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## NOTICE OF INTENT TO FILE A CLAIM/CONTRACTOR CLAIMS

This section provides guidance for dealing with the receipt of a “Notice of Intent to File a Claim” (NOI) from a contractor and subsequent contractor claims. This section also provides guidance in the review, analysis, resolution and defense of contractor claims as well as the use of CARS to track and document claims.

The procedures outlined in this section are intended to be used by North Dakota Department of Transportation (NDDOT) personnel and consultants responsible for handling and processing NOI’s and contractor claims on NDDOT construction projects. These are meant to be general guidelines only. Each NOI and contractor claim is unique and may require variations of these procedures.

This section is not part of any NDDOT contract. In the case of a discrepancy between contract documents and this section, the contract documents shall govern.

Refer to the [2014 Standard Specifications for Road and Bridge Construction](#) for additional information regarding NOI’s and Claims. Any questions should be referred to Construction Services Division at (328-2568).

## GETTING STARTED

### Purpose

The purpose of the NOI/Claims module in CARS is to provide users a method of storing and retrieving NOI’s and Claims information for construction projects. All NOI and Claims received must be tracked using the CARS module. Project, District, and NDDOT Central Office personnel will be able to readily retrieve information to view and create reports to assist in tracking NOI’s and Claims. In addition, users will have the ability to retrieve historical information which may assist in identifying District and Statewide trends.

### Definitions

- **Claimant:** A claimant may be either the Prime Contractor or a Subcontractor. However, if notice is provided by a Subcontractor it must be submitted through the Prime Contractor.
- **NOI:** Notice of Intention to File a Claim ([SFN 16743](#)) must be submitted in accordance with Section 104.04 of the Standard Specifications.
- **Claim:** Claims must be submitted in accordance with Section 104.05 of the Standard Specifications.
- **Filing** - A Filing refers to an unresolved issue or dispute for which Verbal Notice, Written Notice, and/or a Claim has been submitted. A Filing may be in the Verbal, Written, or Claim Stage.
- **Filing Group** - A Filing Group is synonymous with a Filing and is used to describe a Filing and the Stages that the Filing will proceed through until resolution. The Filing Group can be seen on the right hand side of the screen and is used in creating a new Filing ([See Figure 1.06 below](#)). Each dispute or project issue will have its own Filing Group. Separate disputes or issues are numbered sequentially. i.e. Filing #:1, Filing #2, etc., on the Claim Filings screen ([See Figure 1.03 below](#)).
- **Stage:** Refers to the Stage that a Filing is in ([See Figure 1.03 below](#)).
- **Status:** Refers to the Status that the Stage of the Filing is in. For example, if an NOI has been submitted, all work has been completed as included in the NOI, and all documentation has been received within 30 calendar days of completing the work, as outlined in Section 104.04 B of the

Standard Specifications, then the Status would be displayed as shown in [Figure 1.02](#) below. The intent is for the user to be able to identify the current Status of each Filing on the Claim Filings screen ([See Figure 1.03 below](#)).

The available Statuses for each Stage are as follows:

- Stage 1: Verbal
  1. Status: Receipt (Open)
  2. Status: Receipt (Closed)
  3. Status: Receipt (Withdrawn)
- Stage 2: Written
  1. Status: Receipt (Open)
  2. Status: Receipt (Withdrawn)
  3. Status: Pending Issues (Open)
  4. Status: Pending Issues (Withdrawn)
  5. Status: Pending Documentation (Open)
  6. Status: Pending Documentation (Withdrawn)
  7. Status: Pending Review (Open)
  8. Status: Pending Review (Withdrawn)
  9. Status: Pending Engineer Decision (Open)
  10. Status: Pending Engineer Decision (Withdrawn)
  11. Status: Pending Contractor Decision (Open)
  12. Status: Pending Contractor Decision (Withdrawn)
  13. Status: Contractor Decision (Open)
  14. Status: Contractor Decision (Withdrawn)
  15. Status: Contractor Decision (Closed)
- Stage 3: Claim
  1. Status: Receipt (Open)
  2. Status: Receipt (Withdrawn)
  3. Status: Pending Review (Open)
  4. Status: Pending Review (Withdrawn)
  5. Status: Pending Engineer Decision (Open)
  6. Status: Pending Engineer Decision (Withdrawn)
  7. Status: Pending Contractor Decision (Open)
  8. Status: Pending Contractor Decision (Withdrawn)
  9. Status: Pending Arbitration/Mediation (Open)
  10. Status: Pending Arbitration/Mediation (Withdrawn)
  11. Status: Arbitration/Mediation (Open)
  12. Status: Arbitration/Mediation (Withdrawn)
  13. Status: Arbitration/Mediation (Closed)

Figure 1.02

<b>Filing #: 11</b>	<b>Claimant: Dot Test Contractor</b>	
Projects linked to this filing: 19201,19321		
Stage: Written	Date Received: 04/15/2015	Status: Pending Review (Open)

Individual Filing from the Claim Filings screen

Figure 1.03

<i>Construction Automated Records System</i>		
Project: DOT TEST PROJECT		
SubProject: 1 - WIDENING, MINE & BLEND, SELECT REGRADE, HOT BITUMI		
<b>Claim Filings &lt;&lt;</b>		
<b>Prime Contractor: Dot Test Contractor</b>		
<b>Contractor Filings</b>		
<b>Filing #: 1</b>	<b>Claimant: Dot Test Contractor</b>	
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/10/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 02/18/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 02/19/2015	Status: Pending Contractor Decision (Open)
<b>Filing #: 2</b>	<b>Claimant: Dot Test Contractor</b>	
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/10/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 02/25/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 03/13/2015	Status: Arbitration/Mediation (Open)

Claim Filings screen with two Filing Groups

## NOTICE OF INTENT

North Dakota Century Code Title 24 and Section 104.04 A of the Standard Specifications requires submission of a written NOI if the contractor contends that additional compensation is due for work and/or material not clearly covered in the contract. Prior to beginning the work on which the claim will be based, the contractor must immediately notify the engineer in writing of the intent to make a claim for additional compensation.

### Verbal Notice

If the basis of the claim is not apparent until the contractor has started the work and it is not practical to stop the work, the contractor will immediately verbally notify the engineer that the work is continuing. A Written Notice must be submitted within 10 calendar days of Verbal Notice. Refer to Section 104.03 in the NDDOT Standard Specifications for more information regarding notice.

NDDOT specifications require that the NOI be submitted on [SFN 16743](#) Notice of Intent to File a Claim.

Reasons for requiring an NOI include, but are not limited to, the following:

- Allows the Engineer the opportunity to keep strict account of the actual costs of any alleged extra work. North Dakota Century Code requires that the contractor “. . . afford the engineer facilities and assistance in keeping strict account of actual costs. . .” on the work performed.
- Permits early investigation by the owner into the conditions identified in the notice while evidence is still readily available.
- Allows the owner to consider construction alternatives to limit, or altogether eliminate, additional costs.

A Contractor may also withdraw a Verbal Notice at any time. The Engineer should request that the Contractor provide a letter stating the Contractor’s intention to waive their right to any additional compensation and/or time regarding the issue.

### Receipt of a Notice of Intent to File a Claim

#### Initial Response

Upon receipt of an NOI, the Engineer will notify and send an electronic copy of the submitted paperwork to the Construction Services Division. The Engineer will use CARS to track the NOI. The Engineer will review the NOI to ensure it is complete and the notice items are clearly defined. The Engineer should acknowledge receipt of the NOI in writing to the Contractor and indicate the date it was received.

