



Program Management Office

Capital Program Management's (CPM) Negotiation/Review Process for Potential Department Claims Against a Design Consultant

The following process may be placed into all consultant Agreements and Task Orders

A. Overview

This process has been established to resolve a claim by the New Jersey Department of Transportation (Department) against a design consultant (consultant) to recover payment for damages potentially arising from work performed by the consultant.

B. Use

The process is to be used when there has not been a contractual notice of claim received by the Department from the Contractor for the applicable project.

C. Consultant Claim Review Process

The process has established the following three-step review of Potential Claims against a consultant:

Step I– Project Manager/Program Manager Review

Step II- CPM Design Issue Committee Review

Step III- Non-Binding Mediation Process

Step I: A negotiations meeting will be held with the Project Manager, Program Manager, RE and the consultant in an effort to resolve what the Department has determined is a recoverable claim against the consultant. The Project Manager will schedule the meeting within 30 days of receiving the consultant response to the Department's Letter. By participating in this meeting and this process, the Department and consultant shall not be deemed to have waived any claims or defenses or to have admitted any liability. If the Department's claim against the consultant is not resolved at a Step I negotiation meeting, the claim may proceed to the CPM Design Issue Committee, if mutually agreed to by the Department and the consultant. The consultant must first, by letter, reject the Department's settlement demand and either request or accept a review of the claim by the CPM Design Issue Committee. If agreed to by the Department, a CPM Design Issue Committee meeting will be scheduled within 60 days of the date of the rejection letter by the Secretary of the Department Claims Committee.

Step II: The CPM Design Issue Committee will be comprised of three members of the Department's management who will be selected by the Assistant Commissioner, Capital Program Management (CPM). However, the Program Manager who is responsible for the project at issue cannot be selected as one of the CPM Design Issue Committee members. The Assistant Commissioner will select one of these members as chairperson. Additional non-voting members may include a Deputy Attorney General, the Secretary of the Claims Committee, and a member of the Federal Highway Administration. If the Department agrees to a CPM Design Issue Committee, the

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Project Manager will notify the Secretary, Department Claims Committee of the consultant's request to proceed to or accept a review by CPM Design Issue Committee.

- a. The Secretary, Department Claims Committee will coordinate the scheduling of a meeting of the CPM Design Issue Committee.
- b. The consultant will make a presentation to the CPM Design Issue Committee members separately from the Department's Project Management staff.
- c. The Project Manager and/or the Program Manager will make a presentation to the CPM Design Issue Committee members separately from the consultant.
- d. After hearing presentations from the consultant and the Department, the CPM Design Issue Committee members will meet in executive session to decide upon a settlement demand or determination.
- e. The Secretary, Department Claims Committee, no later than 60 days from the date that the CPM Design Issue Committee meeting was held, will notify the consultant in writing of the CPM Design Issue Committee's settlement demand or determination.
- f. The consultant, within 30 days of receipt of the CPM Design Issue Committee's settlement demand or determination will reply in writing to the Secretary, Department Claims Committee of its acceptance or rejection of the CPM Design Issue Committee's settlement demand or determination. If the Secretary, Department Claims Committee receives no reply, it will be considered a rejection of the Committee's settlement demand or determination.
- g. If the Department's claim is also not resolved at the CPM Design Issue Committee, the dispute may proceed to Non-Binding Mediation, if mutually agreed to by the Department and the consultant. The consultant must first, by letter to the Secretary, Department Claims Committee, reject the CPM Design Issue Committee's settlement demand or determination and either request or accept the Department's request to proceed to Non-Binding Mediation, within 30 days of receipt of the CPM Design Issue Committee's settlement demand or determination.

Step III: Non-Binding Mediation

- a. Conditions: If the consultant submits a timely request for or accepts the Department's request for Non-Binding Mediation, and the Department tentatively agrees to participate in Non-Binding Mediation, the consultant must satisfy the following conditions to proceed:
 1. The consultant must enter into the standard Department-Consultant Non-Binding Mediation Agreement.
 2. The consultant must submit the names of six proposed mediators. The consultant must include the fee schedule and the biographical background listing the experience and qualifications of each candidate. If a candidate was engaged by the Department or the consultant, the consultant must identify the project and when the candidate served. If a candidate was employed by the Department or the consultant, the consultant must identify when the candidate was employed and the candidate's job duties. The consultant may propose candidates that have been used for mediation purposes for the project at issue or another project.
- b. Mediator: The Department will select the mediator for the Non-Binding Mediation from the list of candidates submitted by the consultant. If the Department rejects the proposed candidates, the Department will request that the consultant submit four additional candidates that meet the original criteria. The consultant must submit this additional list within 15 days of the receipt of a written request from the Department. The mediator must be acceptable to both the consultant and to the Department for the Non-Binding Mediation to proceed. Upon mutual agreement, the mediator can be an individual proposed by the Department.

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- c. Meeting: Upon selection of the mediator and the return of the executed Standard Non-Binding Mediation Agreement, the Secretary of the Department Claims Committee will schedule a meeting for the Non-Binding Mediation.
- d. Decision: If a proposed settlement agreement is reached at Non-Binding Mediation, it will be forwarded for Department approval.

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