT calls you as a witness, your initial testimony will be in response to questions posed by the VDOT attorney. This is known as "direct testimony". Following direct testimony, the opposing side's attorney will have the opportunity to question you. This is known as "cross examination". Cross examination questions are limited to aspects related to your direct testimony, and it is not uncommon for your direct testimony to be challenged through use of additional information or in questioning the basis for earlier testimony. The initial attorney can follow up cross examination testimony with "re-direct", to allow for fuller explanation or context regarding answers given during cross examination.

**Other Tips:**

As a witness for VDOT, you should most importantly tell the truth. As a VDOT witness, you should speak calmly, clearly and truthfully. Information that has not been asked should not be volunteered. When answering a question or explaining a position, keep your answers simple and in layman's terms. Keep in mind that a judge probably does not have an engineering or construction background. Listening carefully to the questions and insisting on understanding them before answering is extremely important. Take a moment to collect your thoughts before answering if necessary.

Hostility or anger will not help your testimony. It is best if you remain patient and calm during the proceedings. Occasionally, an opposing attorney may attempt to goad you into reacting emotionally by phrasing a question a certain way. When being examined by the opposing attorney, you may politely point out if facts are being presented in a slanted manner. You should speak directly to the person addressing the question while maintaining eye contact. A more detailed explanation or long answer may be directed to the judge or jury.

You have the right to view a written copy if you are being asked to verify a statement that had been previously written or spoken.

When a question is asked requiring a "yes" or "no" answer, it is usually permitted to add an explanation after answering. If a clear "yes" or "no" is not an accurate answer, be sure to clarify.

If an objection is raised, wait until a ruling has been made before answering the question. If you are asked to answer a hypothetical question, wait for VDOT's attorney to object. If the attorney does not, explain that this is a hypothetical answer and explain the assumptions you made. Avoid using words such as "always" and "never."

You must determine if VDOT's position is presented better with a simple answer or a detailed explanation. An answer such as "Not that I recall" or "To the best of my knowledge" may be best in some situations, instead of just "yes" or "no".

Often, fact witnesses are used to identify documents relevant to the case. As such, you may be asked to explain what a particular document meant. Even though these may be routine documents (such as daily reports or letters), your testimony will help establish the authenticity of these documents to allow them to be used as evidence in the case. If you are presented with such exhibits, be well prepared to answer questions or point out pertinent areas.

If you have given a deposition or court testimony in a case prior to trial, ask VDOT's attorney if you may review a transcript of your statements, before the trial. If you have provided deposition testimony, you have the right to read and sign the deposition transcript.

Communication between witnesses and the attorney is critical to presenting effective testimony. If you have questions, ask them at your earliest opportunity and pursue an answer that makes you comfortable. If you think the attorney needs additional information to fully understand the case, be sure to make your thoughts known.

For a court appearance, you should be well groomed and dressed appropriately. This means professional attire suitable for a formal business atmosphere.

Remember, it is important to be honest, answer only what is asked, remain in control and stay focused on the main points of the case. If you become confused, don't answer until you understand what is expected of you. Ask for clarification.

# SUGGESTION SHEET

It is recognized there may be areas in this manual that could need revisions and additions. Please send your suggestions to the Construction Division, attention to the SCE or Claims Analyst.

Your suggestion for change:

Your reason:

Example:

Thank you for taking the time to assist us in this endeavor.

Construction Division
Central Office, Richmond

# APPENDICES

# Appendix 1 - Example of NOI Acknowledgment

*DEPARTMENT LETTERHEAD*

Date

Route
Project
FHWA #
City or County

RE: NOI to File Claim

Contractor's Name
Address

Dear:

This acknowledges receipt of your letter-dated _____, by this office on _____, indicating your intent to file Claim.

On the basis of your letter, we understand that your NOI to file Claim is for the following:

DESCRIPTION/SUMMARY

In accordance with Section 105.19 of the Road and Bridge Specifications, you are required to furnish the Project Inspector with an itemized list of equipment, labor and materials for which additional time or compensation will be requested; provide the Project Inspector every facility for keeping actual cost of the work, and compare records with the Project Inspector and bring them into agreement at the end of each day. Failure on your part to provide the Inspector with access for keeping strict accounts of actual cost will constitute a waiver of the Claim, except as is substantiated by VDOT records.

(This paragraph should be added if NOI is vague or does not provide information needed.)

