

**Contract Basics**  
Virginia Department of Transportation  
Civil Rights Division  
By  
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**KPS**  
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**Introduction**

- Not just concrete, dirt and asphalt
- Understanding basics of contract law critical
- If you don't protect yourself no one will
- Great administration saves money



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**The Subcontract**

- Only what's in writing matters
- Verbal agreements don't count, it must be in the contract
- Include exclusions/qualifications in contract
- Subcontract clauses to review
  - No damage or delay
  - Back charge without notice
  - Schedules you haven't seen
  - Unreasonable dispute process
  - Waive lien or bond claim
  - Time of Payment – "Condition Precedent"



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## Claims and Changes

- Document changed conditions
  - photograph/video
  - marked up plans
  - keep costs daily
  - get tickets signed
  - confirm direction
  - get legal advice
- Don't take it personally




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Joe's Subcontracting, Inc.  
1900 Gallows Road, Suite 210  
Tysons Corner, VA 22182

Subcrusher Construction Company, Inc.  
1400 Subcontractor Way  
Powerful, VA 24229  
Attention: B. A. Subcrusher

Re: I-108 Road Widening Project  
VDOT Project No. 000-100-Q09, C501, B612

Ladies and Gentlemen:

This letter will confirm that on Thursday, November 26, 2015, while excavating for the storm line between station 0+00 and 6+00, we encountered unusual conditions, namely what appears to be a former garbage dump. We have encountered refrigerators, discarded metal pipe, and a 1957 Chevy Impala, among other things.

This is clearly an additional excavation cost as well as disposal cost. It is also slowing our operation and making our work unproductive. In addition, we find it likely that additional backfill material will be required due to the material we are removing from the trench.

Under Section 105.19 of the Road and Bridge Specifications, we hereby give you notice of our intent to file a claim on this matter. Please advise VDOT immediately of our position. We are keeping our costs daily, and ask that VDOT's inspector confirm the daily costs with us so there is no dispute later. We also reserve our right to request an extension of time to perform our work.

If you have any questions, please feel free to call me.

Very truly yours,  
Joseph H. Kasimer




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## 105.19 Submission and Disposition of Claims

Early or prior knowledge by the Department of an existing or impending claim for damages could alter the plans, scheduling, or other action of the Department or result in mitigation or elimination of the effect of the act objected to by the Contractor. Therefore, a written statement describing the act of omission or commission by the Department or its agents that allegedly caused damage to the Contractor and the nature of the claimed damage shall be submitted to the Engineer at the time of each and every occurrence that the Contractor feels gives it the right to make a claim or prior to the beginning of the work upon which a claim and any subsequent action will be based. The written statement shall clearly inform the Department that it is a "notice of intent to file a claim." If such damage is deemed certain in the opinion of the Contractor to result from his acting on an order from the Engineer, he shall immediately take written exception to the order. Submission of a notice of intent to file a claim as specified shall be mandatory. Failure to submit such notice of intent shall be a conclusive waiver to such claim for damages by the Contractor. An oral notice or statement will not be sufficient nor will a notice or statement after the event.




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105.19  
Submission and Disposition of Claims

In addition, at the time of each and every occurrence that the Contractor feels gives it the right to make a claim or prior to beginning the work upon which a claim and any subsequent action will be based, the Contractor shall furnish the Engineer an itemized list of materials, equipment, and labor for which additional compensation will be claimed. Only actual cost for materials, labor and equipment will be considered. The Contractor shall afford the Engineer every facility for keeping an actual cost record of the work. The Contractor and the Engineer shall compare records and bring them into agreement at the end of each day. Failure on the part of the Contractor to afford the Engineer proper facilities for keeping a record of actual costs will constitute a waiver of a claim for such extra compensation except to the extent that it is substantiated by the Department's records. The filing of such notice of intent by the Contractor and the keeping of cost records by the Engineer shall in no way establish the validity of a claim.



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Common Mistakes

1. Failure to give timely notice
  - "Each and every" occurrence
  - Must say "Notice of Intent"
2. Failure to track and document costs
3. Signing lien release that waives claim
4. Signing change order without impact cost included
5. Failure to ask for time extension



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