In some cases the claim items in the NOI may not be clearly defined or the NOI may be incomplete. This makes it difficult if not impossible for the Engineer to monitor and investigate the situation. The NOI should then be returned to the Contractor with a cover letter from the Engineer indicating the date of receipt and requesting that the NOI be properly submitted with, if applicable, additional information. If appropriate, the Engineer may want to address such issues as timeliness of filing the NOI, agreement, partial agreement or disagreement with the issues outlined in the NOI.

### Field Documentation

Subsequent to an NOI being received from the contractor additional documentation of field conditions may be required to measure any possible impacts. Project personnel should be aware when conditions on the project have changed, are different from conditions anticipated in the plans, or are different from what would be expected in the normal course of performing a type of work. Project supervisors should keep the district administration informed about issues arising on the project.

Pictures and videos are important record keeping methods and should be utilized by project personnel whenever a claim or potential claim situation arises on a project. Sufficient photos and video footage should be taken of the area in question to completely describe the situation pictorially. The photos and videos may also include other work being performed by the contractor.

The date, time and location of pictures or video footage taken should be logged in the project records. The printed name, title and signature of the person taking the pictures or video footage should also be included in the applicable project records. A description of what each photo is showing, the date, time and project number should be noted on the back of each photo. Video footage should be narrated and should include the project number, date, time, location, a brief description of the situation and the name of the person taking the video. If the still and/or video camera have a date/time stamp, it should be set and incorporated into the media.

Thorough documentation of a claim includes a list of all the contractor's equipment, material and manpower. After notice is received, whether verbally or in writing, field personnel must immediately begin recording all aspects of the contractor's operation as detailed in 104.03 A.2. At a minimum, these records should document exact working hours of contractor staff and equipment and the execution of the work by the contractor including any down time and should note any inefficiencies.

In addition to the normal diary entries, keeping a daily equipment list is recommended for documentation of the contractor's equipment and manpower. Important items in documentation of the contractor's equipment are:

- An accurate record of working hours
- The item of work performed during those hours by each piece of equipment
- The location of the work performed
- Any down time hours for idled equipment.
- Detailed information on the equipment to include type, year, make, and model.

Attachment 1 at the end of this section is a "Contractor Daily Equipment and Labor" worksheet. This worksheet may be used by project personnel to record the contractor's daily equipment usage and labor hours. An Excel version of the worksheet is available on the Department's website.

Claims that involve state optioned pits require extra documentation. If it becomes apparent that a state optioned pit may not yield the quality and/or quantity shown in the pit plats, field personnel should notify the Materials and Research Engineer and the Construction Services Division. In addition to keeping track of the contractor's operation as outlined previously, the District Materials Coordinator will immediately go to the pit and take samples of the material produced. If the problem in the pit continues, additional samples will be taken in order to document the quality of unprocessed and processed material. Attachment 2 at the end of this section, "Contractor Daily Equipment, Labor, and Materials – Crushing / Aggregate Production", can be used for recording the crushing operation.

### Documentation Submittal

Within 30 calendar days of the completion of work included in the NOI, the Contractor is required to submit the total amount of additional compensation requested and a detailed explanation of the requested compensation. For an NOI involving time, the Contractor must also submit specific days requested and an analysis of the construction schedules as a basis for the request. The contractor may request a meeting to discuss the NOI. This meeting must be held within 30 days of the Department receiving the request.

### Review of the NOI

The NOI and documentation should be reviewed using the 4 steps outlined in section [Review and Analysis of the Claim](#)

Time limits may be extended, as defined under the Dispute Resolution process outlined in Section 104.04 B, if mutually agreed upon.

### Engineer's Response to the NOI

The Engineer will issue written response to the Contractor no more than 30 days after receiving documentation or holding a meeting.

### Draft Response Letter Disclaimer

It is likely that multiple draft versions of an NOI or Claim response letter will be shared between the Engineer, the District, and Construction Services Division prior to the written response being sent to the Contractor. The draft response must contain the following disclaimer language until the letter is in its final version:

*"The draft response or analysis included herein does not represent an endorsement of the merit of the Contractor's claim(s) or an officially approved position of the North Dakota Department of Transportation. The North Dakota Department of Transportation reserves the right to invoke any and all applicable defenses to Contractor's claim(s), and the exclusion or omission of any applicable Contract provision, Standard Specification, Supplemental Specification or provision of state or federal law herein shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or any provision of the Contract."*

The draft letter should also contain a "DRAFT" watermark. The disclaimer and "DRAFT" watermark are removed before sending the final version of the written response to the Contractor.

### Authority to settle

The authority to settle an NOI issue or contractor's claim is as follows:

- Project Engineer – Less than or equal to \$10,000
- Team Leader – Less than or equal to \$20,000
- District Engineer – Less than or equal to \$100,000
- Office of Operations Director – Greater than \$100,000\*

\*Resolutions over \$500,000 will be signed by the Office of Operations Director but will require verbal approval from the Deputy Director for Engineering.

These authorities may be revised by a higher authority on a specific issue. Items that fall within the administrative authority of the Project Engineer, District Engineer or Director of Operations will be referred to higher levels when the proposed resolution is rejected by the contractor.

### Approval of the NOI Issue

If the Engineer has reviewed the NOI and approves granting the requested additional compensation and/or time related to the NOI, a change order is prepared detailing the terms of the settlement. Documentation for the change order must include sufficient detail to justify the amount of the settlement and at a minimum, must include the analysis used to assign and determine damages. The change order should include a release clause to protect the NDDOT from any further liability or claims regarding the issues outlined in the NOI. Attachments 3-5 at the end of this section show examples of different types of release clauses which have been used on NDDOT projects. These may be used by project personnel as a basic template but the wording may need to be modified to fit the given situation.

### Partial Approval of the NOI Issue

The Engineer has reviewed the NOI and believes granting additional compensation and/or time is partially justified. A change order is processed as detailed in the above paragraph.

### Disapproval of the NOI Issue

After the issues outlined are reviewed and analyzed and it is determined that the contractor's NOI does not have merit, the engineer will respond appropriately to the contractor. The response should list each item in the NOI and the reason the NDDOT does not agree that additional compensation is due. This should be done by using the contract documents to justify the department's position. If the issues in the NOI are ongoing and NDDOT personnel must continue keeping strict account of the contractor's work to protect the state's interests, the engineer should request that the NOI be formally rescinded in writing by the contractor. If the contractor refuses to rescind the NOI, then the issues are not resolved and project personnel should continue keeping strict account of the contractor's work until all work related to the issues outlined in the NOI are complete.

### Contractor Response

If the Contractor agrees with the Engineer's decision he should sign the change order and withdraw the NOI in writing.

If the Contractor disagrees with the Engineer's decision, he may pursue a claim in accordance with Section 104.05.

If an NOI remains unresolved, it is critical that project personnel continue keeping strict account of the

contractor’s work until all NOI related items of work are complete. Once this is done, the records should be filed and categorized so they are easily retrievable later. The file should also include copies of any previous correspondence, evaluation, analysis, or any other work done in connection with the NOI. If the contractor does file a claim related to the NOI, these records will be key in evaluating the contractor’s claim, formulating the Department’s position in response to the claim, and ultimately in preparing and executing the defense should the claim go to arbitration.

## CREATING AN NOI OR CLAIM IN CARS

Create a new Filing in the NOI/Claims tracking module in CARS each time a notice or Claim is received from the Contractor. All known information should be promptly entered into CARS and the Filing must be updated as the notice or Claim progresses.

