



Supreme Court of Virginia Affirms Ruling on Written Notice of Claim to VDOT

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In the recent decision of *Commonwealth of Virginia v. AMEC Civil, LLC*, the Supreme Court of Virginia affirmed that a contractor pursuing an administrative claim against the Virginia Department of Transportation ("VDOT") must give timely written notice to VDOT clearly stating the contractor's intention to file a claim. AMEC involved a \$73 million contract for the construction of the Route 58 Clarksville Bypass in Mecklenburg County. The scheduled completion date was November 1, 2003, but the project was not substantially completed until June 2005. Following completion, AMEC submitted an administrative claim to VDOT seeking approximately \$25 million in additional compensation. The claim consisted of over a dozen individual claim items for various impacts related to differing site conditions, defective design, delay and acceleration. VDOT denied the claim, and AMEC filed suit.

During the course of the trial, VDOT argued that AMEC had failed to give timely written notice of many of its claims as required by AMEC's contract with VDOT and by the Virginia Code. The trial court rejected VDOT's notice arguments, ruling that actual notice was an appropriate substitute for written notice and further determining from the evidence that VDOT had received written notice of many of AMEC's claims. The trial court rendered a verdict for AMEC of nearly \$22 million.

VDOT appealed to the Virginia Court of Appeals, and the Court of Appeals reversed the trial court's decision on a number of claims, including claims subject to VDOT's lack of notice defense. The Appeals Court held that a contractor is required to give timely written notice to VDOT of claims and that AMEC had not done so for a number of its claims. This ruling resulted in a substantial reduction in the award to AMEC.

AMEC then appealed to the Supreme Court of Virginia. The Supreme Court agreed with the Court of Appeals that written notice is required. The Court then addressed the requirements for written notice. First, the Court noted that the Virginia Code specifies that written notice "must announce the contractor's 'intention to file [a] claim.'" The statute also requires that such notice be given either "at the time of the occurrence" of the claim, or at the "beginning of the work upon which the claim...is based." Thus, wrote the Court, "[a]t a minimum, to satisfy the written notice requirement, the written document at issue must clearly give notice of the contractor's intent to file its claims and must be 'given to [VDOT]' by letter or equivalent communication directed to VDOT at the

appropriate time."

The Supreme Court of Virginia then analyzed all of AMEC's claims that were challenged by VDOT for lack of notice. With the exception of one small claim, the Supreme Court agreed with the Court of Appeals, resulting in final judgment for VDOT on a substantial portion of the initial verdict for AMEC.

Contractors should always be aware of and closely follow all contract provisions requiring notice, whether in contracts with VDOT or other public agencies or in the private sector. Typically, contract documents specify the manner of giving notice, the time for giving notice and the person to whom the notice should be furnished. Such provisions often include a statement that failure to give notice as specified will result in a waiver of the claim. Virginia courts will enforce these provisions: failure to give notice in the manner and within the time specified can lead to the dismissal of a claim.

For more information about this topic, please contact the author or any member of the Williams Mullen Construction Team.

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