

June 28, 2019

Ravalli County
215 S. Fourth, Suite A
Hamilton, MT 59840-2853

Via Certified Mail
70162070000109252662

Lance D. Bowser
Robert Peccia & Associates
P.O. Box 5653
Helena, MT 59604

70162070000109252655

RE: Ravalli County Airport Improvements-A.I.P. 3-30-0037-015-2018- Claim by
Montana Civil Contractors, Inc.

REQUEST FOR MEDIATION

**Pursuant to Article 17 of the Special Provisions of the Construction Contract for
the Ravalli County Airport Improvements-A.I.P. 3-30-0037-015-2018, and Article 16
of the EJCDC General Conditions**

Dear Mr. Bowser and Commissioners:

This law firm represents Montana Civil Contractors, Inc. ("MCC"). Please accept
this letter as a request for mediation pursuant to Article 17 of the Special Provisions of
the Construction Contract for the Ravalli County Airport Improvements-A.I.P. 3-30-0037-
015-2018 (the "Contract").

Article 17 of the Special Provisions references Disputes, referring the parties to the
EJCDC General Conditions regarding dispute resolution. Article 16 of the EJCDC General
Conditions directs the parties to participate in a mediation prior to arbitrating or litigating
a dispute.

I. Background Facts Relevant to Claims for Mediation

A. Increased Costs Due to Delayed Start by Owner

MCC and Ravalli County entered into the Contract for improvements to the Ravalli
County Airport (the "Project") on May 10, 2018. The bid documents stated that a Notice

to Proceed was "anticipated to start early June 2018," and the Engineer stated during the bidding process, and at bid time, that June was the start of this project.

MCC was prepared to mobilize on June 18, 2018. Then, MCC was informed by Ravalli County that this projected issuance date was being pushed back. In an email of June 11, 2018, the Project Engineer informed MCC that the Notice to Proceed would not be issued until the end of June. Then, on June 25, 2018, the Project Engineer informed MCC that this was pushed back further. On July 5, 2018, MCC was informed that an issuance date was unknown. MCC informed Ravalli County numerous times before the start of the project, and during the project, that this delay could pose negative impacts on the construction schedule. The Notice to Proceed was not issued until August 6, 2018, two months later than anticipated. The contract was signed May 10, 2018 and was bid to work during the Summer months of 2018. The new start date of August changed the scope of production and work. MCC was never given the opportunity to renegotiate this contract with a different start date than the contract stated.

MCC completed all work on this Project, along with extra unpaid work dictated by the Owner that was done outside the scope of this project. But, given the delayed start, MCC encountered problems with increased ground water levels and colder temperatures, given that work was proceeding during late irrigation season and Fall weather with early Winter conditions. The late start meant that MCC encountered problems with unsuitable or unstable temperatures for asphalt and concrete work. The days in July are very different from the days in late September and October. This contract was bid with the start date in early June as indicated numerous times by the Owner and Engineer. This resulted in additional construction time and additional cost to MCC.

On November 21, 2018, MCC provided a "Claim for Additional Contract Time and Compensation" notifying Ravalli County of the calculated costs and delays related to the failure to issue the Notice to Proceed as planned, requesting that 50 days be added to the construction time and increased compensation of \$169,000. A copy of this Claim is attached to this mediation demand.

Following submittal of this claim, MCC was assured that the Owner would resolve this Claim with MCC. Neither Ravalli County nor the Project Engineer ever acted on the Claim. MCC has not received any formal denial of this Claim, though it understands that the Ravalli County Commission discussed the Claim and denied it at its June 13, 2019 Board Meeting.

MCC disputes this apparent denial and would submit this Claim to mediation.

B. Late Payment in Violation of Contract and Prompt Payment Act

The Owner violated the Contract and Montana's Prompt Payment Act in failing to make timely payments to MCC.

MCC submitted its Pay Request #2 to the Project Engineer on September 5, 2018. It was approved that same day. Under the Contract and Montana law, payment is due within 42 days. MCC did not receive payment until October 22, 2018 – 5 days late.

More recently, MCC submitted its Pay Request #5 to the Project Engineer on May 10, 2019. This Pay Request was approved that same day. Payment was due June 21, 2019. MCC submitted a claim for additional compensation, including interest and attorneys' fees under Montana's Prompt Payment Act, on Friday June 21, 2019. MCC just received payment on June 26, 2019. A copy of this claim is attached to this mediation demand.

