

Chapter 5

Contract Administration

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Section 4 Disputes

5-401 General

The objective of this section is to provide guidance to the contract administrative team so that requests for information, protests, contract disputes, potential claims, and claims are addressed and resolved expeditiously and consistently. The contract administrative team includes the resident engineer, the construction engineer, and other California Department of Transportation (Caltrans) personnel with the responsibility to analyze and resolve disputes.

The resident engineer, with the support of the contract administrative team, administers the dispute resolution process. Subject matter experts are consulted to aid in the evaluation of the technical aspects of a dispute.

Contractors submit requests for information to the resident engineer when there is discrepancy or confusion in the contract, to ask for a time extension, or to protest the resident engineer's decision. The resident engineer responds to the request within the specified time. This may lead to a contract dispute when the contractor does not agree with the response.

A contract dispute is a disagreement between the contractor and Caltrans over the interpretation of plans, specifications, bid proposals, material handouts, and other documents. When this occurs, the contractor provides notice of the dispute using the three-part Potential Claim Record process. The resident engineer acknowledges receipt of the dispute and begins the process of analyzing and resolving it. Try to resolve disputes as early as possible, in accordance with the contract, and at the lowest responsible level. Determine the relevant facts and responsibilities. Compensate the contractor where merit exists, even in part, and deny compensation with clear reasons when no merit exists.

Take this action within your authority as described in Section 5-311, "Change Order Approval Process," and Table 5-4.2, "Claims Resolution Authority—Entitlement," of this manual.

If you lack the authority to resolve the dispute, discuss the issue with the rest of the contract administrative team and the Division of Construction field coordinator. Promptly issue and obtain approval of a change order for the portions of the dispute that have merit.

Disputes that have not been resolved prior to issuing the proposed final estimate may become claims if the contractor lists them as exceptions to the proposed final estimate. Caltrans has 240 days from contract acceptance to review the contractor's claims and issue its final determination of claims. The contractor can initiate arbitration by filing a complaint with the Office of Administrative Hearings within 90 days of the receipt of the district director determination of claims letter or 240 days after contract acceptance if no district director determination of claims letter was issued. Caltrans Legal Division is the lead for defending Caltrans in arbitration. The districts and the Division of Construction

support the Legal Division in arbitration proceedings. Refer to Section 5-411, “Arbitration” of this manual for additional information.

Provisions for contract claims are incorporated into Minor B contracts based on the California Government Code. Resident engineers must follow Section 5-406I, “Minor B Contracts,” of this manual, when resolving disputes on Minor B contracts.

5-402 Disputes and Claims Prevention

There are many things that the contract administrative team can do to minimize the number and size of disputes and claims. Be proactive, professionally communicate with the contractor, and properly administer the contract. Partner with the contractor, within the confines of the contract, and maintain a respectful relationship through completion of the project. Be knowledgeable about the contract documents, policies, procedures, and federal and state laws applicable to the proper administration of the contract. Knowing the contractual responsibilities of each party will help in the timely resolution of the dispute.

Take the following actions to minimize claims:

- Partner with the contractor.
- Expediently investigate the situation.
- Consider the facts.
- Define the critical issues.
- Review the appropriate contract specifications.
- Communicate your position as soon as possible.
- Work within the contractual constraints.
- Document resolution and elevate, if appropriate.

5-403 Requests for Information and Potential Claim Records

The contractor can ask questions and make requests for additional compensation. Sections 5-1.42, “Requests for Information,” and 5-1.43, “Potential Claims and Dispute Resolution,” of the *Standard Specifications* include provisions and requirements for the contractor and the resident engineer to follow to document the request and move toward resolution should a dispute arise. The contract administrative team needs to respond without delay to the contractor’s requests. Timeframes for the responses are included in these sections.

Requests for information must be submitted by the contractor to the resident engineer during the course of the project and up to receiving the proposed final estimate. The response may lead to a dispute if the contractor protests the response. Section 5-1.43, “Potential Claims and Dispute Resolution,” of the *Standard Specifications* outlines the three-part potential claim record process, which includes an initial potential claim record, a supplemental potential claim record, and a full and final potential claim record. Note the date and time these documents were received and the name of the person who received them.

Disputes become claims when the contractor lists them as exceptions to the proposed final estimate.

