

# MNDOT – Standard Specifications for Construction, 2018: Procedure for Changes\*

## Changes & Contract Revisions

### Extra Work (§ 1402.5)

1. If Contractor is required to perform any extra work, then . . .
2. **STOP WORK.** Notify the Engineer in accordance with § 1403, “Notification for Contract Revisions.”

### Differing Site Conditions (§ 1402.2)

1. If Contractor encounters subsurface or latent physical conditions that **differ materially from those indicated in the Contract, or unknown physical conditions of an unusual nature, that differ materially from those ordinarily encountered and generally recognized as inherent in the Work** provided for in the Contract, and
2. These conditions cause an increase or decrease in the cost or time required for the performance of any Work under the Contract then . . .
3. **STOP WORK.** Promptly notify the Engineer in writing of the specific differing conditions before they are disturbed and before the affected work is performed.
4. If the Engineer fails to properly adjust the Contract, comply with § 1403, “Notification for Contract Revisions.”

### Significant Changes to the Work (§ 1402.3)

1. If the Engineer orders a change or alteration or the work; and
2. If the character of the work as altered **differ materially in kind or nature** from that involved or included in the original proposed construction, or . . .
3. If a major contract item of work is **increased in excess of 125 percent or decreased below 75 percent** of the original Contract quantity, then . . .
4. **STOP WORK.** Promptly notify the Engineer in writing of the specific significant changes to the character of work
5. If the Engineer fails to properly adjust the contract, comply with § 1403, “Notification for Contract Revisions.”

### Suspension of Work (§ 1402.4)

1. If the performance of all or any portion of the **work is suspended or delayed by the Engineer in writing for an unreasonable period of time** (not originally anticipated, customary, or inherent to the construction industry) and . . .
2. If the Contractor believes that it is entitled to **additional compensation and/or contract time** as a result of such suspension or delay, then . . .
3. Submit to the Engineer in writing a request for adjustment, setting forth the reasons and support for such adjustment, **no later than 7 calendar days after receipt of notice to resume work.**
4. If the Engineer fails to properly adjust the contract, comply with § 1403, “Notification for Contract Revisions.”

### Eliminated Items (§ 1402.6)

1. If the Department **eliminates any Contract Items** from the Contract, then . . .
2. The Department will reimburse the Contractor for all costs incurred before notification that are not the result of unauthorized Work. See § 1905, “Compensation for Eliminated Items.”
3. If Department fails to properly reimburse, notify the Engineer in accordance with § 1403.

## Notification for Contract Revisions (§ 1403)

**NOTE: Failure to provide notice as specified in 1403, “Notification for Contract Revisions” constitutes a waiver of the Contractor’s entitlement to compensation or a time extension.**

### First Notice, By Contractor (§ 1403.2)

1. If any contract revision appears necessary, then . . .
2. **Stop Work.** Immediately notify the Engineer in writing. The Contractor **shall not start or continue with an activity or Contract Item for which a Contract revision may be necessary** without authorization from the Engineer.

### Written Notice, By Contractor (§ 1403.3)

1. If the Contractor **disagrees with the Engineer’s response** or the **Engineer does not respond** to the first notice, then . . .
2. Within 5 business days of first notice if Engineer has not responded or within 5 business days of receiving the Engineer’s response to the first notice, provide a written notice that includes:
  - A. A **description** of the situation;
  - B. The **time and date** the situation was first identified;
  - C. The **location** of the situation, if appropriate;
  - D. A **clear explanation** of why the situation represents a Contract revision, including appropriate references to the pertinent portions of the Contract or law;
  - E. A **statement of the revisions deemed necessary** in the Contract Unit Price(s), delivery schedule(s), phasing, time, etc. (may rely on estimates);
  - F. An **estimate of the time by which the Engineer must respond** to minimize cost or delay, and;
  - G. **Anything else** that will help achieve timely resolution.