It is necessary that you provide the following information immediately.
LIST INFORMATION NEEDED

If VDOT disagrees with the NOI, a paragraph should be added disputing the Contractor's notice citing specifications, etc., and stating it is not valid. (See example letter on page A5.)

Acknowledging your NOI to File Claim and the keeping of cost records shall in no way be construed to establish the validity of the NOI to File Claim.

Sincerely,

Responsible Charge

Initials

C: DA
State Construction Engineer
CM
Project Inspector
AAG

# Appendix 2 - Example of NOI from the Contractor to VDOT

XYZ CONSTRUCTION COMPANY

May 1, 2006

Project: 0000-000-000, C000

Commonwealth of Virginia
Department of Transportation
P. O. Box 249
Derby, Virginia 22110

ATTENTION: Mr. Stone McNut
Responsible Charge

Dear Sir:

Please be advised of our intent to submit a Claim, per Section 105.19 of the Road and Bridge Specifications, due to stop Change Order placed on Parcel 005 on November 14, 2005, from Station 244±00, by the Project Inspector. In order to complete the proposed Stage, I construction and switch traffic over to start Stage II construction, the noted area must be completed immediately.

Due to stop Change Order issued on the above noted area, XYZ Construction Company will be submitting Claims for the following:

1. Field Overhead, including, but not limited to, survey crew time, office trailers and supplies, storage trailers, portable sanitary facilities, additional telephone, drinking water, custodial, trash removal and electric service, additional superintendent, foreman, project manager and Construction Project Manager, time, pickups for noted personnel, lease of trailer property; and additional support equipment such as, but not limited to, fuel truck, service truck, low-boy tractor trailer, water truck, pumps, compactors, lasers and generators.

2. Home Office overhead, as determined by the Eichleay Formula.

3. Material and Wage Escalations.

4. Lost productivity due to the revised methods of construction required to excavate, balance the onsite excavations, fine grade, and place stone base and base asphalt within the confined limits of the remaining area.

Please note that we will be asking your field personnel to verify on a daily basis the types of equipment, methods and quantities performed to complete the items of work noted above, per the procedures outlined in the specifications.

Should you be in need of additional information, please contact the undersigned.

Sincerely,

A. B. Cee
Vice President
Engineering

# Appendix 3 - Example of Response from VDOT to Contractor

Department LETTERHEAD

May 5, 2006

Project 0000-000-000, C000

Mr. A. B. Cee
XYZ Construction Company
1 Main Street
Derby, Virginia 22110

Dear Mr. Cee:

This is to acknowledge receipt of your letter dated May 1, 2006, giving VDOT written notice of your intent to file a Claim on the above referenced project.

Your Claim is for stop Change Order on Parcel 005 on November 14, 2005, from Station 244±00 by the Project Inspector. The Project Inspector requested Mr. John Smith, Superintendent, not to begin work in this area until he had completed some of the other areas they have started.

Section 301.02 of the Specifications states in part "The Contractor shall confine the grubbing of root mat and stumps to that area of land on which the Contractor shall perform excavation or other land disturbance activities within 14 days following grubbing operations." With the winter months coming on, I don't believe XYZ Construction Company will complete the areas already open. There are cleared and grubbed areas from Station 185±00 to 204±00 and from Station 260±00 to 277±00.

Once these above mention areas have been completed through base asphalt, then XYZ Construction Company can work in the areas requested.

Please refer to Section 105.19 of the 2002 Road and Bridge Specifications regarding submission and disposition of Claims.

In the event you have any questions, please do not hesitate to contact this office.

Sincerely,

Jim Jones
Construction Project Manager

Initials

C: AAG
DCE
Responsible Charge
Construction Management Engineer

# Appendix 4 - Example of Claim Acknowledgment for which NOI was Filed

Department Letterhead

Date

Contractor's Name
Address

Route
Project
FHWA #
City or County

RE: Claim

Dear Sir/Gentlemen:

This acknowledges receipt of your Claim dated _____, by this office on _____, in accordance with Section 105.19 of the Specifications for which a "NOI" was filed on _____.

Your Claim is being processed in accordance with the Specifications and Section 33.1-386 through 33.1-389 of the Code of Virginia.