5-403A Requests for Information

The contractor submits a request for information upon recognition of any event or question of fact arising under the contract in accordance with Section 5-1.42, “Requests for Information,” of the *Standard Specifications*. Respond to requests for information within the time specified.

Make every effort to provide a complete response to the contractor’s request. If it is unclear about what is being requested, ask the contractor to clarify the request. If more information is needed from the contractor, be specific about what is needed, request that it be provided, and let the contractor know that you cannot respond until it is received. Notify the contractor when unable to provide an answer because more information is forthcoming from other sources. Provide a date when the information will be available. For additional information, refer to Section 3-521, “Requests for Information and Potential Claim Records,” of this manual.

5-403B Potential Claim Records

Section 5-1.43A, “Potential Claims and Dispute Resolution—General,” of the *Standard Specifications* outlines the three-part potential claim record procedure and informs the contractor that failure to comply with it is a waiver of the potential claim, a waiver of the right to a corresponding claim for the disputed work in the administrative claims process, and is a bar to arbitration.

A unique identification number must be assigned to each potential claim and the nature and circumstances of the potential claim must not change throughout the submittal of all three potential claim record components:

- Initial Potential Claim Record
- Supplemental Potential Claim Record
- Full and Final Potential Claim Record

Make sure that the contractor is aware of and complies with the contractual responsibility to minimize and mitigate the effects of potentially claimed work or events.

5-403C Documentation

Place copies of all documents related to every dispute on the project in Category 62, “Disputes,” of the project records. This information provides the basis for preparing position papers in the alternative dispute resolution process and preliminary construction claim findings. Follow the procedures outlined in Section 5-102, “Organization of Project Documents,” of this manual for documenting claims. Refer to Section 3-521D, “Documentation Guidelines for Disputes,” of this manual for more information.

5-404 Alternative Dispute Resolution

The purpose of the alternative dispute resolution process is to provide a means for Caltrans and the contractor to resolve project disputes at the project level with the help of

a neutral party who has no financial interest in the outcome of the dispute. The alternative dispute resolution process is not allowed for disputes solely between the contractor and a subcontractor because those disputes are outside of the scope of the contract that Caltrans has with the contractor. Additionally, the alternative dispute resolution process is not allowed for overhead-type disputes. Refer to Section 5-409, "Overhead Claims," of this manual for information regarding overhead-type disputes.

The contractor is required to use alternative dispute resolution in order to pursue a claim. Dispute resolution ladder (DRL), dispute resolution advisor (DRA), dispute resolution board (DRB), and partnering are different types of alternative dispute resolution processes available. Refer to Section 3-522, "Alternative Dispute Resolution Processes," of this manual for more information.

5-405 Claims

The contractor submits a written claim statement for each unresolved potential claim record, administrative issue, and overhead adjustment by listing them as exceptions to the proposed final estimate as described in Section 9-1.17D, "Final Payment and Claims," of the *Standard Specifications*.

All claims included in the exceptions to the proposed final estimate should be considered. Exceptions to the proposed final estimate that were not previously submitted in accordance with Section 5-1.43, "Potential Claims and Dispute Resolution," of the *Standard Specifications* are considered new claims. Exceptions for administrative or overhead claims are not considered new claims. Overhead claims are addressed in Section 9-1.17D(2)(b), "Overhead Claims," of the *Standard Specifications*. Refer to Section 5-409, "Overhead Claims," of this manual for information regarding overhead-type disputes.

Analyze the merit of new claims and document the claims as outlined in Section 3-521D, "Documentation Guidelines for Disputes," of this manual. Include the analysis in the preliminary construction claims findings.

Examples of claims correspondence are listed at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

5-406 Claims Resolution Process

The following claims processing milestones were established to assure that the claims process is completed within the statutory requirement of 240 days after contract acceptance. The number of days is calculated from the date of contract acceptance.

Districts are responsible for populating and updating the Division of Construction's claims database with the actual milestone dates to verify that milestones, events, and dates, are current and correct. Refer to Table 5-4.1, "Required Post Acceptance Event Codes and Dates," of this manual. Project claims information should be updated by the 15th of each month to maintain reliability of the data.

5-406A Issue Proposed Final Estimate—Target Day 40

The resident engineer issues a proposed final estimate within 40 days after contract acceptance. Issue the proposed final estimate with the understanding that the estimate represents the final payment to the contractor.