### Written Acknowledgment, By Engineer (§ 1403.4)

The Engineer should provide a written acknowledgment of receipt of the Contractor’s written notice under §1403.3.

### Final Written Response, By Engineer (§ 1403.5)

1. Within 10 business days of receiving the Contractor’s written notice, the Engineer will provide a **written response** that includes one of the following:
  - A. Confirmation of the need for a contract revision. The Contractor shall **pursue time extensions in accordance with 1806**, “Determination and Extension of Contract Time,” and **compensation in accordance with 1904**, “Compensation for Contract Revisions,” or
  - B. Denial of the request for a contract revision, or
  - C. A request for additional information, which specifies **what is needed and by when**. The Engineer will respond within 10 business days of receiving the additional requested information.

### Contractor’s Recourse (§ 1403.6)

1. If the Contractor **disagrees with the Engineer’s final written response** or the **Engineer’s response is untimely**, then . . .
2. The Contractor shall give the Engineer written notice of the intent to pursue a claim within 5 business days of receiving the Engineer’s final written response and then pursue a claim in accordance with 1517, “Claims for Compensation Adjustment.”

## Claims for Compensation Adjustment (§ 1517)

### Notification (§ 1517.1)

The Contractor shall notify the Engineer in writing of any intent to file a claim for compensation or time extension within 5 business days of the Engineer’s denial under 1403.5 or as soon as Contractor is aware of a claim.

### Claims Submittals (§ 1517.2)

The Claim, when submitted, must include the following:

#### A. Entitlement

The Department requires that the Contractor **establish entitlement** for all claims before the Department will consider impact and cost. The Contractor shall submit the following to the Engineer to determine entitlement:

1. A **detailed factual statement** of the claim providing a **description of the claim issues and all relevant facts**, including the events, dates, locations, and a description of what Work was affected and how this Work was affected by the claim.
2. A **narrative** that identifies **all of the specific Contract provisions** that support the claim, **why** they support the claim, and **how** the details of the factual statement in item (1) above establish entitlement based on the referenced Contract provisions.
3. **All pertinent documents, electronic files, and the substance of any oral communications** related to the information provided in item (1) and (2) above.

#### B. Impact and Cost

If the Department determines that the Contractor has **established entitlement**, the Contractor shall submit the following to the Department to determine impact and cost:

1. If a **delay is alleged**, submit a **narrative, all documentation** (including applicable project schedules substantiating the delay), **and a schedule analysis** in accordance with 1806.1, “Determination and Extension of Contract Time, General.”
2. If **additional costs are alleged**, **submit a narrative and all documentation that substantiates the claimed costs**. The Contractor shall submit cost documentation for the claim submittal in a format that allows the Department to perform an audit under the authority of 1721, “Audits.”

### Required Certification of Claims (§ 1517.3)

The Contractor shall include with the Claim a fully executed certification attesting to the following:

1. The claim is made in good faith, based on documented fact and the value is not knowingly overstated, and
2. Supportive data is true, accurate, and complete to the Contractor’s best knowledge and belief.

### Review of Claim Submittals (§ 1517.4)

All claim submittals filed will be subject to review by the Department at any time following the filing of the claim submittal. The Contractor and Department shall exhaust the claim process reflected in this section (1517) before seeking compensation or extension of the Contract Time by filing an action in the courts of this State. The Contractor, Subcontractor(s), or Supplier(s) shall cooperate with the Department and shall **provide the Department access to the following** relevant documents, including, but not limited to all of the **documents and information listed under § 1517.4**.

\*NOTE: Required procedures may be modified by Supplemental Specifications, Special Provisions, or Addendum. Only the Engineer may approve extra work or exceptions to the above procedures (See, e.g., §§ 1402.1, 1501)

**NOTICE: THIS FLOWCHART DOES NOT CREATE AN ATTORNEY-CLIENT RELATIONSHIP AND IS NOT INTENDED AS LEGAL ADVICE. CONTACT A LICENSED ATTORNEY TO UNDERSTAND YOUR RIGHTS.**

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