Sincerely,

Responsible Charge

Initials

C: DA
Construction Management Engineer
CM
Project Inspector
AAG

# Appendix 5 - Example of Claim Acknowledged – Need More Information

Department LETTERHEAD

Date

Contractor's Name
Address

Route
Project
FHWA #
City or County

RE: Additional Information Needed Prior to Processing Claim

Dear Sir/Gentlemen:

This acknowledges receipt of your Claim dated _____, by this office on _____.

Your Claim does not include sufficient information to be processed as submitted. It is necessary that you provide the following information immediately.

LIST INFORMATION NEEDED

Sincerely,

Responsible Charge

Initials

C: DA
Construction Management Engineer
CM
Project Inspector
AAG

# Appendix 6 - Example of Final Payment Letter

Date

**Registered Mail – Receipt Requested**

Mr. Tom T. Anderson
1 Main Street
Salem, Virginia 23000

RE: Route 1 Chesterfield County
Project 0001-000-000, C500

Dear Mr. Anderson:

The DA has furnished you with a copy of the Final Estimate for the captioned project. The estimate has now been processed by the Construction Division and is being submitted to the Fiscal Division for vouchering. Therefore, the date of your final payment will be _____ for the purpose of filing Claims in accordance with Section 105.19 of the Specifications.

Sincerely,

Patrick O'Leary

Asst. State Construction Engineer

Initials

C DA
Responsible Charge
Contract Administration Engineer (Central Office)

NOTE: date to be added will be 28 calendar days after the date of this letter.

# Appendix 7 - Site Manager and the Site Manager Access Reporting Tool (SMART) NOI Tracking Functions:

SITEMANAGER™

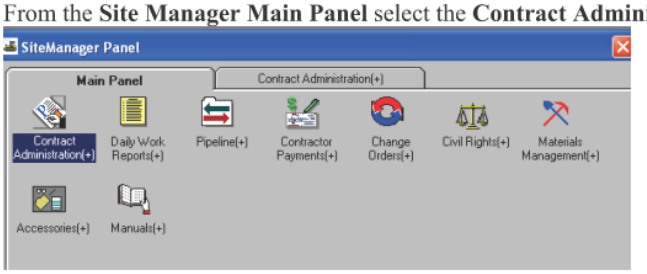
APPENDIX H

## Notice of Intent

### H. Notice of Intent (NOI)

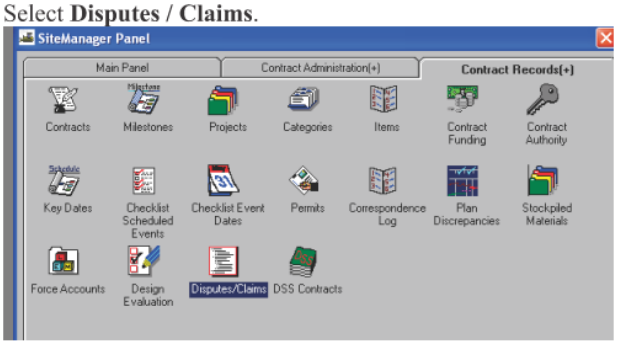
Instructions for Entering Notices of Intent to File a Claim

1. From the **Site Manager Main Panel** select the **Contract Administration** icon.

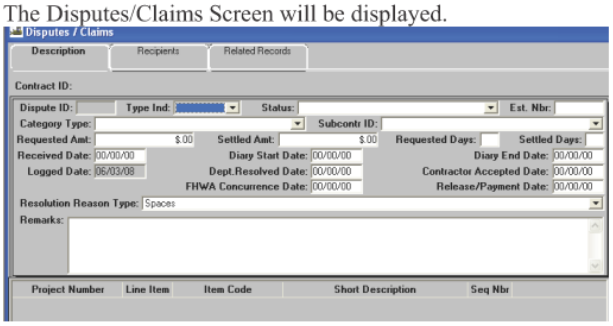



2. Select **Contract Records** icon

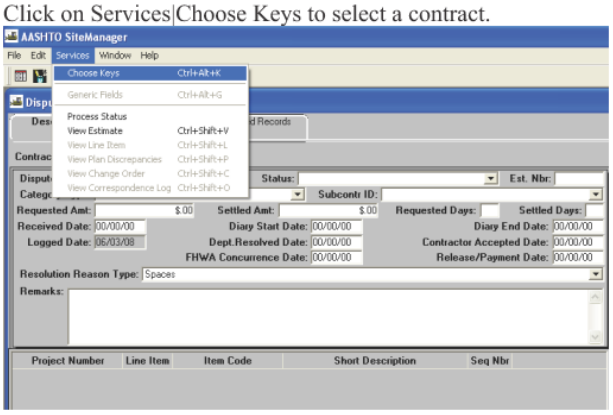
3. Select **Disputes / Claims**.