Do not postpone issuing the final estimate to await additional information from the contractor. Make sure that all quantity calculations and adjustments are completed in time to process the proposed final estimate within the target date. Send the proposed final estimate by certified mail with return receipt requested.

5-406B Proposed Final Estimate Returned—Target Day 70

The contractor has 30 days after receiving the proposed final estimate to review, sign, and respond either with or without a written statement of claims. Document the receipt of the contractor's response by postal receipt or written receipt if hand delivered.

Process the final estimate when the contractor returns the proposed final estimate indicating acceptance, or when the contractor does not return the proposed final estimate within the required 30-day period.

When the contractor returns the proposed final estimate with a written statement of claims within the 30-day period, district construction sends a copy of the contractor's claim package to the resident engineer, construction engineer, and district construction claims engineer.

If claims are submitted after the 30-day period, the entire submittal must be returned to the contractor with a cover letter stating that Caltrans will not address the claims because they were not submitted in accordance with the contract requirements, and the final estimate must be processed.

5-406C Preliminary Construction Claim Findings Completed—Target Day 110

By target day 110, the resident engineer completes the preliminary construction claim findings. These include a compilation of the existing information and documents that are filed in Category 62, "Disputes," of the contract records. The construction engineer sends the preliminary construction claim findings to the deputy district director of construction. Refer to Section 5-412, "Preliminary Construction Claim Findings and Category 62 Preparation and Guidelines," of this manual for detailed format, content, and suggestions in preparing this document.

Review the contractor's statement of claims for conformance with procedural requirements. This review checks that each claim is a continuation of a previously submitted potential claim. Overhead claims or administrative disputes that occur after issuance of the proposed final estimate do not need to be a continuation of a previously submitted potential claim. Document the contractor's failure to comply with the potential claim process and file the detailed findings in Category 62, "Disputes" of the project records. Summarize them in the preliminary construction claim findings for each claim. The detailed findings may include, but are not limited to:

- Failure to provide a statement of claims within the 30-day period.

- Failure to provide the identification number corresponding to the supporting full and final documentation of the potential claim record and the final amount of requested additional compensation.
- Failure to provide documentation in support of the final amount of the claim if different from that stated in the full and final potential claim record.

If the contractor submits a claim without the corresponding identification number, or if there is a disparity in the identification number, notify the contractor of the omission or disparity. The contractor has 15 days after receiving the notification to correct the omission or disparity. Assign an identification number if the contractor fails to correct the omission or disparity.

If the contractor's statement of claims includes administrative disputes that occurred or were recognized after issuance of the proposed final estimate, include these items in the preliminary construction claim findings. Administrative disputes occurring or recognized after issuance of the proposed final estimate may include the following:

- Contract item quantity payments
- Changed quantity payment adjustments
- Administrative deductions and withholds
- Payments for extra work
- Resolution of disputed labor, equipment, and materials

If administrative claims have merit, payment is made through item payments, change orders, or by releasing withholdings. Accompany payment of those claims with a letter stating that the payment resolves the respective claim in its entirety. If the contractor does not accept the payment as full resolution, refer to Section 5-408, "Claim Payments," of this manual, for more information. The results of the attempted resolution of these administrative disputes must be sent to the district construction claims engineer by day 200 for incorporation into the construction claim findings.

If the statement of claims includes claims for overhead, such as field or home office, and cost escalation associated with delays caused by Caltrans, these claims must be supported with an audit by an independent certified public accountant (CPA). Send these types of claims to the deputy district director of construction as part of the preliminary construction claim findings. The Independent Office of Audits and Investigations may review the audit. For additional details, refer to Section 5-409, "Overhead Claims," of this manual.

5-406D District Construction Review of Preliminary Construction Claim Findings Completed—Target Day 130

The deputy district director of construction, or delegated authority, completes the review of the preliminary construction claim findings and segregates the claims into the following three categories:

- Claims with entitlement
- Claims to refer to a board of review

- Claims of an administrative nature

The district construction claims engineer finalizes the preliminary construction claim findings and authorizes payment for claims with entitlement.