1. The first step, upon receiving a Verbal or Written Notice, is to create a new Filing Group. The ‘Create New Filing Group’ option is found on the right-hand side of the Claim Filings screen (See [Figure 1.06 below](#)).
2. The Prime Contractor and approved Subcontractors are listed in the ‘Claimant Name:’ drop-down menu (See [Figure 1.06 below](#)). Select the Claimant’s name from the menu and click ‘Create’.
3. You will then be prompted to select one of three Types or Stages for the Filing (See [Figure 1.04 below](#)). Select the applicable Stage and click ‘Add Notice/Claim’. Each Stage is explained in further detail later in this manual.

**Figure 1.04**

### The ‘Add Filing’ link

The ‘Add Filing’ link, located under the Filing Status toward the right of the Claim Filings screen, is used to add the next Stage to the Filing Group. For example: If a Verbal Notice has been created and a Written Notice is received, the ‘Add Filing’ link is used to advance the Verbal Notice to the Written Notice Stage and add it to the Filing Group.

**Figure 1.05**

<b>Filing #: 3</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/28/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 03/05/2015	Status: Pending Issues (Open)

The Add Filing button is used to add the next Stage to the Filing Group

A new Filing is created for each separate issue or dispute. To create a new Filing, select the Contractor’s name from the ‘Create New Filing Group’ drop-down menu and click ‘Create’. Filing #2 will now be visible on the Claim Filings screen (See [Figure 1.06 below](#)).

Figure 1.06

*Construction Automated Records System*

Project: DOT TEST PROJECT  
SubProject: 1 - WIDENING, MINE & BLEND, SELECT REGRADE, HOT BITUMI

**Claim Filings <<**

**Prime Contractor: Dot Test Contractor**

Contractor Filings		
<b>Filing #: 1</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/10/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 02/18/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 02/19/2015	Status: Pending Contractor Decision (Open)
<b>Filing #: 2</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/10/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 02/25/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 03/13/2015	Status: Arbitration/Mediation (Open)

**Create New Filing Group**

Claimant Name:

Two Filing Groups have been created for this example project

A Filing whose Status is shown as (Open) can be edited by clicking anywhere on the row of the Stage of the Filing to be edited. A Filing whose Status is complete will be shown as (Closed). Once an issue or dispute has been resolved, the Filing Status will be shown as 'Filing Status: Not Active' (See Figure 1.07 below).

Figure1.07

**Claim Filings <<**

**Prime Contractor: Dot Test Contractor**

Contractor Filings		
<b>Filing #: 1</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/10/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 02/18/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 02/19/2015	Status: Pending Contractor Decision (Open)
<b>Filing #: 2</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Not Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/10/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 02/25/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 03/13/2015	Status: Arbitration/Mediation (Closed)

### Verbal Notice in CARS

If a Verbal Notice is not received prior to receiving a Written Notice, the Verbal Notice Stage of the CARS module can be skipped.

The Verbal Notice Stage is broken up into two steps or sections as follows (See Figure 1.08 below):

1. Receipt
2. Complete

Figure 1.08

**Verbal Notice (Open)** [Update Filing Status](#)

**Receipt**

**Date of Verbal Notice**

**Date Issues Started**

**Available Claim Types**

- Adverse Weather
- Cardinal Change
- Change in Method
- Change in Scope
- Constructive Acceleration
- Contractor Caused Delay
- Defective Drawings
- Defective Plans; Specifications
- Delay in Delivery of Materials
- Designer Caused Delay
- Differing Site Condition - Type I
- Differing Site Condition - Type II
- Directed Acceleration

**Applicable Claim Types**

**Comments**

**Complete**

The Verbal Notice Stage

### Receipt

The Receipt section is used to enter information related to the Verbal Notice. Enter the information required in the section, but only click 'Continue' if the entered dates are correct. After clicking 'Continue', the dates contained in the Receipt section will be locked. Clicking 'Save & Finish Later' will save the information, but allow the user to return to edit the information if needed. In the Receipt section, the user must enter all information and click 'Continue' in order to advance to the Complete section.

### Complete

The purpose of the Complete section is to convert the Status of the Verbal Notice in the Claim Filings screen from (Open) to (Closed) ([See Figure 1.09 below](#)). The Verbal Notice should be converted to (Closed) when:

1. Ten days pass without the issuance of a Written Notice or
2. A Written Notice is received; in which case the Verbal Notice is closed and a Written Notice is opened.

Once received, the Verbal Notice can be withdrawn by clicking on ‘Update Filing Status’ as shown in [Figure 1.08 above](#) if the contractor decides to withdraw it. The user is then prompted to enter the date withdrawn and to provide any comments such as how it was withdrawn. The Filing Status will then be displayed as ‘Receipt (Withdrawn)’ on the Claim Filings screen.

Figure 1.09

The screenshot shows a web interface for a 'Verbal Notice (Open)'. At the top right, there is a link for 'Update Filing Status'. Below this, the status is 'Receipt' with a green checkmark. A 'Complete' button is visible. A 'Comments' section contains a text area with the text: 'The contractor has filed a written notice within the 10 day time period allowed by Specification.' At the bottom, there are three buttons: 'Complete', 'Save and Finish Later', and 'Cancel'.

The comments field can be used to explain why the Verbal Notice is being closed.

#### Helpful Hints:

1. ‘Date of Verbal Notice’ refers to the date a Verbal Notice was received. A Contractor may claim that the ‘Date Issues Started’ was earlier than the ‘Date of Verbal Notice’, but the Contractor may only be entitled to additional compensation beginning from the date of Verbal Notice, unless the Contractor can prove that constructive notice was given or should have been evident earlier on.
2. Users can select multiple Claim types under the ‘Available Claim Types’ by selecting a Claim type and holding down the ‘Ctrl’ button on the keyboard while selecting additional Claim types or by selecting one at a time and clicking the ‘>’ symbol. Conversely, the user can highlight claim types under the ‘Applicable Claim Types’ and remove them from the list by clicking the ‘<’ symbol (See Figure 1.10 below).

Figure 1.10

**Receipt** ✓

**Date of Verbal Notice**  
04/22/2015

**Date Issues Started**  
04/15/2015

**Available Claim Types**

- Defective Drawings
- Defective Plans; Specifications
- Delay in Delivery of Materials
- Designer Caused Delay
- Differing Site Condition - Type I**
- Differing Site Condition - Type II
- Directed Acceleration
- Early Occupancy
- Extra Work**
- Force Majeure
- Higher Standards
- Impractical or Impossible
- Increase or Decrease in Quantities**
- Material Breach

**Applicable Claim Types**

- Differing Site Condition - Type I
- Extra Work
- Increase or Decrease in Quantities

Clicking 'Save and Finish Later' saves the work, but allows the user to return to the Filing to edit information later. The 'Save and Finish Later' button should be used in place of the 'Continue' or 'Complete' button until the user is sure that the information is accurate ([See Figure 1.08 & Figure 1.09 above](#)).

3. Clicking 'Continue' locks the dates to editing but 'Available Claim Types' and 'Comments' can still be edited after clicking 'Continue'.
4. The NDDOT Help Desk (701-328-4357) must be contacted to unlock fields which have been locked to editing.
5. After clicking 'Complete', a dialog box will pop up to remind the user that the following action cannot be undone without contacting the NDDOT Help Desk (See Figure 1.11 below). The purpose of completing the notice is to convert the Status of the Verbal Notice from (Open) to (Closed) for tracking purposes. The Status is shown on the Claim Filings screen ([See Figure 1.07 above](#)).

