

Office of the Auditor General  
Performance Audit Report

---

**Construction Contractor Claim Process**  
Michigan Department of Transportation

November 2023

---

---

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general may make investigations pertinent to the conduct of audits.

*Article IV, Section 53 of the Michigan Constitution*

---



# OAG

Office of the Auditor General

## Report Summary

### *Performance Audit*

### *Construction Contractor Claim Process*

### *Michigan Department of Transportation (MDOT)*

**Report Number:**  
591-0422-23

**Released:**  
November 2023

Construction contractors can request additional compensation and/or time from MDOT for work not included in the original project contract and for unexpected site conditions and delays. MDOT utilizes either a tiered administrative process or an independent panel, known as a dispute review board (DRB), to evaluate and resolve contractors' claim requests when MDOT and the contractor disagree on the contractor's entitlement, the impact, or the costs associated with project changes. MDOT had 1,844 active construction projects with the original contract award amounts totaling \$8.2 billion between August 1, 2021 and May 31, 2023.

Audit Objective			Conclusion
Objective: To assess the sufficiency of MDOT's efforts to administer the construction contractor claim process.			Sufficient, with exceptions
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
MDOT did not centrally track claim information, which hindered its monitoring efforts, and did not timely respond to 7% of claims. Also, MDOT did not maintain documentation in ProjectWise to support the decision rationale for 36% of claims or to show that periodic progress meetings occurred for 16% of DRB projects ( <a href="#">Finding 1</a> ).		X	Agrees

#### Obtain Audit Reports

Online: [audgen.michigan.gov](http://audgen.michigan.gov)

Phone: (517) 334-8050

Office of the Auditor General  
201 N. Washington Square, Sixth Floor  
Lansing, Michigan 48913

**Doug A. Ringler, CPA, CIA**  
Auditor General

**Laura J. Hirst, CPA**  
Deputy Auditor General





# OAG

Office of the Auditor General

201 N. Washington Square, Sixth Floor • Lansing, Michigan 48913 • Phone: (517) 334-8050 • [audgen.michigan.gov](http://audgen.michigan.gov)

**Doug A. Ringler, CPA, CIA**  
Auditor General

November 28, 2023

Michael D. Hayes, Vice Chair  
State Transportation Commission  
and  
Bradley C. Wieferich, PE, Director  
Michigan Department of Transportation  
Murray D. Van Wagoner Building  
Lansing, Michigan

Vice Chair Hayes and Director Wieferich:

This is our performance audit report on the Construction Contractor Claim Process, Michigan Department of Transportation.

Your agency provided the preliminary response to the recommendation at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

A handwritten signature in black ink that reads "Doug Ringler". The signature is written in a cursive, flowing style.

Doug Ringler  
Auditor General



## TABLE OF CONTENTS

### CONSTRUCTION CONTRACTOR CLAIM PROCESS

	<u>Page</u>
Report Summary	1
Report Letter	3
Audit Objectives, Conclusions, Findings, and Observations	
Administering the Construction Contractor Claim Process	8
Findings:	
1. Improved centralized monitoring needed for contractor claims and DRB projects.	10
Supplemental Information	
Exhibit 1 - Claim Process	12
Exhibit 2 - Dispute Review Board (DRB) Process	13
Exhibit 3 - Summary of DRB Activity for Active Projects by Region	14
Exhibit 4A - Change in Original Award and Current Award Costs Due to Contract Modifications by Region	15
Exhibit 4B - Number (Percentage) of Total Projects by Region	15
Process Description	16
Audit Scope, Methodology, and Other Information	17
Glossary of Abbreviations and Terms	20





# AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS

# ADMINISTERING THE CONSTRUCTION CONTRACTOR CLAIM PROCESS

---

## BACKGROUND

The Michigan Department of Transportation (MDOT) awards construction contracts\* for road and bridge projects. Construction contractors\* can request additional compensation and/or time for work not included in the original project contract or for unexpected site conditions and delays. Contractors typically submit a notice of intent\* (NOI) to file a claim\* with MDOT. The NOI begins the process for the engineer\* and contractor to try and resolve potential claim issues before work starts. If the engineer and contractor cannot reach a mutually agreeable resolution, the contractor can file Form 1953\*, claim content and certification, with the engineer for claim consideration (see Exhibit 1).