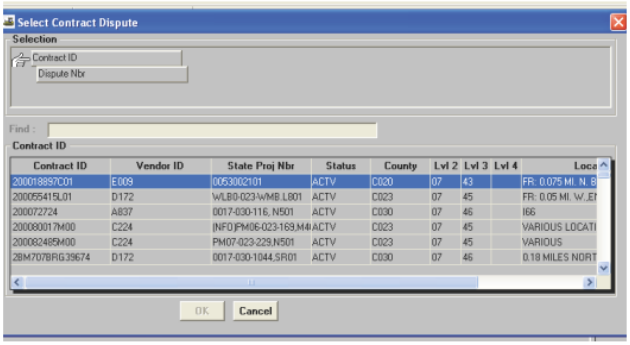
4. The Disputes/Claims Screen will be displayed.



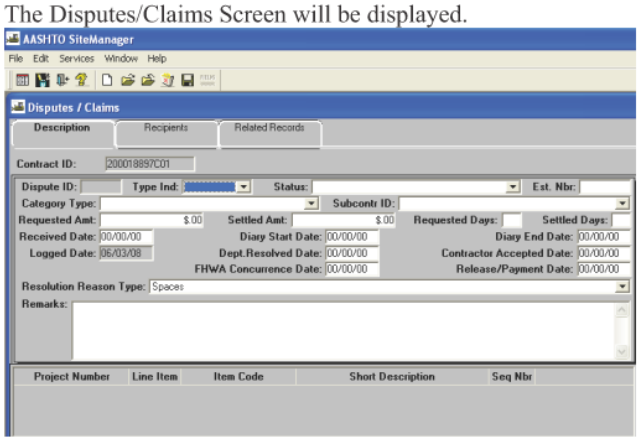

5. Click on Services|Choose Keys to select a contract.




6. Double-click on contract id to select a contract.



7. The Disputes/Claims Screen will be displayed.



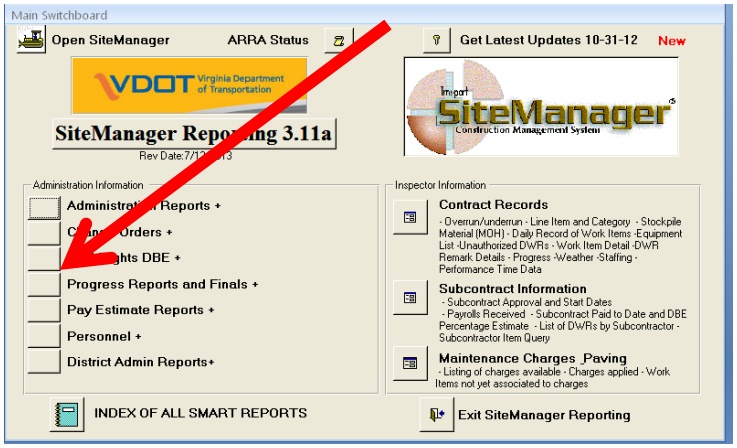

There are five required fields which are as follows:

a) Type – The selections are NOI, Dispute & Claim- **Select NOI**
b) Status – Select from four choices in the drop down box
c) Category – Select the most appropriate selection from the 29 choices in the drop down box
d) Received Date – Enter the date that the Department received the NOI from the contractor.
e) Requested Amount-required if there is a monetary compensation requested.

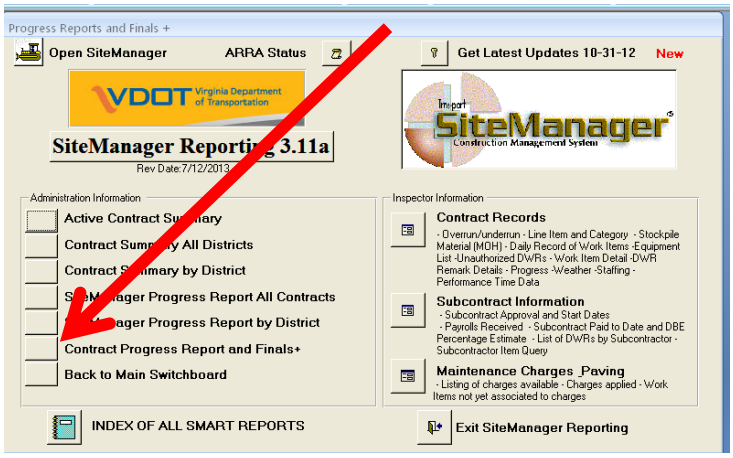
8. Click on Save icon.