Figure 1.11

**Complete**

**Warning:** Filing will be locked to editing once the user selects Ok.

Cancel Ok

## Written Notice in CARS

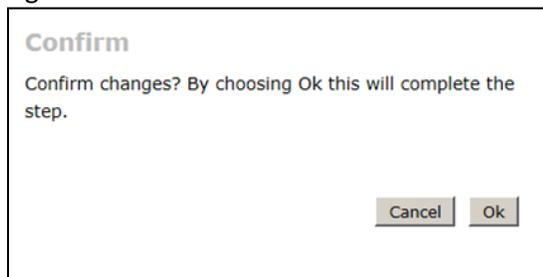
### Background

The Written Notice Stage is divided into 7 steps or sections. The sections were designed to correspond with the progression of the NOI process:

1. Receipt
2. Issues
3. Documentation
4. Review
5. Engineer Decision
6. Contractor Decision
7. Complete

As with the Verbal Notice Stage, the bottom of each section contains options for 'Continue', 'Save and Finish Later', and 'Cancel.' Clicking 'Continue' will advance the user to the next section, but will also cause some items (such as dates) to be locked to editing ([See Figure 1.12 below](#)). If dates are unclear while entering information into the Filing, click 'Save and Finish Later' until dates are firmly established. Some information, such as the comment box, can still be edited after clicking 'Continue' and advancing to the next section.

Figure 1.12



Dates will lock upon completion of the step

### Receipt

The Receipt section is used to enter general information about the NOI.

- Date of Verbal Notice: Enter the date that the Verbal Notice was received. If a Verbal Notice has been previously entered for the Filing, the date will be populated automatically.
- Date of Written Notice: Enter the date that the Written Notice was received.
- Contract Adjustment Requested: This information may be left blank if unknown at the time the Written Notice is first entered. The user can still edit this information after clicking 'Continue' and moving onto the next section.

## Issues

**Date Issues Ended:** The date of the completion of work included in the NOI as described in Section 104.04 B of the Standard Specifications. The 'Date Issues Ended' cannot be edited after clicking 'Continue' (See Figure 1.14 below).

Figure 1.14

The screenshot shows a web form titled 'Receipt' with a green checkmark icon. Below the title is a section labeled 'Issues'. Inside this section, there is a label 'Date Issues Ended' followed by a single-line text input field. Below that is a label 'Comments' followed by a multi-line text area with a vertical scrollbar on the right. At the bottom of the form, there are three buttons: 'Continue', 'Save and Finish Later', and 'Cancel'.

## Documentation

This section refers to the documentation described in Section 104.04 B of the Standard Specifications. The 'Documentation Due Date' is automatically calculated based on the 'Date Issues Ended' entered in the preceding section (See Figure 1.14 above). If documentation is not received before the documentation due date, this does not end the NOI reporting process. Click 'Not Received' and 'Continue' to proceed to the next section.

## Review

The Review section contains a series of questions to assist the Engineer in determining whether all requirements for a properly submitted NOI have been met (See Figure 1.16 below).

Figure 1.16

**Receipt** ✓

**Issues** ✓

**Documentation** ✓

**Review**

Was verbal notification provided?  
 Yes  No

If verbal notification provided, was written notification provided on SFN 16743 within 10 days?  
 Yes  No

Is the Contractor requesting an extension to the contract time?  
 Yes  No

Did the Contractor submit Contractor Request for Extension of Contract Time (SFN 14461) per 104.03?  
 Yes  No

Did the Contractor provide proper facilities and assistance in keeping strict account of actual costs in accordance with 104.03?  
 Yes  No

Did the Contractor define the basis for which additional compensation and/or time will be sought for each claim issue?  
 Yes  No

Did the Contractor provide totals for compensation and/or time within the 30 calendar days of completing work outlined in NOI?  
 Yes  No  No, Extension Granted Date of receipt:

Did the Contractor request a meeting to resolve dispute?  
 Yes  No

Yes - arrange meeting within 30 calendar days of request and provide written response within 30 calendar days of meeting. Enter Date of Request:   
 Enter Date of Meeting:

**Comments**

Continue
Save and Finish Later
Cancel

Written Notice Review section

After clicking 'Continue' the Review section can be expanded to show whether the requirements of a properly submitted notice have been met. If all required information has been received, the following information will be displayed if the Review section is expanded ([See Figure 1.17 below](#)).

Figure 1.17

<b>Receipt</b> ✓
<b>Issues</b> ✓
<b>Documentation</b> ✓
<b>Review</b> ✓
<p><b>Properly Submitted?</b> Yes</p> <p><b>Comments</b> No Comments</p> <p><input type="button" value="Edit"/></p>
<b>Engineer Decision</b>

Review section showing properly submitted Written Notice

If the NOI was not properly submitted, the Review section can be expanded to display the reasons the NOI was not properly submitted (See Figure 1.18 below).

Figure 1.18

<b>Review</b> ✓
<p><b>Properly Submitted?</b> No</p> <p>If verbal notification not provided, was written notification provided on SFN 16743 before continuing construction on the affected work? No</p> <p>Did the Contractor submit Contractor Request for Extension of Contract Time (SFN 14461) per 104.03? No</p> <p><b>Comments</b> No Comments</p> <p><input type="button" value="Edit"/></p>

Review section showings an incorrectly submitted Written Notice.

The fields of the Review section can be edited, if needed, by clicking the ‘Edit’ button to return to the previously answered questions in the Review section ([See Figure 1.16 above](#)). The user may also use the ‘Edit’ button to view answers to the previously answered questions when formulating a response to the Contractor.

### Engineer Decision

The Engineer Decision section is used to record the date of the Engineer’s response to the NOI. The Engineer will respond with a letter to the Contractor stating the reasons for approval, partial approval, or disapproval of the NOI.

Figure 1.19

**Engineer Decision**

Date of Engineer's Response

**Decision**

Approved  Partial Approval  Disapproved

**Contract Adjustment**

Amount  Number of Days  Day Type

**Comments**

**Contractor Decision**

### Engineer's Decision Section

The fields in the Engineer Decision section can be edited, if needed, after continuing to the next section.

### Contractor Decision

Three things can happen after the Engineer responds to a Written Notice (NOI):

1. The Engineer's decision is accepted by the Contractor
  2. The Engineer's decision is formally rejected by the Contractor or
  3. The Contractor does not respond
1. **Engineer's Decision is Accepted:**  
If the Engineer approves granting additional time and/or compensation, a change order and settlement agreement is created for the Contractor's signature. Once the Contractor signs the change order and settlement agreement, enter the date of the Contractor's response under the 'Date of the Contractor's Response' and select 'Yes' for 'Engineer's Decision Accepted' (See Figure 1.20 below).

Figure 1.20

**Contractor Decision**

Date of Contractor's Response

Engineer's Decision Accepted  
 Yes  No

Comments

Continue Save and Finish Later Cancel

Contractor Decision Section

The user then clicks 'Continue', advances to the Complete section, enters any comments, and completes the section to change the Status of the Filing to 'Contractor Decision (Closed)'.

If the Engineer's response denies additional compensation and the Contractor accepts this decision, then the NOI should be rescinded by the Contractor in writing. Once received, the Engineer should withdraw the Filing Instead of clicking 'Complete' in the Complete section.