MDOT's claim process provides contractors with the option to request a region office review (ROR) if they disagree with the engineer's decision and, if necessary, a central office review (COR). ROR and COR panels are composed of department engineers who have had no prior involvement in the project. The panels conduct meetings to review documentation, listen to the contractor's and engineer's positions, evaluate evidence, and issue the official MDOT written decision regarding the claim.

MDOT also utilizes an alternative option to process disputes referred to as a dispute review board\* (DRB) for specific complex road and bridge construction projects (see Exhibit 2). The DRB evaluates and provides recommendations as to the entitlement of a contractor's claim arising out of the work on specific contracts. Industry guidance indicates DRBs can provide a low-cost and highly effective means of assisting parties in a project to achieve project outcomes and help avoid and resolve disputes. Contractors and MDOT pay members of a DRB to participate in periodic project progress meetings\* and hold hearings\* in accordance with required or recommended time frames (see Exhibit 3).

In addition to claims, as the project work progresses, MDOT may initiate a change\* to project plans and/or specifications to fit field conditions and achieve project goals, resulting in a need to modify the original contract. MDOT processed contract modifications\* for more than 1,900 projects from August 1, 2021 through May 31, 2023 for a net increase in construction costs of \$208.9 million. These contract modifications resulted from changes initiated by MDOT, changes initiated by the contractors and agreed to by MDOT, and contractor claims resolved in favor of the contractor.

## AUDIT OBJECTIVE

To assess the sufficiency of MDOT's efforts to administer the construction contractor claim process.

\* See glossary at end of report for definition.

**CONCLUSION**

Sufficient, with exceptions.

**FACTORS  
IMPACTING  
CONCLUSION**

- For all contractor claims we reviewed, MDOT documented appropriate approvals and accurately made related contract modifications when applicable.
- For claims we reviewed involving RORs and CORs, MDOT issued timely decisions and generally met other required procedural time frames.
- MDOT allowed only eligible independent candidates to participate on DRBs we reviewed.
- Reportable condition\* related to the need to improve centralized monitoring of contractor claims and DRB projects (Finding 1).

\* See glossary at end of report for definition.

## FINDING 1

---

### Improved monitoring is needed for contractor claims and DRB projects.

---

MDOT could improve its centralized monitoring of contractor claims and DRB projects. Improved centralized monitoring would enhance MDOT's internal control\* by helping it assess the impact of contractor claims and DRBs on overall construction costs and activities. Also, it would help ensure staff process claims objectively, timely, and in accordance with established procedures and identify when training or additional guidance may be needed.

MDOT's Construction Manual Section 104.10 requires the Construction Field Services (CFS) Division and region construction engineers to monitor and track all claims. In addition, the State adopted the principles included in the *Standards for Internal Control in the Federal Government* issued by the Comptroller General of the United States (Green Book) for guidance on effective internal control. Principles 13 and 14 state management should design a process that identifies and uses quality information to make informed decisions and evaluate the entity's performance in achieving key objectives and select appropriate methods to internally communicate the necessary quality information.

MDOT written claim procedures require the engineer to issue a documented response to a contractor's claim within 30 days of the receipt of Form 1953. If the parties cannot reach an agreement concerning the claim at the transportation service center (TSC) level, the contractor may appeal the claim to the region office, MDOT's central office, or, for applicable projects, contractors can request a DRB hearing. MDOT requires contractors and engineers to submit all project documentation electronically in ProjectWise\* and contractors to keep all project information up to date throughout the execution of the contract.