Running a SMART report for querying NOIs

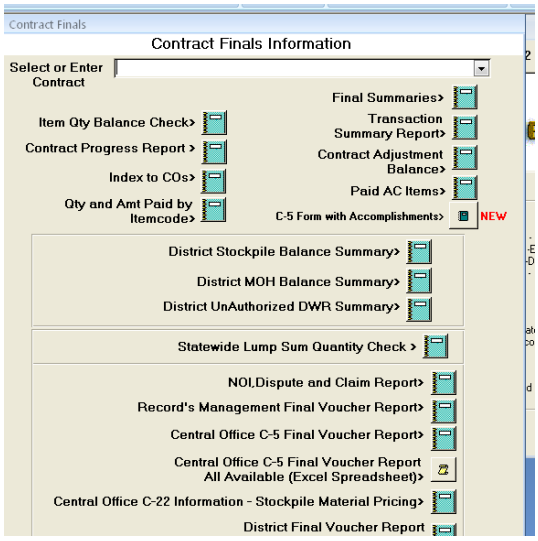
1. Once SMART is open, click on “Progress Reports and Finals”



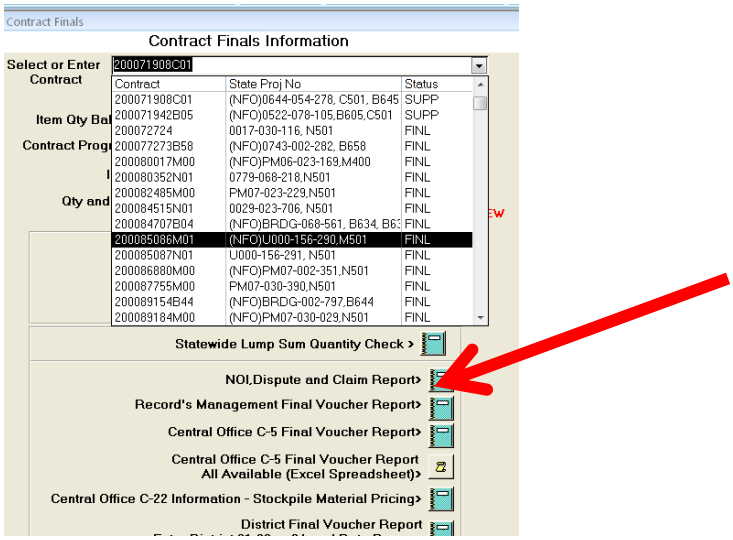

2. Click “Contract Progress Report and Finals”



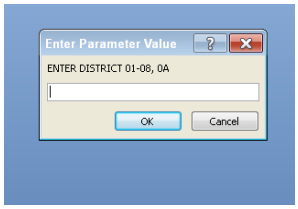

3. A new window will ‘pop-up’ showing the following:



4. Use the scroll down list at the top to select a project, or type in the Contract ID to go directly to the project you wish to query. Then click the “NOI, Disputes and Claim Report”.




5. If you leave the scroll down list blank, and click the “NOI, Disputes and Claim Report”, a new window will appear asking for a District number. By entering a number and clicking OK, a list of all NOIs in the District will be produced.



# Appendix 8 - Construction Manual (Revised July 08)

## Project Records

## GENERAL

The "keeping" of project records, including the preparation, assembly, and preservation of such records is considered to be one of the most important duties and responsibilities which the Engineer delegates to the Inspector.

Field notes constitute a written record of pertinent information, measurements, and observations regarding the project. They should be kept according to uniform practices. Detailed sketches should be shown on daily diary sheets.

Project diaries and project records are to be reviewed by the Construction Manager, Area Construction Engineer or District Construction Engineer on at least a monthly basis. A record of this review, signed by the reviewer, will be made part of the project records and a summary of the findings of this review shall be made in the project diary.