## 2. Engineer's Decision is Rejected:

If the Engineer's response is formally rejected by the Contractor, the user will enter the 'Date of the Contractor's Response' and select 'No' under 'Engineer's Decision Accepted'. Upon completing the Contractor Decision section, the user will click 'Continue' to advance to the Complete section (See Figure 1.21 below). Do not click 'Complete' until either a Claim is filed or 90 days has expired from the submittal of the Final Estimate. The Claim Filings screen will appear as shown in [Figure 1.22](#) below until the user clicks 'Complete'. Clicking 'Complete' will show on the Claim Filings screen a Status of 'Contractor Decision (Closed)'. If a Claim is filed, the Engineer should go to the Claim Filings screen and click 'Add Filing' to advance the Filing to the Claim Stage ([See Figure 1.23 below](#)).

Figure 1.21

**Contractor Decision** ✓

**Date of Contractor's Response:** 04/15/2015  
**Engineer's Decision Accepted:** No

**Comments**  
 A claim was submitted by the Contractor on 4/15/15.

---

**Complete**

**Comments**

---

Contractor Decision and Complete Sections

Figure 1.22

<b>Contractor Filings</b>		
<b>Filing #: 1</b>	<b>Claimant:  </b>	
Projects linked to this filing: 18726,18727		
Stage: Verbal	Date Received: 04/01/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 04/04/2015	Status: Contractor Decision (Open)

The Status of the Written Notice should remain open until a Claim is filed or time limit expires

Figure 1.23

<b>Filing #: 14</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 04/30/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 05/04/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received:	Status: Receipt (Open)

3. Contractor Does Not Respond:

If the Engineer's response to the NOI is not responded to by the Contractor, then the Contractor Decision section should be left blank. The Claim Filings screen will show the Status of the Written Notice as 'Pending Contractor Decision (Open)'. The Filing will remain in this Status until the Written Notice has been rescinded, 90 days expire after submittal of the final estimate, or a Contractor submits a Claim.

If a Claim is filed by the Contractor, complete the Contractor Decision section by entering the date of the Claim under 'Date of Contractor's Response' and check 'No' for 'Engineer's Decision Accepted'. Proceed to the Complete section, enter any comments and select complete. This will convert the Status to 'Contractor Decision (Closed)' on the Claim Filings screen for the Written Notice Stage. The Engineer should then go to the Claim Filings screen and click 'Add Filing' to advance to the Claim Stage (See Figure 1.23 above).

## Complete

The purpose of the Complete section is to change the Status of the Written Notice from (Open) to (Closed). The Status is displayed on the Claim Filings screen to assist the Engineer in tracking unresolved issues or disputes.

A Written Notice displays a Status of (Closed) when:

- An NOI is resolved by Change Order
- 90 calendar days pass after submittal of the final estimate or
- A Contractor files a Claim

Upon clicking 'Complete', a dialog box will pop up to warn the user that the Filing will be locked to editing. Locked notices can only be unlocked by calling the NDDOT Help Desk at 701-328-4357 (See Figure 1.24 below)

Figure 1.24

**Claim Filings** << [Project Filings](#)

**Contractor Filing Group #1 -**  
 Linked Projects: 18726,18727 [Manage Linked Projects](#)

**Written Notice (Open)** [Update Filing Status](#)

Receipt ✓

Issues ✓

Documentation ✓

Review ✓

Engineer Decision ✓

Contractor Decision ✓

**Complete**

**Comments**  
 90 days have passed since the submittal of the final estimate to the contractor. No claim has been filed so the written notice is being converted to closed.

**Complete** **Warning: Filing will be locked to editing once the user selects Ok.**

Complete is the final section in the Written Notice Stage. Clicking 'OK' will close the Filing and lock it to editing.

Clicking 'Ok' will convert the Status to (Closed) on the Claim Filings screen (See Figure 1.25 below).

Figure 1.25

**Claim Filings** <<

Prime Contractor: |

---

**Contractor Filings**

Filing #:	Claimant:	Filing Status:
1	F	Not Active
Projects linked to this filing: 18726,18727		
Stage: Verbal	Date Received: 04/01/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 04/04/2015	Status: Contractor Decision (Closed)

[Add Filing](#)

The completion of the Complete section converts the filing to (Closed) on the CARS NOI/Claim home screen and in tracking reports.

A Contractor may also withdraw a Written Notice at any time. If this is done, the Engineer should request that the Contractor provide a letter stating the Contractor’s intention to waive their right to any additional compensation and/or time regarding the issue. The Written Notice is then withdrawn by clicking on ‘Update Filing Status’ and selecting ‘Withdraw’ (See Figure 1.26 below). The user is prompted to enter the date withdrawn and to provide any comments. For example, if the Engineer has made a decision and the Contractor responds with a letter of withdrawal, the Status of the Filing would be changed to ‘Pending Contractor Decision (Withdrawn)’ (See Figure 1.27 below).

Figure 1.26

**Claim Filings** << [Project Filings](#)

**Contractor Filing Group #3 - Dot Test Contractor**

Linked Projects: 19201,19321

**Written Notice (Open)**

**Update Status**

Withdraw

Date Withdrawn: 05/04/2015

Comments:

---

**Receipt** ✓

**Issues** ✓

**Documentation** ✓

**Review** ✓

**Engineer Decision** ✓

**Contractor Decision** ✓

**Complete**

Comments:

Figure 1.27

Filing #: 7		Claimant: Dot Test Contractor	
Projects linked to this filing: 19201,19321			
Stage: Verbal	Date Received: 02/23/2015	Status: Receipt (Open)	
Stage: Written	Date Received:	Status: Pending Contractor Decision (Withdrawn)	

Shows NOI that was in the Pending Contractor Decision Status before it was withdrawn

## CLAIMS

Section 104.05 of the Standard Specifications is the governing specification for a contractor who submits a claim to the NDDOT. A contractor submitting a claim must do so no later than 90 days after receiving the final estimate from the department.

### Receipt of a Claim

Upon receipt of a contractor claim the engineer should ask the following questions to assure that the contract provisions regarding a claim submittal have been met:

- Was a proper and timely NOI filed by the contractor which covered the issues outlined in the claim?
- Was the claim properly submitted in writing no later than 90 days after the final estimate was submitted to the contractor?
- Does the claim meet the requirements of a properly submitted claim as outlined in Section 104.05 of the Standard Specifications?
- Were the bid documents submitted with the claim as required by Section 104.05 of the Standard Specifications?

If a claim is not properly submitted, the project engineer will respond immediately to the contractor stating that the claim has not been properly submitted and the reasons for that determination. The contractor should also be informed that the 60 day time period for claims < \$3M and 180 day time period for claims ≥ \$3M for the Department to respond will not begin until a claim is properly submitted. If the claim is properly submitted, the department must respond with its position within the above stated time periods upon receipt of the claim. The Construction Services Division should be notified when an NOI or claim has been submitted by a contractor.

### Review and Analysis of the Claim

There are four basic steps to use in the review, analysis and resolution of a contractor claim. These steps should be used for all levels of review beginning with the project engineer. The four steps are:

1. Determine whether or not a change has occurred. Is there a difference between what was required by the contract and what was required during the course of construction? If the answer is no, then that is the owner's position. Go to step 2 if the potential answer is yes.
2. Determine who caused the change or who has liability for the change, the owner or the contractor. If it is determined that the owner caused or is liable for the change, go to step 3.
3. Determine the impacts of the change. Impacts include but are not limited to the following: extra work, delays, reduced efficiency, increase costs of material, unused material, etc.