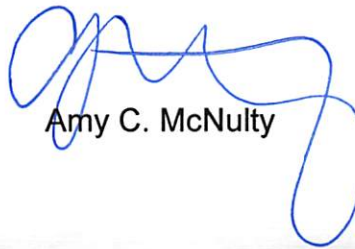
MCC is entitled to interest and attorney's fees for this claim and submits this claim to mediation.

II. Request for Mediation

Please accept this letter as a request for mediation of the above-described disputes under the applicable terms of the Contract, including the Special Provisions, as referenced above.

Please contact me at your earliest convenience, or refer this request to your legal counsel, so that we may work together to set up and schedule this mediation as soon as practicable for both parties.

Cordially,



Amy C. McNulty

ACM/jdm
cc: Client
Enclosures: Referenced Above



Wednesday, November 21, 2018

Lance Bowser P.E.
Project Manager
Robert Peccia and Associates
P.O. Box 5653
Helena, Montana 59601

Subject: Claim for Additional Contract Time and Compensation

Mr. Lance Bowser,

I am writing this letter to serve as an official **Claim for Additional Contract Time and Additional Compensation** referencing to the Ravalli County Airport Improvements Project, A.I.P. 3-30-0037-015-2018. Montana Civil Contractors (MCC) is seeking for an extension in contract time, as well as an increase in compensation required to finish the remaining portion of work associated with the project.

During the bidding process, it was stated that funding was partially secured and the remaining grant funding would be released for a project start date sometime in early to mid June, 2018. On April 4/18/2018, MCC was named the apparent low bidder out of two responsive bids for the Ravalli County Airport Improvements Project. It was anticipated that MCC would be planning to mobilize and start construction on 6/18/2018. In an email dated 6/11/2018, MCC was informed that the grant funding would not be released until the end of June. In another email dated 6/25/2018, MCC was again informed that FAA was planning to issue grant funding on Thursday the 28th of June, pushing back the revised start date. On 7/5/2018, MCC was then updated that funding was again held up and that an intended release date was unknown. In response to this, on 7/5/2018, MCC stated that a continuation to the delay in contract start date could pose negative impacts to the construction schedule. Finally on 7/30/2018, MCC was informed that grant funding had been released but the formal grant offer was yet to be received. It wasn't until 8/6/2018 that MCC could begin construction on the project. Throughout the delay process, after the 7/5/2018 email, MCC stated continued concerns as it was figured that weather and cooler conditions would potentially cause issues for construction.

During the construction, MCC experienced several delays due to the following circumstances;

- Elevated ground water levels encountered during sub excavation due to work occurring late in irrigation season. Resulting in slow productions, excess material needed to be excavated and excess fill required.
- Additional preparatory work required for base coarse gravel to deal with overnight frost during asphalt prep.
- Prolonged starts for Asphalt placement as temperatures were too low, causing shortened windows for paving. Resulting in extended asphalt paving schedule.
- Delayed asphalt, causing extended wait times for tack distributor trucks.
- Additional cost incurred to multiple mobilizations of tack distributor contractor.
- Extended paving schedule due to the colder temperatures caused increased materials testing fees for standby time, additional mobilizations, and increased time onsite.
- Cold temperatures also led to delayed concrete starts to allow for paving operations to take precedence.



Montana
Civil
Contractors Inc.

- Due to pushing back concrete placement, additional expenses were incurred to protect and cure newly placed concrete.

Due to the delay in construction start, resulting from the delay in grant funding to be released by the FAA, MCC incurred several financial burdens that were a direct result of the aforementioned issues. It was in MCC's best interest to continue forward in the construction of the project, with adding additional crew personnel and extended hours not accounted for in the original project. Additionally due to the above listed setbacks, causing an overrun in construction contract time, which concluded to a winter shutdown and remobilization, MCC is seeking full compensation for the damages listed below.

Re-Mobilization	\$65,000.00
MCC Project Staff/Operations and Overhead	\$25,000.00
Materials Testing Overrun and Re-Mobilization	\$12,000.00
Paving Remobilization	\$5,000.00
Tack Oil Remobilizations/Standby Time	\$8,500.00
Cold Weather Concrete	\$6,000.00
Concrete Remobilization	\$2,500.00
Increased Production Labor & Equipment Costs	<u>\$45,000.00</u>

Total Damages Incurred = \$169,000.00

For the project to be completed in the 2019 spring construction season, MCC also requests an additional 50 days be added to the original contract time. The original 68 calendar days per the contract were for the base bid of the project. Adding in the two project alternates and above mentioned project setbacks, the intended time frame set forth for the project is severely inadequate to obtain project completion in time. Lastly due to the delay in funding, ultimately pushing the project well in to the fall/winter weather season, where this project is located is also a clear justification for the requirement of additional time to be added to the contract.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Owen Strods', is written over a large, circular scribble.