### Accuracy

Record exactly what was done at the completion of the item rather than depending on memory at a later time. When it is necessary to add data to notes previously prepared, the additional item should be dated and initialed. Always enter notes directly into the record.

### Clarity

Plan your entries so that data can be orderly arranged. Do not make ambiguous statements. Show neatly dimensioned sketches for clarity. Assume that the person who will use your notes has no familiarity with the work.

### Legibility

Use standard symbols and abbreviations to keep notes concise. Use plain lettering to avoid confusion.

### Completeness

Show all pertinent measurements and observations. Use a degree of accuracy consistent with the operation. If in doubt about the need for the data, record it.

## Self-Checking

Notes should be so kept that the work can be checked without returning to the field. Persons familiar with the project should be able to verify the accuracy of the work from the information contained in the notes. Use positive controls.

Project records consist of, but not limited to, the following:

1. Copy of the Contract and Special Provisions.
2. A complete set of plans that include the latest revisions.
3. Notice to Proceed, Form C-20.
4. A copy of the "Report of Starting and Completion of Project," Form C-5.
5. A copy of Subletting Requests, Form C-31.
6. A copy of all approved Change Orders, Form C-10.
7. One copy of approved working drawings and shop plans that are required for the project.
8. Copies of all utility plans and agreements when the Project Inspector inspects such work.
9. Inspector's Daily Utility Reports, Form UT-7, for utility and railway work.
10. A copy of the project's correspondences and reports.
11. A copy of the Right-of-Way Agreement between the Commonwealth and the property owners within, and adjacent to, the project limits.
12. Records of work performed under Force Account Specifications, Forms C-115, and C-116.
13. Copies of all shutdowns issued on contracts, Form C-12, and correspondence relative to extensions of time.
14. Electronic Project Diary
15. Source of Materials
16. Materials Test Reports
17. Work Zone Inspection Checklists
18. Materials Invoices / Delivery Tickets
19. Materials Notebook.
20. A complete and accurate file should be kept on the project concerning information pertaining to Equal Opportunity and Form C-67 for on-the-job training by the Contractor.
21. Copy of Form C-79 Summary of Time, Theoretical and other measurements, signed by both the Contractor and the Inspector. Form C-79 is to be printed and signed at least monthly to coincide with the monthly pay voucher. This form may be printed and signed more often as deemed necessary and mutually agreed upon by the Contractor and Inspector.
22. Progress Estimate.
23. Progress Schedule, Working Schedule, Plan of Operations, or CPM.
24. As built plans, if required.
25. Contractor's weekly payroll or payroll roster.
26. copies of CPE annual / final reports signed by the Contractor
27. copies of CPEi reports signed by the Contractor
28. copies of CPEs reports signed by the sub-contractors

29. Form C-107 Construction Runoff Control Inspection Form

## PROJECT DIARY

The Project Inspector is required to maintain an electronic diary in Site Manager for each contract. The electronic diary entries will be made daily and must be completed by noon on the following day.

The project diary should contain a day-to-day record of all significant occurrences relating to the project. It must be complete, concise, and accurate. The Project Diary should include the following information:

1. Day of week, month, date of the month and year.
2. Daily weather conditions and temperature range.
3. Record of instructions given to the Contractor. In the event a controversy arises, record all pertinent information.
4. Information relative to the progress of work being done by the Utility Company in moving its facilities (lines, cables, poles, pipes,). Note causes for delay and its effect on the Contractor's progress.
5. Pay items
6. Note any authorized extra work, force account work, etc. being performed and refer to Inspector's Daily Report for detailed information.
7. Any unusual occurrences, resulting in personal injury or property damage, such as damage caused by blasting operations or Contractor's equipment.
8. When physical conditions of the work are encountered that are unusual or are materially different from those expected, record the following information:

    i. Detailed description of the unusual conditions encountered.

    ii. An estimate of the net effect the unusual conditions have upon the progress of the work.

    iii. The increase in the working force required to overcome the unusual conditions encountered.

    iv. Equipment and materials used and other pertinent information which would be of value should a claim result.

9. If construction progress is not satisfactory, entries in the diary should substantiate this fact. In addition to the information previously listed the diary should include:
10. The actual activities of the Contractor.
11. The rate that the Contractor is performing these operations.
12. The activities that the Contractor could and should be accomplishing but is not.