4. Determine damages (dollar amount, increased contract time, etc.) to which the contractor may be entitled. If the impacts are clearly defined, determination of damages is much easier to do.

These four steps should always be followed in sequence. The contract documents (plans, proposal, and specifications) should always be used in conjunction with the four step review. The decision on whether or not the contractor is due additional compensation or contract time depends on the deviation, or lack of deviation, between the work and requirements outlined in the contract documents and the work actually performed by the contractor.

The contractor's claim submittal should match the items that were identified in the original NOI for the claim. The claim is reviewed to check merit, validity and adherence to the contract documents. Any NOI related records kept during the project should be retrieved and used to facilitate the review.

### Response to the Claim

In formulating a response to, and conducting negotiations of the claim the Construction Services Division should be kept informed of all details. Additionally, the Construction Services Division is available to provide guidance to the district in these matters.

It is likely that multiple draft versions of a Claim response letter will be shared between the Engineer, the District, and Construction Services Division prior to the written response being sent to the Contractor. The draft response must contain the following disclaimer language until the letter is in its final version:

*“The draft response or analysis included herein does not represent an endorsement of the merit of the Contractor's claim(s) or an officially approved position of the North Dakota Department of Transportation. The North Dakota Department of Transportation reserves the right to invoke any and all applicable defenses to Contractor's claim(s), and the exclusion or omission of any applicable Contract provision, Standard Specification, Supplemental Specification or provision of state or federal law herein shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or any provision of the Contract.”*

The draft letter should also contain a “DRAFT” watermark. The disclaimer and “DRAFT” watermark are removed before sending the final version of the written response to the Contractor.

### Agree/Partially Agree With the Claim

If, after the review and analysis of the supplemental information submitted by the contractor, it is determined that the claim has merit, the NDDOT may choose to meet with the contractor to attempt negotiation of a settlement. The intent is to negotiate the claim at the project or district level, if possible.

The authority to settle a claim is the same as that for an NOI. However, due to the statewide significance of any claim settlement and the importance of uniformity in decisions, all settlement agreements over \$50,000.00 must be made in consultation with the Construction Services Division.

Claims referred to the Construction Services Division for review and action must be accompanied by

the pertinent data, reports and findings. Additional meetings with the contractor, either with or without legal counsel, may be arranged. District personnel will be asked to attend these meetings and furnish any supporting data that may be needed. Any audits of the contractor's records necessary to verify submitted data will be arranged by the Construction Services Division.

Claims that cannot be resolved by the Director of Operations may be forwarded to the Deputy Director for Engineering or to the Director for a final attempt at resolution. If a claim that cannot be resolved, the contractor's next step is to file for arbitration in accordance with North Dakota law.

### Settlement of a Claim

If negotiations are successful and a settlement is reached and extra compensation and/or time are granted for an approved or partially approved Claim, then a change order and a Release and Settlement Agreement are created to resolve the Claim and absolve the NDDOT of further liability. A statement should be included in the change order stating that the change order resolves the Claim. As with an NOI, documentation for the change order must contain sufficient detail to justify the amount of the settlement. Upon signing of the change order and the Release and Settlement Agreement, the Contractor agrees to the terms of the settlement and any additional compensation regarding this issue will be denied.

### Disapproval of a Claim

When the issues outlined in the contractor's claim are found to be without merit, the NDDOT must respond in writing within 60 days of receipt of the claim for claims < \$3M and 180 days for claims ≥ \$3M and inform the contractor that the department disagrees with the items outlined in the claim. The response may include an itemized list of the issues contained in the claim and the department's justification for rejecting the contractor's request for additional compensation. The contractor's next option is to file for arbitration.

### Arbitration

If the contractor does not accept the response by the department on the issues presented in the claim, a demand for arbitration may be filed by the contractor.

James Acret in the *"Construction Arbitration Handbook"*, Shepard's/McGraw-Hill, © 1985, defines arbitration as:

*"Arbitration is a system, voluntarily adopted by parties to decide their disputes, in which an impartial arbitrator, after hearings, issues a legally enforceable award."*

Arbitration is required by North Dakota Century Code for:

*"All controversies arising out of any contract for the construction or repair of highways entered into by the director (of the NDDOT)..."*

North Dakota Century Code requires that in cases less than \$100,000 dollars, one arbitrator will be appointed to hear the case. In cases of \$100,000 or more, three arbitrators will comprise a panel to hear the case. If the contractor does choose to file for arbitration and legal counsel has not already been employed by either party, it is likely that both sides will now hire attorneys to assist in their case.

### Claims Against Contractors – External Claims

External claims are defined as those made against a contractor by parties other than the NDDOT.

Claims made against a contractor by third parties for materials, supplies, services, equipment or labor shall be referred to the Construction Services Division. Other than informing the claimant that these claims should be submitted to Construction Services, district employees should not provide any advice.

When the Construction Services Division receives the written claim, a letter will be sent to the claimant citing the requirements of law which must be followed in filing a claim against the contractor. The letter shall provide the claimant with the name of the contractor's bonding company and the resident agent. Copies of the NDDOT's letter to the claimant along with a copy of the written claim shall be sent by the Construction Services Division to the contractor and the bonding company.

### LIST OF CLASSIFICATIONS OF CONSTRUCTION CLAIMS

The following is a list of the classifications of construction claims as shown in the "Construction Claims Guide" published by Wagner, Hohns, Inglis, Inc.

#### Constructive Changes

Changes resulting from acts attributable to the owner which cause more work or more time on the job than planned, but for which the owner refuses to execute formal change orders.

1. Work out of Sequence  
Work in a different order than originally planned.
2. Change in Method  
A change in the way of doing the work on a project.
3. Over Inspection  
Inspector demands work quality higher than normal industry standard or requires special operations.
4. Defective Drawings  
Errors, omissions, or ambiguities occurring in the drawings.
5. Higher Standards  
Requires higher quality work than called for in the specifications.
6. Non-Disclosure  
Failure to provide all available information. Usually relates to information known by the designers but not made a part of the contract documents.
7. Impractical or Impossible  
Work physically impossible to perform or economically impractical.

### Acceleration

When the owner orders completion of the project sooner than required by the contract or orders work finished on the original completion date failing to grant time extensions which are due.

1. Directed Acceleration  
Order to complete prior to contract completion date.
2. Constructive Acceleration  
Insistence on the original schedule despite entitlement to time extension.

### Changed Conditions

Conditions other than what a prudent person would have expected.

1. Type I  
Subsurface of latent physical conditions differing materially from those indicated in the contract.
2. Type II  
Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered in work of the character provided for in the contract.

### Schedule Change

A change in the time or sequence of the schedule to complete a project.

1. Suspension  
Work stoppage for one party's benefit.
2. Termination  
Defaulted for bad work or failure to perform. If for Owner's convenience, profits on work completed and cost of demobilization permitted.

### Delays

There are three types of delays: delays which are the responsibility of the owner, delays which are the responsibility of the other party, and delays which are beyond the control of either party.

1. Owner Caused
  - a. Lack of access
  - b. Owner interference
  - c. Directed reduction in manpower
  - d. Directed slowdown
2. Designer Caused
  - a. Late shop drawing approval
  - b. Design error
  - c. Failure to accept
3. Contractor Caused
  - a. Rework
  - b. Lack of productivity
  - c. Procurement failures
4. Force Majeure
  - a. Hurricanes
  - b. Tornadoes
  - c. War

Miscellaneous

Claims which do not fall into any of the above categories.

