



Construction  
2023 CFL Annual A/E Meeting

# Construction Contracts

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- Elements of CFLHD Contracts
  - Federal Acquisition Regulations (FAR)
  - Transportation Acquisition Regulations (TAR)
  - Special Contract Requirements
  - Plans
  - Standard Specifications FP-14
- Which elements does the Designer of Record prepare?

# Contract Administration

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- After Award
  - Contract Interpretation
  - Submittal Review
  - Quality Assurance Inspection
  - Verification Testing
  - Measurement Review
  - Payment

# Successful Contract

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- Build the Project
  - As Specified and Shown on Plans
  - Within the Contract's Period of Performance
  - Within the Obligated Contract Amount
  - With as Little Drama as Possible
  - Without Construction Claims
- Accurately Document Construction Activities

# Resources

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- Government Resources
  - The Contract
  - FLH Construction Manual
  - FLH Materials Manual
- Other Resources
  - Geotechnical Report
  - Hydraulics Report
  - Pavement Report
  - Permits
  - NEPA Environmental Commitments
  - Administration of Government Contracts, Fifth Edition (Cibinic, Nagle, and Nash)

# Lessons Learned from the Field

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- NPDES Permitting and SWPPP Design
  - Design projects with Notice of Termination in mind if NPDES permit req'd
    - Must have some form of permanent stabilization
- Right of Way
  - Encroachment permits coordinated with State DOT
    - Whenever improvements to a State Highway are required.
    - This includes and signage required in State Highway Right of Way.
    - Permanent improvements must be within the ROW/easements.
- Subsection 633.01
  - Requires designation of post material type.
  - Requires designation of panel material for signage.

# Lessons Learned (continued)

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- Grading Summaries
  - Not properly accounting for material generated
  - Not accounting for waste
  - No shrink/swell factors used
- Plan and Profile Sheets
  - Outdated Plan and Profile Sheet in plan set
  - Profile elevation not matching cross sections
- ADA/ABA Design
  - Limit where sidewalk or walking path elevation equals road elevation
  - Grade separate with raised curb and gutter
  - Use ADA/ABA ramps

# Typical Claims and Complaints

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- Differing Site Conditions
- Defective Specifications
- Ambiguous Specifications
- Failure to Provide Access to the Work Site (ROW Issues)
- Impracticability of Performance
- Impossibility of Performance
- Delayed Notice to Proceed
- Constructive Changes
- Constructive Acceleration
- Constructive Suspension
- Improper Contract Administration
- Active Interference
- Hindrance or Failure to Cooperate
- Abuse of Discretion
- Government Delay
- Failure to Partner
- Negotiating in Bad Faith



# Formal Claims Filed By Fiscal Year

	Formal	Claim Totals			CODs Issued	Decision Totals			Notes
	Claims Filed	Amount	Time	Amount		Time			
<b>FY2017</b>	2	\$ 10,287,342	0 days	1	\$ -	0 days	1		
<b>FY2018</b>	1	\$ 1,505,092	89 days	0	\$ -	0 days	2		
<b>FY2019</b>	2	\$ 1,208,838	0 days	1	\$ (7,812)	0 days	2, 3, 4		
<b>FY2020</b>	2	\$ 11,829,389	934 days	1	\$ 253,956	0 days	5		
<b>FY2021</b>	1	\$ 50,635	0 days	2	\$ (194,917)	95 days	6		
<b>FY2022</b>	5	\$ 29,790,764	1274 days	3	\$ -	0 days	7, 8		
<b>FY2023</b>	6	\$ 8,196,231	614 days	2	\$ 6,538	0 days	9, 10		

- 1 Claim XVI-17-002 Rescinded by the Contractor after Execution of a Settlement Agreement
- 2 COD for Claim XVI-18-001 Issued in FY2019
- 3 COD for Claim XVI-19-001 Issued in FY2020
- 4 Claim XVI-19-002 Rescinded by the Contractor after Settlement of CM006 Costs
- 5 CODs for Claim XVI-20-001 and Claim XVI-20-002 Issued in FY2021
- 6 Claim XVI-21-001 Rescinded by the Contractor after Execution of a Contract Modification Settling the Issues
- 7 COD for Claim XVI-22-004 Issued in FY2023
- 8 COD for Claim XVI-22-005 to be Issued in FY2023
- 9 CODs for Claim XVI-23-002 and Claim XVI-23-003 to be Issued in FY2023
- 10 COD for Claim XVI-23-004 to be Issued in FY2024
- 11 COD for Claim XVI-23-005 to be issued by 4/14/2023
- 12 COD for Claim XVI-23-006 to be issued by 4/16/2023

# Appeals to CBCA/CoFC Filed By Fiscal Year

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	Appeals Filed	Appeal Totals			Judgement Totals			Notes
		Amount	Time	Judgements	Amount	Time		
<b>FY2017</b>	<b>0</b>							
<b>FY2018</b>	<b>0</b>							
<b>FY2019</b>	<b>1</b>	<b>\$ 1,505,092</b>	<b>89 days</b>					<b>1</b>
<b>FY2020</b>	<b>0</b>							
<b>FY2021</b>	<b>1</b>	<b>\$ 4,144,561</b>	<b>72 days</b>					<b>2</b>
<b>FY2022</b>	<b>4</b>	<b>\$ 6,802,814</b>	<b>672 days</b>					<b>3, 4, 5, 6</b>
<b>FY2023</b>	<b>3</b>	<b>\$ 21,450,223</b>	<b>860 days</b>	<b>1</b>	<b>\$0.00</b>	<b>0 days</b>		<b>7, 8, 9</b>

- 1 CBCA 6574 Settled in Alternate Dispute Resolution in FY2020
- 2 CBCA 7063 & CBCA 7137 Consolidated by the Board and Scheduled for a Hearing in late FY2023
- 3 CBCA 7269 Scheduled for a Hearing in late FY2023 or early FY2024
- 4 CBCA 7313 Non-monetary Appeal of CPARS Evaluation Dismissed after FHWA Temporarily Removed the Evaluation from CPARS
- 5 CBCA 7433 Dismissed with Prejudice at the Appellant's Request
- 6 CoFC Case 22-339 C is being defended by the Department of Justice. Currently Awaiting the Judge's Decision on DOJ's Motion to Dismiss
- 7 CBCA 7539 Scheduled for a Hearing in late FY2024
- 8 CBCA 7675 Consolidated with CBCA 7269
- 9 CoFC Case 22-339 C Dismissed with prejudice on 2/14/2023

# Questions?

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