

**INCLUDE IN ALL TENDERS THAT REFERENCE THE
GENERAL SPECIFICATION, EDITION 16, 2019**

**AMENDMENTS TO SPECIFICATION 1.2, GENERAL, RE: DISPUTE RESOLUTION
PROCESS**

- i) Section 1.2.1.2, HIERARCHY OF DOCUMENTS, is revised as follows:
 - The first bullet of the first paragraph of Clause 1.2.1.2 reading “Applicable appendices contained in the document entitled Dispute Resolution Process for Government of Alberta Construction Contracts, Edition 1, 1997” is deleted.
- ii) Section 1.2.57, CLAIMS AND DISPUTE RESOLUTION, is revised as follows:
 - The Contents of Section 1.2.57, CLAIMS AND DISPUTE RESOLUTION, are replaced in their entirety with the following:

1.2.57 CLAIMS AND DISPUTE RESOLUTION

Any claims or demands by the Contractor, arising out of alleged errors, omissions or misrepresentations in the Contract Documents or arising out of acts or omissions of the Consultant, the Consultant's directors, officers, employees, agents, or sub-consultants, in relation to the carrying out of the Work, are to be made only to, or against, the Department. The Contractor waives any right to commence or carry on such claims or demands against any person other than the Department.

Unless otherwise agreed to in writing between the Department and the Contractor, all disputes in respect of the application or interpretation of any provision of the Contract shall be determined in accordance with the Dispute Resolution Procedure (as defined in Section 1.2.57.2). Either party may at any time by notice to the other refer any question in respect of the application or interpretation of any provision of the Contract to the Dispute Resolution Procedure. In the case of a Claim (as defined in Section 1.2.57.1.1), the Contractor shall follow the Claims Review Process for Contractor Claims (as set out in Section 1.2.57.1).

The Contractor is hereby warned that under applicable laws there may be certain things that have to be done by certain times, otherwise the Contractor may lose its legal right to make, or continue with making, a claim against the Department.

1.2.57.1 Claims Review Process for Contractor Claims

The review of contractor claims is subject to the following process:

1.2.57.1.1 Claims

If a circumstance arises between the Department and the Contractor, in connection with or arising out of the Contract or the carrying out of the Work, which the Contractor believes

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requires a change in payment or compensation under the Contract or a change in the time required to complete the Contract, such situation is considered a claim (the “**Claim**”).

As soon as the Contractor becomes aware of the Claim, the Contractor shall immediately begin to keep separate daily work records relating to the Claim. The records may include, but are not limited to, accurate quantity measurements, quality reports, actual direct costs, and actual indirect costs. The Contractor shall provide copies of such records in the manner and at the times requested by the Department.

1.2.57.1.2 Claims Review Process

1.2.57.1.2.1 Notice of Claim

Where the Contractor considers that there is a Claim, the Contractor shall send a notice of the Claim (the “**Notice of Claim**”) to the Project Sponsor (as set out in the Contract).

The Notice of Claim must be provided as soon as reasonably possible after the occurrence of the circumstance giving rise to the Claim, and not later than seven days after the occurrence of the circumstance or the Contractor becoming aware of the circumstance. It is imperative that the Contractor provide such notice in such manner and if the Contractor fails to provide such notice in such manner, the Department may assert a claim for damages arising from such failure.

The Notice of Claim shall be in such written form as directed in writing by the Department or be in writing and expressly referring to this Section 1.2.57.1.2.1 and shall set out details about the Claim, including but not limited to:

- a. the Contract number;
- b. the Contract description;
- c. Notice of Claim number;
- d. identification of any documents or particulars that support the Claim (including any written or oral communications related to the Claim);
- e. detailed description of the substance of the Claim with dates, locations, incurred/projected direct costs (labour, material, equipment, etc.), incurred/projected indirect costs and any other items relevant to the Claim;
- f. relevant provisions of the Contract which support the Claim and the reasons why such provisions support the Claim;
- g. identify whether there is any impact on a critical path that will impact the Detailed Construction Schedule (as set out in the Contract) thereby resulting in additional Site Occupancy Days (as set out in the Contract) and adjustment of Construction Completion Date (as set out in the Contract);
- h. any other information that may be helpful for reviewing the Claim; and
- i. any proposals on ways to mitigate the impact of the Claim.

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In order for there to be an efficient and effective understanding of the Claim by the Department, it is incumbent on the Contractor to provide all the necessary information reasonably needed by the Department in order to understand the Claim and to provide all the necessary information in an organized, concise, and logical manner.

Notwithstanding a Notice of Claim has been provided to the Project Sponsor, the Work must proceed or continue without delay.

1.2.57.1.2.2 Department Acknowledgement of the Notice of Claim

Upon receipt of the Notice of Claim, the Department shall provide a written acknowledgement to the Contractor and within seven days of the receipt of the Notice of Claim arrange a tri-party meeting of representatives of the Department, the Contractor and the Consultant. The details of the Claim will be discussed at the tri-party meeting.

1.2.57.1.2.3 Ongoing Effect

If the circumstance giving rise to the Claim has a continuing effect, then the Contractor shall submit to the Department such further information at such intervals as may be reasonably required by the Department.