By day 130, the deputy district director of construction reviews the preliminary construction claims findings and uses this information to prepare a “Review of Claims by Deputy District Director of Construction” notification letter. This notifies the contractor which claims are resolved, claims that are of an administrative nature returned to the resident engineer for further review, and which claims will or will not be heard at a board of review meeting. Refer to the example “Review of Claims by Deputy District Director of Construction Notification Letter” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

5-406E Board of Review Meeting—Target Day 160

The board of review convenes when the deputy district director of construction or a delegated authority decides that certain claims may warrant further analysis by a board of review. The target date to hold a board of review meeting is 160 calendar days after contract acceptance. The board of review secretary must notify the contractor of the date, time, and the location of the board of review meeting as soon as the board members have been selected and all the necessary arrangements have been made. In the “Board of Review” notification letter, state that both the contractor and Caltrans will be allowed to make only oral presentations in support of their previously submitted written information and that no additional written information will be accepted by the board of review. Refer to the example “Board of Review Notification Letter” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

The resident engineer, supported by Caltrans personnel, is responsible for preparing and delivering the presentation at the board of review meeting.

The board of review is an informal meeting allowing the contractor and Caltrans the opportunity to make presentations in support of previously submitted written information for claims identified within the board of review notification letter to the contractor. The board of review listens to the presentations made by the contractor and Caltrans, and provides objective recommendations in the board of review report. The board of review report should be issued within 200 days after contract acceptance.

If requested, Caltrans personnel including district and structure personnel involved with the contract may attend the board of review meeting to assist in presenting the claims under review by the board. Arrange to have other personnel involved in the project available to the board to answer questions during the meeting regarding complex claims or for firsthand knowledge of events.

5-406E (1) Board of Review Secretary

The district assigns a secretary for the board of review. Generally, the district construction claims engineer serves as the board secretary. Other personnel that have organizational and writing skills may also serve as board secretary. The secretary must do the following:

- Arrange the meeting date, time, and location and notify the contractor by certified mail at least 15 days before the meeting. In the notification letter to the contractor, request the contractor inform Caltrans of any intentions to have legal representation at the board of review meeting. If the contractor plans to have legal representation at the meeting, the district should consider having a legal representative attend as a legal advisor. A Legal Division representative is present only to advise and counsel the board on significant legal issues. Contact the Division of Construction field coordinator for advice on legal representation.
- Notify respective Caltrans staff of the meeting date, time and location, and verify their attendance.
- Verify the attendance of the contractor, subcontractors, district and structure personnel involved with the project, and any other Caltrans personnel before the meeting.
- Provide board members with copies of the preliminary construction claim findings, review of claims by deputy district director of construction notification letter, board of review notification letter, project plans, and special provisions, two weeks before the meeting.

5-406E (2) Board of Review Member Selection

The deputy district director of construction is responsible for selecting the board of review members. The number of members of a board of review should be based on the following guidelines:

- Total claims less than \$250,000, one or two members
- Total claims of \$250,000 to \$1,000,000, two members
- Total claims of more than \$1,000,000, three members

Exceptions to these guidelines can be made depending on the complexity of claims. Discuss exceptions to the guidelines with Contract Administration in the Division of Construction. Board of review members must be selected based on the following criteria:

- The board of review members should not have been involved in the administration of the project under consideration.
- The board of review chairperson should be either the deputy district director of construction or a delegated manager at a supervising engineer level or above, with a minimum of 5 years of experience in construction. The chairperson should be assigned to the district in which the claim originated.
- The other two members of the board of review will either be a supervising engineer level or above with a minimum of 5 years of construction experience, or a senior engineer level with a minimum of 8 years of construction experience. The members may be from the project's district or selected from the statewide board of review member list.
- The expertise of each board of review member should be considered relative to the disputes under consideration.

The Division of Construction maintains and manages a statewide list of available board of review member candidates, and provides a project-specific, member-candidate list to the district upon request. Candidates on the board of review member list are construction managers, retired annuitants, Division of Construction field coordinators, or other Caltrans personnel meeting the minimum experience requirements.

5-406E (3) Board of Review Operation

The board of review will hear only those claims identified in the review of claims by deputy district director of construction notification letter sent to the contractor. The board will not hear or address other claims. Caltrans prohibits recording the meeting. The meeting is informal, allowing the contractor and the district personnel to present their positions, and for all parties to exchange questions and answers. All questions, except those of the chairperson, are directed to the chairperson first. The meeting attendees must recognize that the chairperson controls the meeting.