1. Material Breach  
Violation of an important contract obligation
2. Refusal to Accept Completed Work  
Owner refuses to takeover completed work and Contractor is forced to maintain and protect the work.
3. Early Occupancy  
Owner moves into facility and interferes with the Contractor.
4. Change in Scope  
Project’s purpose is altered or increased significantly.
5. Cardinal Change  
Owner alters a project radically.

It is important to become familiar with the different types of claims to better recognize a claim situation as it is happening.

TRACKING CLAIMS IN CARS

The Claim Stage is divided into 5 steps or sections. The sections were designed to correspond with the progression of the Claim process:

1. Receipt
2. Review
3. Engineer Decision
4. Contractor Decision
5. Complete

As with the Written Notice Stage, the bottom of each section contains options for ‘Continue’, ‘Save and Finish Later’, and ‘Cancel.’ Clicking ‘Continue’ will advance the user to the next section, but will also cause some items (such as dates) to be locked to editing. If dates are unknown when entering information into the Filing, click ‘Save and Finish Later’ until dates are firmly established. Some information, such as the comment box, can still be edited after clicking ‘Continue’ and advancing to the next section. Figure 1.28 below shows a Filing that is in the Claim Stage with a Receipt (Open) Status.

Figure 1.28

Claim Filings <<		
Prime Contractor:		
Contractor Filings		
Filing #: 1	Claimant: f	Filing Status: Active
Projects linked to this filing: 18726,18727		
Stage: Verbal	Date Received: 04/01/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 04/04/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 12/31/2015	Status: Receipt (Open)

The Claim Filings screen showing an open Claim

## Receipt

Similar to the Written Notice Stage, the Receipt section is used to enter general information about the Claim.

## Review

The Review section contains a series of questions to assist the Engineer during the review process to determine whether all requirements for a properly submitted Claim have been met (See Figure 1.29 below).

Figure 1.29

**Receipt** ✓

**Review**

**Date of Final Estimate:** 10/31/2014

**This claim is not properly submitted if any of the questions below are answered as 'No'**

Did the Contractor submit the claim within 90 calendar days of the final estimate?  
 Yes  No

Does the claim describe and detail all claim items originally submitted within the NOI?  
 Yes  No

Is a detailed narrative provided according to 104.5 A?  
 Yes  No

Were copies of project documentation provided in support of the claim?  
 Yes  No

Were bid documents provided (If the contract did not require escrow of bid documentation)?  
 Yes  No

Was the amount of compensation and or time requested, detailed explanations and calculations provided for each claim item according to 109.03?  
 Yes  No

Were copies provided of all information previously required under 104.04 B, "Dispute Resolution"?  
 Yes  No

Did the Contractor sign and notarize the claim in accordance with 104.05 B?  
 Yes  No

**Comments**

Contractor failed to submit the claim within 90 calendar days of the final estimate

## Engineer Decision

Similar to the Written Notice Stage, the Engineer Decision section is used to record the date of the Engineer's response to the Contractor's Claim. The letter will state the approval, partial approval, or disapproval of the Claim

The fields in the Engineer Decision section can be edited, if needed, after continuing to the next section.

### Contractor’s Decision

Three things can happen after the Engineer responds to a Claim:

1. The Engineer’s decision is accepted by the Contractor
2. The Engineer’s decision is rejected by the Contractor or
3. The Contractor does not respond

1. Engineer’s Decision is Accepted:

If the Contractor accepts the Engineer’s decision, the Engineer selects ‘Yes’ under ‘Engineer’s Decision Accepted’. This signifies that the Claim has been resolved and the Complete section can then be completed in order to show a Status of ‘Contractor Decision (Closed)’ on the Claim Filings screen.

2. Engineer’s Decision is Rejected:

If the Contractor disagrees with the Engineer’s decision, the Engineer will enter the date of the Contractor’s response and select ‘No’ under ‘Engineer’s Decision Accepted’. The section will then prompt the Engineer whether arbitration or mediation has been requested by the Contractor.

- a) If ‘Arbitration’ is selected, the CARS program will automatically calculate the deadline by which the Contractor can request arbitration, which is 90 days after the Engineer’s response to the Claim (See [NDCC Chapter 24-02-26.1](#)). The Engineer is then asked to enter the date of the request under ‘Date of Arbitration Request’ and any comments before continuing to the Complete section ([See Figure 1.30 below](#)).

Figure 1.30

**Claim (Open)** [Update Filing Status](#) [Linked Notices](#)

**Receipt** ✓

**Review** ✓

**Engineer Decision** ✓

**Contractor Decision**

**Date of Contractor's Response**

**Engineer's Decision Accepted**  
 Yes  No

**Arbitration or Mediation?**  
 Arbitration  Mediation

Request for Arbitration due on/before: 05/14/2016

**Date of Arbitration Request**

**Comments**

The Contractor Decision section in the Claim Stage

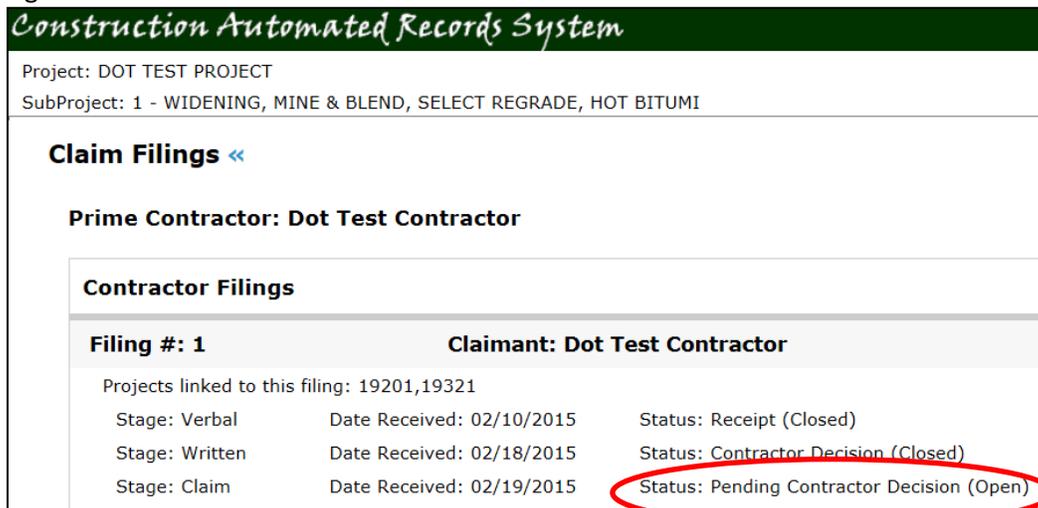
If the Contractor doesn't respond to the Engineer's letter denying the Claim, then the Contractor Decision section should remain in an (Open) Status until the Claim is either rescinded, 90 days expire from the date of the Engineer's response, the Claim is resolved, or the Contractor signs the final payment statement. The Claim Filings screen should show the Status of the Claim as 'Pending Contractor Decision (Open)' ([See Figure 1.31 Below](#)).

If 90 days pass after the Engineer's response without the Contractor requesting arbitration, the Claim is resolved, or the Contractor signs the final payment statement, the user should continue to the Complete section and the Claim should be (Closed).

- b) If 'Mediation' is selected, there is no deadline for the Contractor's request to mediate, except that which is stated in Section 104.05 of the Standard Specifications. Section 104.05 states that by signing the final payment, the Contractor accepts the amount stated as full and final payment on the contract and waives all rights to any further payments to the contract. After selecting 'Mediation', the Engineer should enter any comments before advancing to the Complete section.