Owen Strods
Montana Civil Contractors



Montana
Civil
Contractors Inc.

P.O. Box 1019, Belgrade, MT 59714 www.montanacivil.com T: 406-388-1740 F: 406-388-5105

Friday, June, 21, 2019

Lance Bowser P.E.
Project Manager
Robert Peccia and Associates
P.O. Box 5653
Helena, Montana 59601

Subject: Letter of Notice of Claim of Late Payment

Mr. Lance Bowser,

This letter shall serve as formal written notice of Montana Civil Contractors (MCC) intent to claim addition compensation for delay in payment due to MCC. Per the contract between MCC and Ravalli County, as stated in the contract documents, in the Information to bidders' section 8 payment shall be approved and paid within 42 calendar days. On May 10th, 2019, payment application #5 was submitted to the engineer, approved and signed. Based on the 42-day payment clause, payment was due to MCC on June 21, 2019. At this time no payment has been made to MCC.

Document Attached: Payment Application #5

Respectfully Submitted,



Owen Strods
Montana Civil Contractors

APPLICATION AND CERTIFICATE FOR PAYMENT

Application No. 5

Page 1 of 3

Period from : 11/11/2018

To: 5/9/2019

OWNER:
Ravalli County
215 S. Fourth, Suite A
Hamilton, MT 59840-2853

CONTRACTOR:
Montana Civil Contractors, Inc.
P.O. Box 1019
Belgrade, MT 59714

PROJECT: Ravalli County Airport (AIP 3-30-0037-015-2018 - Schedule B)

CONTRACT DATE: August 2, 2018

ORIGINAL CONTRACT SUM		<u>\$1,587,270.00</u>
Change Order No. 1	<u>11/5/2018</u>	<u>\$4,226.22</u>
Change Order No. 2		
Change Order No.		
Net Change by Change Orders		<u>\$4,226.22</u>
CONTRACT SUM TO DATE		<u>\$1,591,496.22</u>

Estimate No.	Amount Earned This Estimate	Retainage Held This Estimate	Amount Earned Less Retainage	Less 1% Gross Receipts Tax	Total
One	<u>81,797.54</u>	<u>4,089.88</u>	<u>77,707.66</u>	<u>777.08</u>	<u>78,930.58</u>
Two	<u>118,220.22</u>	<u>5,761.01</u>	<u>109,459.21</u>	<u>1,094.59</u>	<u>108,264.62</u>
Three	<u>299,782.98</u>	<u>14,967.85</u>	<u>284,785.33</u>	<u>2,847.65</u>	<u>281,917.88</u>
Four	<u>814,587.44</u>	<u>40,729.37</u>	<u>773,858.07</u>	<u>7,738.58</u>	<u>765,119.49</u>
Five	<u>159,395.95</u>	<u>7,969.30</u>	<u>151,426.15</u>	<u>1,514.26</u>	<u>149,911.89</u>
Totals:	<u>1,470,764.13</u>	<u>73,637.71</u>	<u>1,397,216.42</u>	<u>13,972.16</u>	<u>1,383,244.26</u>

Less Previous Certificates for Payment: 1,233,332.97
 Less Liquidated Damages THIS PERIOD - Unscheduled Employment of Engineer (Special Provision #13): 23,034.87
 Less Liquidated Damages THIS PERIOD - Unscheduled Employment of Engineer (Special Provision #21): 0.00
 Less Liquidated Damages THIS PERIOD - exceeding project schedule (Special Provision #13): 0.00
 Previous Liquidated Damages Not Included: 10,682.03

Current Payment Due: 126,677.02

CONTRACTOR'S CERTIFICATE:

The undersigned Contractor certifies that the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by him for Work for which previous Certificates for payment were issued and payments received from the Owner, and that current payment shown herein is due.

Dated: 5/10/19

By: Montana Civil Contractors, Inc.
 Contractor



ENGINEER'S CERTIFICATE FOR PAYMENT

This Application (with accompanying documentation) meets the requirements of the Contract Documents and payment of the above "Current Payment Due" is recommended.

Dated: 5/10/2019

By: Robert Peccia and Associates.
 Engineer
Lance D. Borden