The members of the board of review must conduct the meeting as follows:

- The board of review chairperson informs the meeting attendees of the procedures and the format of the meeting.
- The chairperson states that the meeting is being conducted in accordance with Section 9-1.17D(3), “Final Determination of Claims,” of the *Standard Specifications*, which allows a person or a board appointed by the district to review those claims that would benefit from further review by a board of review.
- Each claim issue begins with a district representative giving a brief description of the project and the subject of the claim.
- The contractor is given the opportunity to present the claim in detail as supported by previously submitted information and documentation.
- The district presents its detailed position as supported by the preliminary construction claim findings.
- After both the contractor and the district make their presentations, the board may allow rebuttals by both parties. Attendees must only respond when board members request a response.
- If the contractor attempts to submit new information regarding a claim, the board chairperson must inform the contractor that the board does not permit additional claims or additional information regarding claims.

If the contractor attempts to discuss a claim other than those to be heard by the board as stated in the “Review of Claims by Deputy District Director of Construction” notification letter, the board chairperson informs the contractor that the board will not hear the issue and will not accept any additional information. Refer to the example “Review of Claims by Deputy District Director of Construction Notification Letter” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

The board of review will not make decisions on claims at the meeting. After the meeting, the board of review members and the secretary will discuss and review of the claims.

The board of review must make decisions on claims, after reviewing the preliminary construction claim findings and the information presented by both the contractor and the district personnel at the board of review meeting. The board secretary compiles the board of review report under the direction of the board chairperson, with suggestions from the other board members. For additional details, refer to Section 5-413, “Board of Review Report Preparation and Guidelines,” of this manual. The board of review report will contain a determination of claims heard and the board’s conclusions.

If the contractor did not attend a scheduled board of review meeting, the board of review report will be based on the information contained in the preliminary construction claim findings. Since the contractor did not attend the meeting, the claims cannot be filed in arbitration as stated in Section 10240.2, of the Public Contract Code. If this happens, attach a letter with the district director determination of claims explaining the situation, referencing the above noted section. For an example of the letter, refer to the example “District Director Determination of Claims—Board of Review Held, Not Attended by the Contractor” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

The board members and other Caltrans personnel involved in the claims resolution process must review drafts of the board of review report. Once all comments and corrections have been made, the board secretary will complete the board report and obtain the signatures of the board of review members. For complex claims with significant statewide implications, the board members must consult with the Division of Construction before sending the report to the district director.

5-406E (4) Board of Review Settlements

The board of review may decide that a negotiated settlement of the claims is appropriate. The board secretary prepares the claim settlement request memorandum. The board of review chairperson submits the claim settlement request memorandum directly to the Division of Construction for approval. Upon approval, negotiate settlement with the contractor in accordance with that approval. For roles, responsibilities, and information on preparing a claim settlement request memorandum, refer to Section 5-407A, “Claim Settlement Process,” and Table 5-4.2, “Claims Resolution Authority—Entitlement,” of this manual.

5-406F Board of Review Report Completed—Target Day 200

After the board members have signed the board of review report, the board secretary prepares a letter of transmittal and sends the report and the supporting documents to the district Claims Unit and the district director by target day 200.

5-406G Construction Claim Findings and Draft District Director Determination of Claims Completed—Target Day 220

The construction claim findings will name each of the contractor’s claims in summary form including the items below:

- References to the supporting documents

- Resolution of the administrative claims by the resident engineer
- Analysis of claims that were not heard by a board of review
- Board of review findings

For detailed information on preparing the construction claim findings, refer to Section 5-414, “Construction Claim Findings Preparation and Guidelines,” of this manual.

In addition to preparing the construction claim findings, the district construction claims engineer prepares a draft district director determination of claims. For detailed information on preparing the draft district director determination of claims, refer to Section 5-415, “District Director Determination of Claims Preparation and Guidelines,” of this manual.

Send the construction claim findings and the draft district director determination of claims to the deputy district director of construction by day 220.

The deputy district director of construction approves the construction claim findings, and then sends the findings and the draft determination of claims to the district director for signature.

Prepare and obtain approval of a change order compensating the contractor for claims found to have merit based on the construction claim findings. The change order must state that the payment is for full resolution of the claim specified. Refer to Section 5-3, “Change Orders,” of this manual for more information.

Run a semifinal estimate to make payment and add any time for approved change orders.