1.2.57.1.2.4 Review of the Claim

*If the Contractor wishes to have the Department review the Claim, the Contractor shall send a written notice to the Project Sponsor (as set out in the Contract), no later than 28 days after submitting the Notice of Claim, expressly referring to this Section 1.2.57.1.2.4 and requesting the Department review the Claim (the "**Level 1 Notice**"). Failure by the Contractor to provide the Level 1 Notice by such deadline shall be deemed by the Department to be an abandonment of the Claims Review Process for Contractor Claims (as set out in Section 1.2.57.1), unless otherwise agreed to in writing by the Department.*

The parties will make bona fide efforts to review the Claim but the Work must proceed or continue without delay during the following process to review the Claim:

Level 1 Review by Project Sponsor

- a. *within 14 days of the receipt of the Level 1 Notice, the Level 1 reviewer will provide a written acknowledgement of receipt of the Level 1 Notice to the Contractor;*
- b. *the Level 1 reviewer shall commence review of the claim as soon as possible and will meet with the Contractor within a period of 30 days from the receipt of the Level 1 Notice. During this meeting, the Level 1 reviewer and the Contractor will start the process of negotiating and entering into a claim review process agreement for the Claim (the "**CRP Agreement**") addressing the schedule for the review, the process for the review (including participants), the date for providing*

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- the Level 1 reviewer's decision, and the date for providing the Level 2 reviewer's decision;*
- c. the Contractor shall provide any additional information as set out in the CRP Agreement and as may be further required by the Level 1 reviewer;*
 - d. the Level 1 reviewer shall provide the Contractor with the Level 1 reviewer's decision (the "**Level 1 Decision**") by the date set out in the CRP Agreement;*
 - e. if the Contractor is not satisfied with the Level 1 Decision, the Contractor may by the date set out in the CRP Agreement give the Regional Director (as set out in the Contract) written notice (the "**Level 2 Notice**") that the Contractor is elevating the Claim to the Level 2 review and setting out the aspects of the Level 1 Decision that the Contractor takes issue with and why (failure by the Contractor to provide the Level 2 Notice in such manner shall be deemed by the Department to be an abandonment of the Claims Review Process for Contractor Claims [as set out in Section 1.2.57.1], unless otherwise agreed to in writing by the Department).*

Level 2 Review by Regional Director

- f. within 14 days of the receipt of the Level 2 Notice, the Level 2 reviewer will provide a written acknowledgement of receipt of the Level 2 Notice to the Contractor;*
- g. the Level 2 reviewer shall commence and complete review of the claim in accordance with the CRP Agreement;*
- h. if the Level 2 Notice includes new items or issues that were not included in the Notice of Claim, the Level 2 reviewer may refer the new items or issues back to the Level 1 reviewer;*
- i. the Contractor shall provide any additional information as may be required by the CRP Agreement or as may be further required by the Level 2 reviewer;*
- j. the Level 2 reviewer shall provide the Contractor with the Level 2 reviewer's decision (the "**Level 2 Decision**") by the date set out in the CRP Agreement;*
- k. if the Contractor is not satisfied with the Level 2 Decision, the Contractor may submit the Claim to the Dispute Resolution Procedure set out in Section 1.2.57.2.*

The review of the Claim shall end no later than 12 months after the occurrence of the circumstance giving rise to the Claim. If the review of the Claim has not been completed within 12 months after the occurrence of the circumstance giving rise to the Claim, for any reason whatsoever including the inability of the parties to agree on a CRP Agreement, the Claim shall be deemed to have been unequivocally denied by the Department and the Contractor may submit the Claim to the Dispute Resolution Procedure set out in Section 1.2.57.2.

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1.2.57.2 *Dispute Resolution Procedure*

*Any Claim that has not been resolved by the Claims Review Process for Contractor Claims (as set out in Section 1.2.57.1), or any disagreement or other dispute in respect of the application or interpretation of any provision of the Contract (the "**Dispute**"), will be resolved in accordance with the dispute resolution procedure set out below (the "**Dispute Resolution Procedure**"):*

- a. *the Dispute Resolution Procedure shall be started by delivery of a notice (the "**Dispute Notice**") in writing and expressly referring to this Section 1.2.57.2, from one party to the other party providing details of a Dispute and invoking the Dispute Resolution Procedure in respect of that Dispute;*
- b. *any Dispute Notice issued by the Contractor to the Department must be sent to:*

*Executive Director, Strategic Procurement Branch
3rd Floor, Twin Atria Building
4999 - 98 Avenue
Edmonton, AB, T6B 2X3*
- c. *within 30 days from the receipt of the Dispute Notice, officials designated by the Department and the Contractor will meet (the "**Settlement Meeting**") at a mutually acceptable time and place to make all reasonable efforts to attempt to resolve the Dispute (all negotiations held pursuant to the Settlement Meeting are to be held on a without prejudice basis and will not be used by either party as evidence at any other proceeding); and*
- d. *if the Settlement Meeting does not result in resolution of the Dispute, either party may refer the Dispute to a court of law of competent jurisdiction.*