13. The efforts made at the project level to have the Contractor improve upon his progress.

    Note: The opinion of the Inspector is valuable when it is documented by facts. Do not hesitate to list the full particulars in the diary. Seemingly minor details may become important at a later date.

14. Periodic wage rate interviews with Contractor's employees (Laborer, Equipment Operator, etc.,) to determine proper classification and wage rate compliance.
15. Discussions with property owners, official visitors, and the representatives of various utilities, railroads or other governmental agencies should also be entered in the diary.
16. All official phone calls should be recorded.
17. Final disposition of salvageable materials.
18. Welder Certifications - Record the Welder's name, type, and position of weld qualified and certification number.
19. Note any assigned Inspector who is on vacation, sick leave, or on temporary assignment to another project.
20. Summary of findings of Construction Manager's, Area Construction Engineer's or District Construction Engineer's monthly review.

## INSPECTOR'S DAILY REPORT

Each Inspector is to complete a Daily Work Report (DWR) on the construction activities he/she personally inspects for that day. However, if more than one Inspector is involved in the inspection of a single construction activity, only one need be written for that activity. The DWR does not have to be printed and signed.

The Inspector's daily report is to include the following information:

1. Contractor's working force and equipment used. (The equipment can be listed weekly or monthly if changes are recorded daily.) Note equipment condition if efficiency is affected thereby.
2. Record of locations of pertinent items of work in progress. Description of the work being performed, including quantities of work, the quality of workmanship, difficulties encountered and method of correction, and the results of Inspectors checks or tests.
3. Information as to time, materials, working force and equipment used for authorized extra work, i.e., claims, force account.
4. Material accepted on visual inspection or material rejected.
5. Structural footings information should include:

    a) Description of the material encountered, such as type of clay, sand, gravel, rock, etc.

    b) Condition of the foundation, such as firm, soft, level, sloping rock, results of probes.

c) Elevation of foundation.

d) Date of approval.

e) Person approving.

6. Measurements taken as dimensional checks and for determination of pay quantities. Include dimensioned sketch where such will prove helpful in preparing the dairy. Show detailed sketches on daily diary sheet.
7. Notes on the work as required by the Inspection manual.

The Inspector's Daily Reports and the Project Diary should be completed promptly but not later than noon of the following workday.

## STATE FORCE OPERATIONS

Certain items of work such as signs, guardrail, fence, and right-of-way monuments may be designated to be accomplished using State Forces.

To obtain uniformity and insure proper administration and documentation of this work, the following procedures are established:

### 1. Plans

a. Items to be handled by State Forces are to be selected at design stage of plan development.

b. Items to be handled by State Forces are to be summarized on the plans separately from the work to be performed by the contractor.

### 2. FHWA Approval

Construction Division obtains approval from FHWA to use State Forces for the construction of the selected items on a participating basis, based upon Total Estimated Cost (TEC).

### 3. Detailed Estimate

The detailed estimate is to show State Force Work.

### 4. Diary and Summary

a. As these items of work are being performed, the Project Inspector is to make the appropriate entries in the project diary.

b. All work performed by State Forces is to be summarized separately from that done by contract and clearly identified as such.

## 5. Cost Keeping Records

a. All costs, except engineering, involved in performing the State Force work are to be charged to the project as nonparticipating, Activity 733.

b. All engineering costs are to be charged to the applicable engineering activity of the project as participating on Federal-aid projects and as nonparticipating on State financed projects.

c. As any item of work by State Forces on an individual section within the contract is completed, Form A-50 (Report of Force Account Work on Federal Projects) is to be completed. The TEC to be used in completing Form A-50 will be that shown on the detailed estimate furnished to the District.

d. At the time each Form A-50 is completed, a copy of Form A-11 (Debit and Credit Memorandum) is to be prepared, crediting Activity 733, and debiting Activity 633 of the appropriate project section with a sum equal to that shown on the Form A-50. The costs shown on Form A-11 are to be classified by items and not by labor, materials, and equipment. The TEC to be used in completing Form A-11 will be the same as that price used in preparing Form A-50. The Forms A-50 and A-11 are to be submitted together through the District to the Fiscal Division.

## 6. Exceptions

a. The procedures outlined in Item 5 c. and d. will not apply to projects financed with 100 percent State funds or for nonparticipating items on Federal-aid projects.

b. In the event the FHWA approves the financing of State Force work on an actual cost basis for an individual project, separate instructions will be issued on a project by project basis.