When a contract has the DRB special provision, MDOT and contractors assemble DRBs after execution of the contract and hold periodic progress meetings. The meetings allow DRB members to become familiar with the project work, construction operations, and time frames and to facilitate discussion of potential emerging issues. Contractors can request hearings with DRBs in an attempt to settle disagreements with the project engineers' decisions on claims. The CFS Division informed us it documented certain data, including project costs, DRB members' eligibility and selection, and DRB hearing results, in a spreadsheet for DRB projects.

From August 1, 2021 through May 31, 2023, MDOT had 1,844 active construction projects with a total original contract award amount of \$8.2 billion. Using keyword queries and the CFS Division's documented data for DRB projects, we identified 99 construction projects in ProjectWise having at least 1 contractor claim and 43 projects with DRBs during our audit period. We reviewed 29 claims for 25 of the construction projects requesting additional days for construction work and/or approximately

\* See glossary at end of report for definition.

\$20.7 million in additional compensation. MDOT approved additional compensation of \$1.1 million for 13 (45%) claims and also extensions between 25 and 228 days for 7 of these claims. MDOT denied 15 (52%) of the claims and had not yet reached a decision on 1 (3%).

Our review of the 29 contractor claims and 43 projects with DRBs determined MDOT did not:

- a. Centrally track claim information. In addition, only 2 of the 7 region offices attempted to track claim information, and the information was incomplete. As a result, the CFS Division could not readily determine the total number of claims filed by contractors, reasons for the claims, the amount of requested and/or approved compensation, or the resulting additional days for construction projects.
- b. Issue a written response within 30 days for 2 (7%) of 28 applicable claims. MDOT provided written responses 44 and 116 days after receiving the claim forms.
- c. Maintain documentation in ProjectWise to support its rationale for decisions regarding 10 (36%) of 28 applicable claims or that periodic DRB progress meetings occurred for 7 (16%) projects. MDOT was able to provide documentation or information to support its decisions for the 10 claims and that the progress meetings occurred and informed us its engineers sometimes maintain this information in other shared drive locations outside of ProjectWise.

The inclusion of additional data in the DRB spreadsheet would also help facilitate improved monitoring efforts. Relevant data the CFS Division should consider capturing includes claim information, formation dates of DRBs, and payment information for progress meetings.

MDOT informed us it believed prioritizing the collection of claim information for only RORs and CORs adequately addressed the risks associated with the contractor claim process. Also, MDOT indicated the balancing of the engineers' workloads can impede the timeliness of sending official responses and transferring records into ProjectWise.

## **RECOMMENDATION**

We recommend that MDOT improve its centralized monitoring of contractor claims and DRB projects.

## **AGENCY PRELIMINARY RESPONSE**

MDOT provided us with the following response:

