

§ 143-135.3. Adjustment and resolution of State board construction contract claim.

(a) For purposes of this section, the following shall apply:

- (1) "Board" shall mean the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, as distinguished from a board or governing body of a subdivision of the State.
- (2) "A contract for construction or repair work" shall mean any contract for the construction of buildings and appurtenances thereto, including, but not by way of limitation, utilities, plumbing, heating, electrical, air conditioning, elevator, excavation, grading, paving, roofing, masonry work, tile work and painting, and repair work as well as any contract for the construction of airport runways, taxiways and parking aprons, sewer and water mains, power lines, docks, wharves, dams, drainage canals, telephone lines, streets, site preparation, parking areas and other types of construction on which the Department of Administration or The University of North Carolina enters into contracts.
- (3) "Contractor" shall include any person, firm, association or corporation which has contracted with a State board for architectural, engineering or other professional services in connection with construction or repair work as well as those persons who have contracted to perform such construction or repair work.

(b) A contractor who has not completed a contract with a board for construction or repair work and who has not received the amount that contractor claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The Director may deny, allow, or compromise the claim, in whole or in part. A claim under this subsection is not a contested case under Chapter 150B of the General Statutes.

(c) A contractor who has completed a contract with a board for construction or repair work and who has not received the amount that contractor claims is due under the contract may submit a verified written claim to the Director of the Office of State Construction of the Department of Administration for the amount the contractor claims is due. The verified written claim shall be submitted within 60 days after the contractor receives a final statement of the board's disposition of the claim and shall state the factual basis for the claim.

The contractor may appear before the Director, either in person or through counsel, to present facts and arguments in support of the verified written claim. The Director may allow, deny, or compromise the verified written claim, in whole or in part. The Director shall give the contractor a final written decision, as provided in subsection (c2) of this section, allowing or denying those portions of the contractor's claim that have not been previously compromised.

(c1) A contractor who is dissatisfied with the Director's final written decision on a verified written claim, or any portion of a verified written claim, submitted under subsection (c) of this section may commence a contested case on the claim under Chapter 150B of the General Statutes. The contested case shall be commenced within 60 days of receiving the Director's written statement of the decision.

(c2) The verified written claim submitted under subsection (c) of this section shall be disposed of as follows:

- (1) If the verified written claim was originally for an amount less than one hundred thousand dollars (\$100,000), the Director shall investigate and issue a final written decision allowing or denying the verified written claim, in whole or in part, within 120 days of receipt of the contractor's verified written claim.
- (2) If the verified written claim was originally for an amount of at least one hundred thousand dollars (\$100,000) but less than five million dollars (\$5,000,000), the Director shall investigate and issue a final written decision

allowing or denying the verified claim, in whole or in part, within 180 days of receipt of the contractor's verified written claim.

- (3) If the verified written claim was originally for an amount of five million dollars (\$5,000,000) or more, the Director shall investigate and issue a final written decision allowing or denying the verified written claim, in whole or in part, within 270 days of receipt of the contractor's verified written claim.

(c3) Prior to the expiration of the time periods provided for in subsection (c2) of this section, the Director and contractor may, in writing, extend the time in which the Director shall issue a final written decision. The Director's failure to issue a final written decision as provided in subsection (c2) of this section, or at the expiration of the agreed-upon extended time, shall be deemed a denial of the portions of the verified written claim not previously compromised, and the contractor may seek relief on those portions of the verified written claim as provided in subsection (c1) or (d) of this section.

(d) As to any portion of a verified written claim that is denied by the Director under subsection (c) of this section, the contractor may, in lieu of the procedures set forth in subsection (c1) of this section, within six months of receipt of the Director's final written decision, institute a civil action for the sum the contractor claims to be entitled to under the contract by filing a verified complaint and the issuance of a summons in the Superior Court of Wake County or in the superior court of any county where the work under the contract was performed. The procedure shall be the same as in all civil actions except that all issues shall be tried by the judge, without a jury.

(e) The provisions of this section are part of every contract for construction or repair work made by a board and a contractor. A provision in a contract that conflicts with this section is invalid. (1965, c. 1022; 1967, c. 860; 1969, c. 950, s. 1; 1973, c. 1423; 1975, c. 879, s. 46; 1981, c. 577; 1983, c. 761, s. 190; 1985, c. 746, s. 18; 1987, c. 847, s. 4; 1989, c. 40, s. 1; 1991, c. 103, s. 1; 1997-412, s. 7; 2001-496, s. 8(c); 2005-300, s. 1; 2019-39, s. 1.)