5-406H District Director Determination of Claims—Target Day 230

The district director determination of claims is the final determination of claims and completes the claims resolution process. The determination concludes Caltrans’ administrative claims process, triggers preparation of the final estimate, and opens the contractor’s 90-day arbitration filing window.

The district director reviews and approves the final determination of claims. The district construction claims engineer sends the approved final determination of claims letter to the contractor within 230 days after contract acceptance. The region director may delegate the authority for approval to the district director in a district served by a region. Refer to the example “District Director Determination of Claims—Major and Minor A Contracts” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

When all the claims are resolved, the district director may delegate signature authority for determination letters to the construction deputy district director who may further delegate this authority to the construction manager.

After the district director final determination of claims letter is sent, do not have any further discussion of claims with the contractor.

District construction processes a final estimate within 30 days of sending the district director determination of claims. For information on the final estimate, refer to Section 3-907D, “Final Payment and Claims,” of this manual.

Before submitting a request for the final estimate, verify that change order payment has been made for all claim determinations.

The district must store all project records in accordance with the procedures outlined in Section 5-104, “Final Construction Project Records,” of this manual.

If the contractor has diligently pursued and exhausted the administrative procedures specified in the contract, the contractor is entitled to file for arbitration of its claims 240 days after contract acceptance, even if the district director determination of claims has not been issued.

If the contractor files for arbitration and the final determination of claims has not yet been issued, the district must nevertheless send a final determination of claims letter to the contractor. The format of the final determination of claims may be similar to the example “District Director Determination of Claims—Major and Minor A Contracts” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

Consult the Division of Construction field coordinator and the designated attorney for guidance. Send a draft copy of the final determination of claims to the designated attorney for concurrence. After the designated attorney provides concurrence, the district director approves the final determination of claims and it is sent to the contractor. Do not have any further contact or discussion with the contractor concerning the merit of claims.

Do not try to resolve claims in the time between issuing the district director determination of claims notification letter and the contractor’s filing for arbitration. Once arbitration is requested, any request for claims settlement is initiated by Caltrans Legal Division with preparation of a request for arbitration settlement authority memorandum. Depending on the delegated settlement authority shown in Table 5-4.2, “Claims Resolution Authority—Entitlement,” of this manual, the Division of Construction chief or the deputy director for project delivery approves the requests.

5-406I Minor B Contracts

By law, the contractor has a maximum of 1 year from contract acceptance to file a claim with the Department of General Services, Government Claims Program for Minor B contracts. If a contractor submits a potential claim record, alternative dispute resolution will help resolve disputes and mitigate damages. Use the concepts and levels of the dispute resolution ladder as described in Section 3-522B, “Dispute Resolution Ladder,” of this manual to assist the potential claims record process.

5-406I (1) Contract Accepted—Target Day 0

When the contract is accepted, the resident engineer discusses and attempts to resolve any disputes. This will begin the dispute resolution process at Level 1.

5-406I (2) Claim and Invoice Submission—Target Day 30

Within 30 calendar days following acceptance of the contract, the contractor must submit a written claim for an unresolved dispute as part of the fully itemized invoice covering the actual work performed. Process payment to the contractor for the undisputed portion of the invoice. Immediately request additional information for the unresolved claims. When

the written claim is received, this ends Level 1 of the dispute resolution process. Elevate the unresolved claims to the construction engineer, beginning Level 2. Use Form CEM-6209, "Elevation of a Dispute," to define the unresolved claims when elevating to this level.

5-406I (3) Additional Information Received—Target Day 45

When the additional information is received for the unresolved claims, begin preparation of the preliminary construction claim findings (refer to Section 5-412, "Preliminary Construction Claim Findings and Category 62 Preparation and Guidelines" of this manual. Concurrently, the district construction claims engineer prepares a draft district director determination of claims (refer to Section 5-414, "Construction Claim Findings Preparation and Guidelines," of this manual).

5-406I (4) Preliminary Determination of Claims—Target Day 50

If the construction engineer cannot resolve the claims, finalize the construction claims findings and provide a copy to the contractor; this ends Level 2 of the dispute resolution process. This will serve as a preliminary determination of claims and notifies the contractor of the opportunity to present any unresolved claims within 30 days to the construction manager, or deputy district director of construction depending on the district's preference. This begins Level 3 of the dispute resolution process.