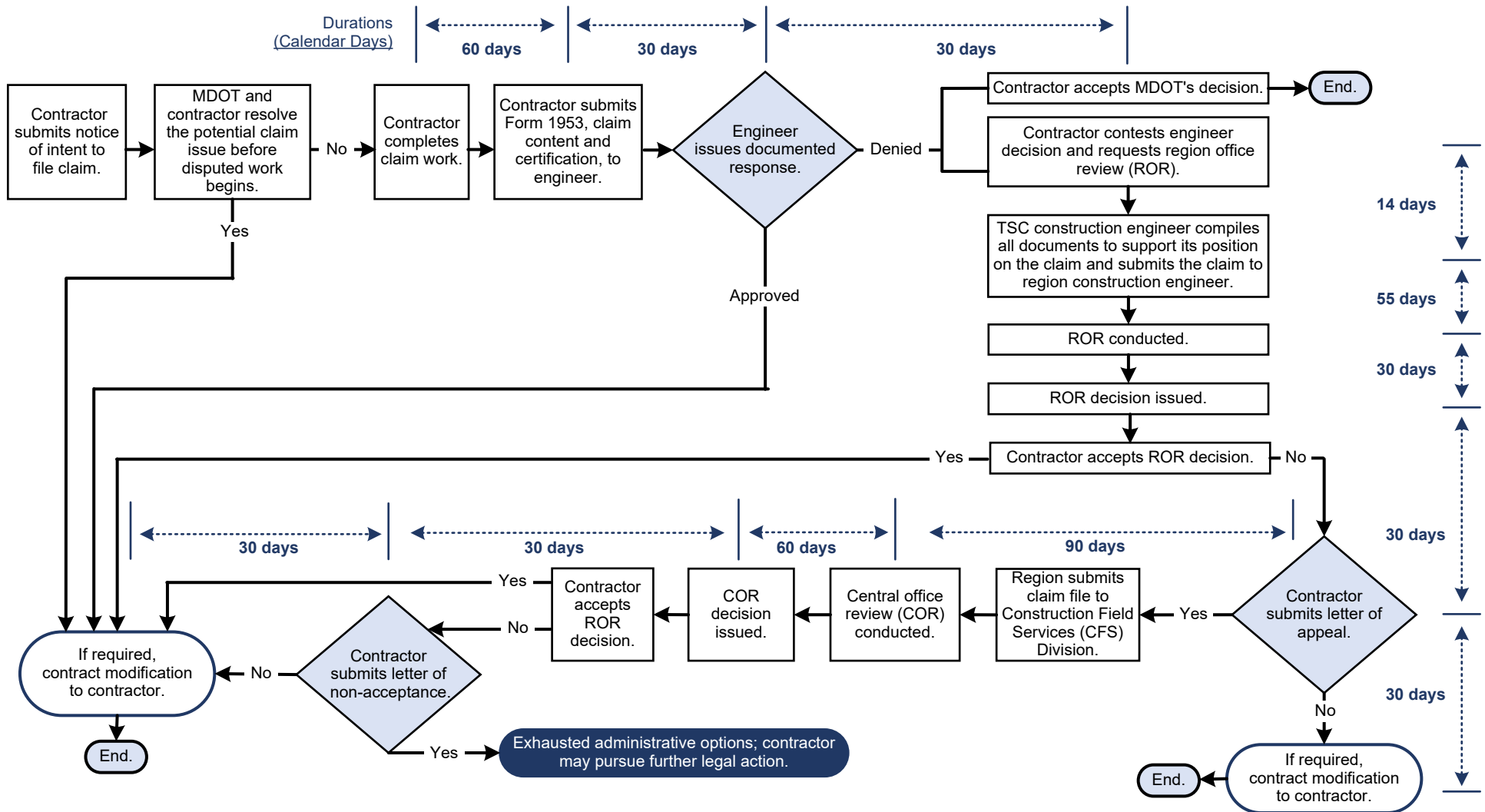
*MDOT agrees with the recommendation. MDOT will commence maintaining a centralized list of contractor claims and DRB projects by April 30, 2024.*