If the Contractor doesn't respond to the Engineer's letter denying the Claim, then the Contractor Decision section should remain in an (Open) Status until the Claim is either rescinded, the Claim is resolved, or the Contractor signs the final payment statement. The Claim Filings screen should show the Status of the Claim as 'Pending Contractor Decision (Open)' ([See Figure 1.31 Below](#)).

Figure 1.31



The Claim Filings screen showing an open Claim

### Arbitration/Mediation

If a Contractor rejects the Engineer's decision, the Engineer will complete the Contractor Decision section as outlined above before advancing to the Arbitration/Mediation section. This section will only be visible if the Contractor rejects the Engineer's decision. This section is used to enter the details of the settlement (See Figure 1.32 below). The settlement reached during arbitration is legally binding. However, the decision reached during mediation is not. In the event of mediation, the Contractor may choose to pursue the Claim further.

Figure 1.32

**Claim (Open)** [Update Filing Status](#) [Linked Notices](#)

Receipt ✓

Review ✓

Engineer Decision ✓

Contractor Decision ✓

**Arbitration / Mediation**

Date of Settlement

**Contract Adjustment**

Amount  Number of Days  Day Type

Comments

The Arbitration/Mediation section is unlocked if selected in the Contractor Decision section

Prior to clicking 'Continue' in the Arbitration/Mediation section, the Claim Filings screen will display the Status of the Claim as 'Pending Arbitration/Mediation (Open)' (See Figure 1.33 below).

Figure 1.33

<b>Filing #: 3</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/28/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 03/05/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 05/05/2015	Status: Pending Arbitration/Mediation (Open)

A Filing Group pending arbitration

### Complete

Once a Claim has been either resolved in the Contractor Decision section or the Arbitration/Mediation section, the Engineer can advance to the Complete section. The Engineer will be prompted to enter in any comments before clicking 'Complete'. After clicking 'Complete', the Status will then be shown as either Contractor Decision (Closed) or 'Arbitration/Mediation (Closed)' and the Filing Status will be shown as 'Filing Status: Not Active' (See Figure 1.34 Below).

Figure 1.34

<b>Filing #: 14</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Not Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 04/30/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 05/04/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received:	Status: Contractor Decision (Closed)

<b>Filing #: 1</b>	<b>Claimant: Dot Test Contractor</b>	<b>Filing Status: Not Active</b>
Projects linked to this filing: 19201,19321		
Stage: Verbal	Date Received: 02/10/2015	Status: Receipt (Closed)
Stage: Written	Date Received: 02/18/2015	Status: Contractor Decision (Closed)
Stage: Claim	Date Received: 02/19/2015	Status: Arbitration/Mediation (Closed)

## REPORTS

Reports can be created by clicking on ‘NOI/Claims Reports’ found on the Main Menu.

After clicking on the NOI/Claims Reports heading, the user will be directed to a screen with three reporting options as follows:

1. Pending Disputes Report
2. Custom Reporting
3. Predefined Reports

Figure 1.36

**Notice / Claim Search <<**

**All Past Due Items (29)**

**Filters**

**General Filing Information**

**PCN Number:** 
**District:** 
**Prime Contractor:** 
**Claimant:**

**Stage Status**

**Written Notice Status:**

NOI Work Ended
  Documentation
  Review
  Engineer Decision
  Contractor Decision
  Past Due
  Select All

**Claim Status:**

Review
  Engineer Decision
  Contractor Decision
  Arbitration / Mediation
  Past Due
  Select All

**Status Due Date Range**

**From:** 
**To:**

NOI/Claims Search Menu

### Pending Disputes Report

The Pending Disputes Report shows past due items for the entire state, but it also allows the user to select different filters to create a list of past due items which are more specific to the user’s needs. For example, if the user wants to know what items are past due in the Williston District, then the user would click on the dropdown arrow under the ‘District:’ heading, select Williston, and then the ‘Search’ button at the bottom of the screen.

APPENDIX 1 – EXAMPLE OF CONTRACTOR DAILY EQUIPMENT AND LABOR SUMMARY

**Contractor Daily Equipment and Labor**

Project Number:

Contractor:

Date	Type	Equipment						Name	Labor			Remarks
		Hours		Total Hours	Item of Work	Location	Standby Hours		Hours		Total Hours	
		Begin	End						Begin	End		

APPENDIX 2 – EXAMPLE OF CRUSHING/AGGREGATE PRODUCTION SUMMARY

**Contractor Daily Equipment, Labor, and Materials – Crushing / Aggregate Production**

Project Number:

Contractor:

Date	Equipment							Labor			Remarks	
	Type	Hours		Total Hours	Item of Work	Standby Hours	Down Hours	Name	Hours			Total Hours
		Begin	End						Begin	End		

Samples Taken (Y/N) \_\_\_\_\_

Sample Reference Number \_\_\_\_\_

Amount of Product Produced In 24 Hours \_\_\_\_\_

Amount of Waste Produced In 24 Hours \_\_\_\_\_

Inspector:

APPENDIX 3-5 EXAMPLES OF NOTICE OF INTENT TO FILE A CLAIM SETTLEMENT AGREEMENT

**NOTICE OF INTENT TO FILE A CLAIM SETTLEMENT AGREEMENT**

The Contractor, \_\_\_\_\_, by the signing of this agreement certifies that:

Upon execution of Change Order Number \_\_\_\_\_ any and all claims in any manner arising out of, or pertaining to, the attached Notice of Intent dated \_\_\_\_\_, filed on Project No. \_\_\_\_\_, including but not limited to such issues as;

have been satisfied in full and the State of North Dakota is released and discharged from any claims or extra compensation in any manner arising out of the referenced Notice of Intent.

_____	_____	_____	_____
NDDOT Representative	Date	Contractor Representative	Date
_____		_____	
Printed Name		Printed Name	

### NOTICE OF INTENT TO FILE A CLAIM SETTLEMENT AGREEMENT

The Contractor, \_\_\_\_\_, by the signing of this agreement certifies that:

Upon execution of Change Order Number \_\_\_\_\_ in the amount of \$ \_\_\_\_\_ any and all claims in any manner arising out of, or pertaining to, Project No. \_\_\_\_\_, including but not limited to the Notice of the Intent to file a claim in regards to;

have been satisfied in full and the State of North Dakota is released and discharged from any claims or extra compensation in any manner arising out of Project No. \_\_\_\_\_.

_____	_____	_____	_____
NDDOT Representative	Date	Contractor Representative	Date
_____		_____	
Printed Name		Printed Name	

**NOTICE OF INTENT TO FILE A CLAIM SETTLEMENT AGREEMENT**

The Contractor, \_\_\_\_\_, by the signing of this agreement certifies that:

Upon execution of Change Order Number \_\_\_\_\_ reducing the total of days of liquidated damages to \_\_\_\_\_ days, any and all claims in any manner arising out of, or pertaining to, Project No. \_\_\_\_\_, including but not limited to the Notice of the Intent to file a claim and time extension in regards to;

have been satisfied in full and the State of North Dakota is released and discharged from any claims or extra compensation in any manner arising out of Project No. \_\_\_\_\_.

_____	_____	_____	_____
NDDOT Representative	Date	Contractor Representative	Date
_____		_____	
Printed Name		Printed Name	

APPENDIX 6 NDDOT CONSTRUCTION CLAIMS FLOWCHART