5-406I (5) Presentation of Unresolved Claims—Target Day 80

Any unresolved claims are presented, merits of the claims are discussed, and an attempt is made to resolve the claims by the respective representatives at Level 3.

5-406I (6) Final Determination of Claims—Target Day 85

The final determination of claims is completed by the district claims engineer and submitted to the deputy district director of construction for approval. The approved final determination of claims is sent to the contractor by day 85 and ends Level 3 of the dispute resolution process. The contractor can accept the district's decision, thereby ending the process, or continue the process through the Department of General Services, Government Claims Program or Superior Court, as applicable.

5-406I (7) Department of General Services, Government Claims Program and Superior Court

The Division of Construction arbitration engineer is responsible for coordinating Minor B claims with the Legal Division and for updating the database that includes tracking, monitoring, and reporting on all Minor B claims filed with the Department of General Services, Government Claims Program, Superior Court, or Division of Construction. The arbitration engineer is the point of contact regarding the status of and providing statistics for all Minor B claims filed with Department of General Services, Government Claims Program, Superior Court, or Division of Construction.

The contractor has 6 months to file a complaint in Superior Court after the Department of General Services, Government Claims Program or the chief of the Division of

Construction rejects the contractor's claim. The Legal Division is responsible for representing Caltrans in court and expects district and headquarters construction staff to provide assistance upon request.

5-407 Claim Settlement

A claim settlement is defined as a compromise of the contract requirements to settle a dispute in Caltrans' best interest. Settlements of claims may arise when both Caltrans and the contractor contributed to the disputed issue, and total responsibility is difficult to attribute to either party. In these situations, district management, the board of review, or Caltrans Legal Division will explore the possibility of settlement with the contractor.

A claim settlement request must be approved by the district director, Division of Construction chief, or the deputy director for Project Delivery depending on the settlement amount. The region director may delegate the authority for approval to the district director in a district served by a region. Refer to Table 5-4.3, "Claims Resolution Authority—Settlement Before Arbitration Filing," for the claim settlement authority and responsible parties.

No claim can be addressed between the district director determination of claims and the contractor's filing for arbitration.

5-407A Claim Settlement Process

When considering a decision to settle a claim, analyze Caltrans' exposure to help determine potential liability. This will serve as a guide for the settlement. The Division of Construction field coordinator provides assistance on all settlement analyses and should be consulted early in the process.

For consideration of settlements before arbitration, the field coordinator engages the Legal Division. The Legal Division will consult with the district or the board of review and provide direction for preparing a claim settlement request memorandum. For consideration of settlements during arbitration, the case attorney prepares this memorandum for approval.

The claim settlement request memorandum is an internal, confidential document protected under attorney-client communication privilege and must not be given to the contractor or included in the project files. The original claim settlement request memorandum will be kept in the Division of Construction's confidential files. The claim settlement request memorandum must be approved before entering into any negotiations with the contractor.

5-407A (1) Claim Settlement Request Memorandum

The claim settlement request memorandum must include the following items:

- Confidential attorney-client communication clause, ". . . prepared at the direction of and in consultation with the Legal Division."
- Project description.
- Chronology.

- Time extension summary.
- Description of claims.
- Summary of claims.
- Entitlement and settlement justification.
- Funding status.
- Consequences of not settling.

Refer to the example “Claim Settlement Request Memorandum” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

5-407A (2) Claim Settlement Agreement

A fully executed change order is considered the claim settlement agreement for claims settled before the district director determination of claims is issued. The change order must be written in sufficient detail so that it clearly describes the claims being settled, adjustments in contract time, disposition of liquidated damages, and compensation amount. Refer to Section 5-3, “Change Orders,” of this manual for guidance and see standard change order clauses at:

<https://dot.ca.gov/programs/construction/change-order-information>

The change order memorandum must refer to the approved claim settlement request memorandum. Do not substitute a change order memorandum for a claim settlement request memorandum.

During arbitration, the Caltrans case attorney prepares and signs a claim settlement agreement. Agreement is reached when the opposing counsel signs the document. To complete the administrative process, the Division of Construction’s arbitration engineer prepares a unilaterally approved change order for payment.