# SUPPLEMENTAL INFORMATION

UNAUDITED  
Exhibit 1

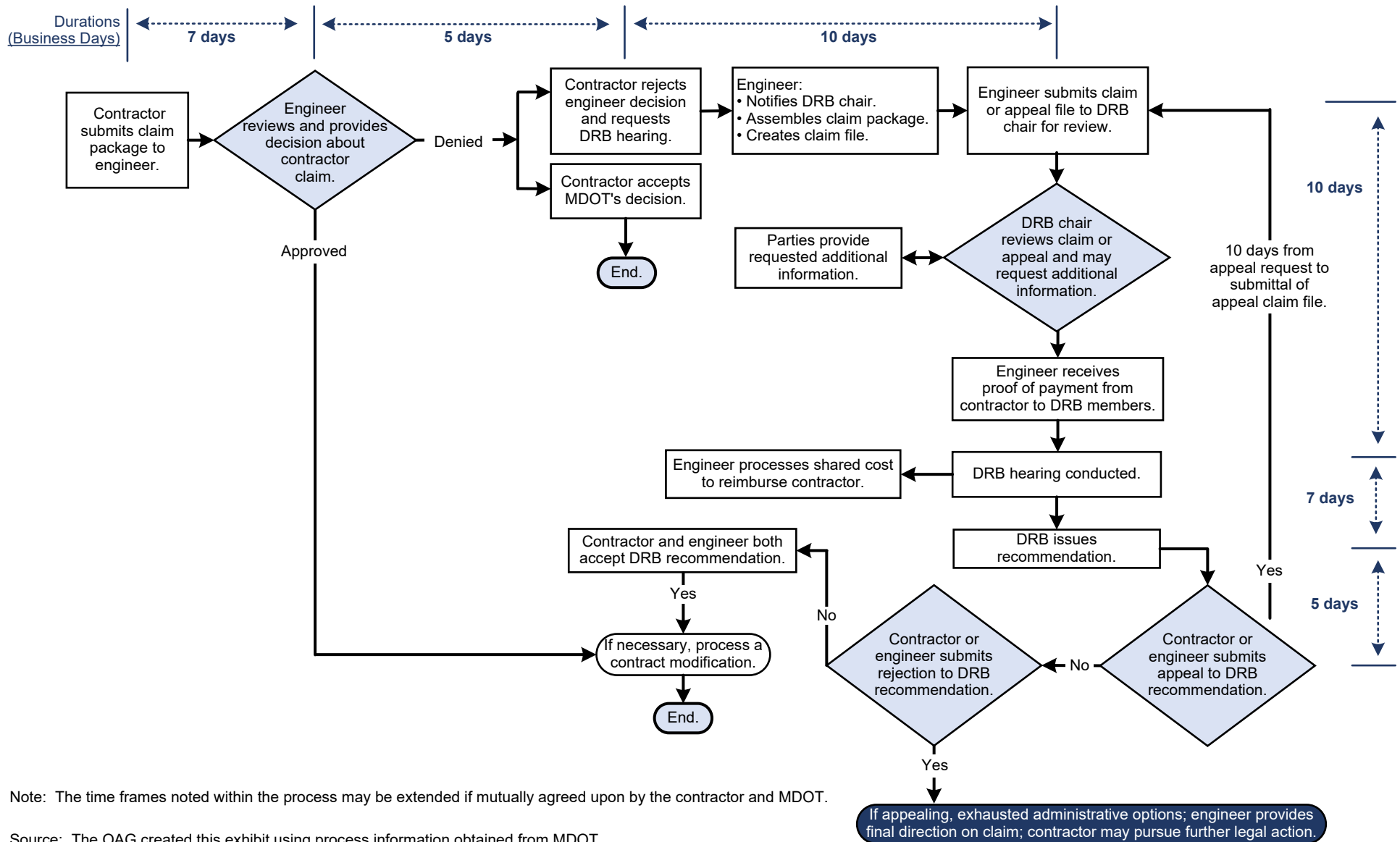
## CONSTRUCTION CONTRACTOR CLAIM PROCESS Michigan Department of Transportation (MDOT)

### Claim Process



Source: The OAG created this exhibit using process information obtained from MDOT.

**CONSTRUCTION CONTRACTOR CLAIM PROCESS**  
Michigan Department of Transportation (MDOT)  
**Dispute Review Board (DRB) Process Flowchart**



Note: The time frames noted within the process may be extended if mutually agreed upon by the contractor and MDOT.

Source: The OAG created this exhibit using process information obtained from MDOT.

CONSTRUCTION CONTRACTOR CLAIM PROCESS  
Michigan Department of Transportation

Summary of DRB Activity for Active Projects by Region

Region	Projects in Region	Number of		Total Meeting and
		Progress Meetings	Hearings	Hearing Costs
Bay Region	7	58	5	\$ 229,500
Grand Region	2	10	0	35,000
Metro Region	14	89	7	360,500
North Region	7	15	1	60,000
Southwest Region	2	14	0	49,000
Superior Region	1	2	0	7,000
University Region	10	70	4	275,000
Total	43	258	17	\$1,016,000

Note: This summary includes projects active from August 1, 2021 through May 31, 2023.

Source: The OAG prepared this exhibit using data obtained from MDOT.



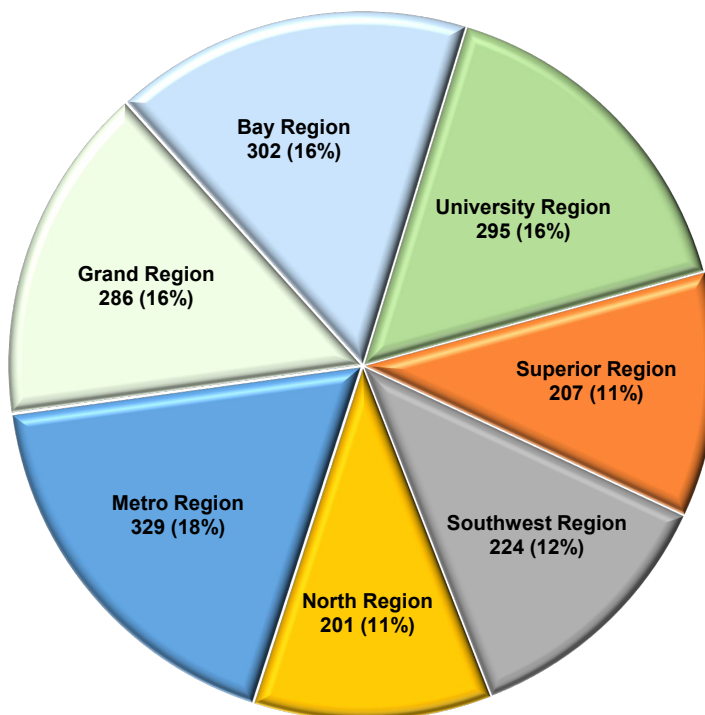
**CONSTRUCTION CONTRACTOR CLAIM PROCESS**  
Michigan Department of Transportation

Summary of Changes to Active Construction Projects by Region

A. Change in Original Award and Current Award Costs Due to Contract Modifications\* by Region

Region	Total Contract Costs		Percentage of Total Current Award	Increase (Decrease)	Percentage of Award Change
	Original Award	Current Award			
Bay Region	\$ 1,049,456,091	\$ 1,081,496,538	13.0%	\$ 32,040,446	3.1%
Grand Region	676,180,112	694,276,620	8.3%	18,096,509	2.7%
Metro Region	2,851,969,930	2,942,418,824	35.2%	90,448,894	3.2%
North Region	416,056,739	414,949,358	5.0%	(1,107,381)	(0.3%)
Southwest Region	869,625,822	876,119,021	10.5%	6,493,199	0.7%
Superior Region	383,392,972	384,610,041	4.6%	1,217,068	0.3%
University Region	1,916,164,732	1,955,664,766	23.4%	39,500,035	2.1%
<b>Total</b>	<b>\$ 8,162,846,399</b>	<b>\$ 8,349,535,168</b>	<b>100.0%</b>	<b>\$ 186,688,770</b>	<b>2.3%</b>

B. Number (Percentage) of Total Projects by Region



Note: This summary includes projects active between August 1, 2021 and May 31, 2023.

\* Includes any contractor claims.

Source: The OAG prepared this exhibit using data obtained from MDOT.

## PROCESS DESCRIPTION

---

MDOT's construction contractor claim process provides a formalized, tiered process for the submittal and review of contractors' claims. Claims, which may provide contractors additional compensation and/or time, represent the administrative remedy for resolution within the department, rather than pursuing legal action. The DRB process evaluates and provides recommendations as to the entitlement of claims arising out of work on limited projects. If appropriate, MDOT incorporates the DRB special provision within the contract language.

The claim process involves MDOT central office's CFS Division, 7 region offices, and 23 TSCs within MDOT:

- CFS Division's responsibilities include development and distribution of construction specifications, quality control/quality assurance programs, and construction staff guidance. The CFS Division provides specialized engineering expertise to the regions and other divisions and maintains testing laboratories for all types of highway materials. Designated CFS Division staff oversee the DRB process, including candidate applications and progress meeting and hearing tracking.
- Region offices direct and oversee the transportation related construction, maintenance, and geographical programs as well as provide an additional level of review for contractors to appeal to when they disagree with the TSC's claim decision.
- TSCs respond to local transportation needs including permitting, maintenance, and urgent transportation issues. TSC engineers are generally the first level in evaluating NOIs and claim requests.

MDOT's Construction Manual Section 104.10 requires contractors to exhaust all its administrative remedies before proceeding to the court of claims and provides MDOT with the authority to determine whether the contractor has exhausted its remedy at any level. A contractor's written acceptance of an administrative panel's decision on a claim constitutes a settlement of the claim and bars a contractor from pursuing further legal action against MDOT on the settled claim item.

Between August 1, 2021 and May 31, 2023, MDOT had 1,844 active construction contracts with the original award amounts totaling \$8.2 billion (see Exhibits 4A and 4B).

## AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

---

### AUDIT SCOPE

To examine MDOT's construction contractor claim process and related records. We conducted this performance audit\* in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As part of the audit, we considered the five components of internal control (control environment, risk assessment, control activities, information and communication, and monitoring activities) relative to the audit objectives and determined all components were significant.

### PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered August 1, 2021 through May 31, 2023.

### METHODOLOGY

We conducted a preliminary survey to gain an understanding of MDOT's process for handling construction contractor claims to establish our audit objective and methodology. During our preliminary survey, we:

- Interviewed MDOT management, staff, and selected DRB members to gain an understanding of their roles and responsibilities and the internal control significant to the potential audit objective.
- Reviewed MDOT policies and procedures related to the contractor claim, DRB, and contract modification processes.
- Analyzed construction contract data from August 1, 2021 through February 23, 2023 to determine the significance of contract modifications, including contractor claims, to MDOT's total construction costs.
- Performed limited testing of selected projects with a Form 1953 submitted from August 1, 2021 through February 15, 2023 to determine whether MDOT and contractors followed MDOT's procedural requirements and the sufficiency of supporting documentation.

\* See glossary at end of report for definition.

- Reviewed a sample of active construction projects with DRB involvement to determine whether MDOT, contractors, and DRB members followed MDOT's procedural requirements.
- Reviewed and compared other states' DRB processes with MDOT's policies and procedures.

## OBJECTIVE

To assess the sufficiency of MDOT's efforts to administer the construction contractor claim process.

To accomplish this objective, we:

- Randomly sampled 25 of 99 construction projects with 1 or more contractor-submitted claims from August 1, 2021 through May 31, 2023 to determine whether MDOT:
  - Received NOIs and Form 1953s in a timely manner.
  - Provided a documented response to the contractor's claim within 30 days.
  - Maintained adequate and appropriate documentation, such as forms, supporting documents, responses, and agreements.
  - Sufficiently processed and approved construction contract modifications reflecting its claim decision.
- Randomly sampled 11 of 59 judgmentally compiled construction projects with contract modifications but no claims from August 1, 2021 through April 3, 2023 to determine if the contract modifications appropriately circumvented the claim process.
- Randomly sampled 4 of 11 construction projects with an ROR and/or COR completed from August 1, 2021 through May 31, 2023 to determine whether MDOT met required time frames and followed select ROR and/or COR procedural requirements.
- Reviewed MDOT's DRB spreadsheet and progress meeting documentation in ProjectWise for 43 projects active during the audit period to determine the sufficiency of its tracking methodology and completeness of project documentation.
- Analyzed the DRB member selection to identify member utilization and hearing outcome trends.

We used random samples to eliminate any bias and enable us to project the results to the populations.

## **CONCLUSIONS**

We base our conclusions on our audit efforts and any resulting material conditions\* or reportable conditions.

When selecting activities or programs for audit, we direct our efforts based on risk and opportunities to improve State government operations. Consequently, we prepare our performance audit reports on an exception basis.

## **AGENCY RESPONSES**

Our audit report contains 1 finding and 1 corresponding recommendation. MDOT's preliminary response indicates it agrees with the recommendation.

The agency preliminary response following the recommendation in our report was taken from the agency's written comments and oral discussion at the end of our fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

## **SUPPLEMENTAL INFORMATION**

Our audit report includes supplemental information presented as Exhibits 1 through 4. Our audit was not directed toward expressing a conclusion on this information.

\* See glossary at end of report for definition.

## **GLOSSARY OF ABBREVIATIONS AND TERMS**

---

<b>CFS</b>	Construction Field Services.
<b>change</b>	The difference between the contract requirements at the time of bid and the actual requirements imposed during construction.
<b>claim</b>	A contractor's request for additional compensation and/or time extension from MDOT when the contractor does not agree with the engineer's decision regarding the compensation for work performed and/or time required to complete work operations.
<b>contract</b>	A written agreement between MDOT and the contractor setting forth the obligations of the parties for the performance of and payment for the prescribed work.
<b>contract modification</b>	A mutually agreed upon change or addition to an existing contract.
<b>contractor</b>	An individual or a legal entity contracting with MDOT to perform prescribed construction work and supply materials.
<b>COR</b>	central office review.
<b>dispute review board (DRB)</b>	A three-person panel utilized on specific construction contracts including a special provision establishing a DRB for the project. DRBs should meet periodically to discuss emerging issues and resolve disputes before they escalate to a claim. DRBs conduct hearings and issue recommendations upon a contractor's request when they disagree with the engineers' claim decision.
<b>engineer</b>	An individual classified as an engineer who is: <ul style="list-style-type: none"><li>• The director of MDOT, or is designated by the director, acting directly or through authorized representatives, who is responsible for engineering supervision of the construction when the State of Michigan is the awarding authority.</li><li>• Representing the county when a county is the awarding authority.</li><li>• Representing the city or village when a city or village is the awarding authority.</li></ul>

<b>Form 1953</b>	A claim content and certification form MDOT requires contractors to submit to request additional compensation and/or time extensions.
<b>hearing</b>	A structured meeting conducted by a DRB to review the claim file materials, hear oral testimony from a contractor and engineer, and issue a recommendation for the claim.
<b>internal control</b>	The plan, policies, methods, and procedures adopted by management to meet its mission, strategic plan, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It also includes the systems for measuring, reporting, and monitoring program performance. Internal control serves as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.
<b>material condition</b>	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program. Our assessment of materiality is in relation to the respective audit objective.
<b>MDOT</b>	Michigan Department of Transportation.
<b>notice of intent (NOI)</b>	Written correspondence from a contractor to MDOT giving notice of its intent to file a claim. The NOI should include a concise description of the claim and identify the contract requirement in dispute. If a contractor is seeking additional compensation, they must notify the engineer before beginning the work or upon encountering the circumstance that is the basis of the claim or within three calendar days after the beginning of a delay for which the contractor intends to seek compensation.
<b>performance audit</b>	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision-making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

<b>progress meeting</b>	A periodic meeting of the DRB, representatives from MDOT, and the contractor to allow the DRB to become familiar with the project work, construction operations, time frames, and issues.
<b>ProjectWise</b>	A system used by MDOT for construction document management. MDOT requires staff and contractors to maintain project documentation including, but not limited to, claim activity, RORs and CORs, and DRB progress meetings and hearings in ProjectWise.
<b>reportable condition</b>	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: a deficiency in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements; opportunities to improve programs and operations; or fraud.
<b>ROR</b>	region office review.
<b>TSC</b>	transportation service center.











**Report Fraud/Waste/Abuse**

Online: [audgen.michigan.gov/report-fraud](http://audgen.michigan.gov/report-fraud)

Hotline: (517) 334-8070