5-407B Contract Time Settlements

Time adjustments for reasons other than those specifically enumerated in the contract are considered contract time settlements. Defer contract time settlements until completion of the contract. Prepare a claim settlement request memorandum and settlement agreement as described above for contract time settlements. Attach CEM-2702, “Overrun in Contract Time,” to the memorandum. Do not record these contract time settlements on the CEM-2701, “Weekly Statement of Working Days.”

5-408 Claim Payments

If adequate funding is available, make payment immediately when you reach agreement with the contractor or find entitlement on a claim. Prepare and process a supplemental funds request if there are insufficient funds for payment.

When a change order is necessary to make payment for disputed work and the contractor refuses to sign it, issue a unilaterally approved change order in accordance with Section 4-1.05, “Changes and Extra Work” of the *Standard Specifications*, and Section 5-3, “Change Orders,” of this manual.

Claim payments are made in accordance with Table 5-4.2, “Claims Resolution Authority—Entitlement”; Table 5-4.3, “Claims Resolution Authority—Settlement Before Arbitration Filing”; and Table 5-4.4, “Claims Resolution Authority—Settlement After Arbitration Filing,” depending on the resolution type and the timing of the Resolution. For detailed information on contract payments, refer to Section 3-9, “Payment,” of this manual.

5-409 Overhead Claims

Overhead claims generally fall into two categories: home office overhead and field office overhead. Overhead claims generally occur when there have been delays to the completion of the contract. Delays caused by Caltrans to the controlling operation on contracts with a time-related overhead bid item are compensated through bid item quantity adjustments to the time-related overhead item. Refer to Section 3-905, “Time-Related Overhead,” of this manual.

All other overhead claims must be supported by an audit. The contractor must provide the required audit in accordance with Section 9-1.17D(2)(b), “Overhead Claims,” of the *Standard Specifications*. Provide a written response regarding Caltrans’ consideration of the overhead claim to the contractor before issuing the proposed final estimate. If the resident engineer determines that a compensable delay exists, evaluate the overhead claim through the audit process.

When a claim for overhead expenses is received without an audit by a Certified Public Accountant (CPA) to justify the claimed amount, notify the contractor that the submittal is incomplete and will not be considered until an independent CPA audit report is received. Failure to comply with the requirements justifies denying the overhead claim.

5-409A Home Office Overhead

Home office overhead, or general and administrative expenses, consists of indirect costs that are not associated with a specific project but are the costs of general facilities and administration necessary for the contractor’s performance on all contracts.

5-409B Field Office Overhead

Field office overhead consists of indirect costs that are associated with a specific project. These costs do not include costs for labor, materials, or equipment used in performing the work.

5-409C Contractor Submitted Audits

The Independent Office of Audits and Investigations will assist the resident engineer by performing a preliminary check of the independent audit report’s compliance with the requirements of the American Institute of Certified Public Accountants (AICPA) Attestation Standards.

Audits and Investigations will perform an audit of contractor submitted audits if the following conditions exist:

- The deputy district director of construction and the Division of Construction field coordinator have made a determination that an audit is warranted.

- The contractor has submitted an independent CPA audit report that conforms to the AICPA Attestation Standards.
- The Division of Construction has received and prioritized the audit request.
- The contractor has fulfilled the provisions of Section 9-1.17D, “Final Payment and Claims,” of the *Standard Specifications*.

A systematic review of the contractor’s claim and audit is required to decide if there is reason to proceed with a detailed analysis of the costs contained within the contractor submitted audit.

The audit process is initiated by the contractor’s written request for a Caltrans audit review of home office overhead and field office overhead by submitting exceptions to the proposed final estimate.

If determination has been made to consider the overhead claim, verify that the contractor’s claim for home office overhead or field office overhead is submitted along with a supporting independent CPA audit report in accordance with Section 9-1.17D, “Final Payment and Claims,” of the *Standard Specifications* and with those policies contained within the *CPA Desk Guide for Overhead Audits* available at the Division of Construction’s intranet website. Unallowable expenses including those relating to other businesses of the contractor must be excluded from the claimed expenses for field office overhead and home office overhead. For typical unallowable expenses, refer to the Code of Federal Regulations, Title 48, Section 31.205, “Selected Costs” (48 CFR 31.205). The independent CPA audit report may be faxed to the Independent Office of Audits and Investigations for assistance. Deny the audit request if the audit report does not comply with Section 9-1.17D, “Final Payment and Claims,” of the *Standard Specifications*.

The Division of Construction field coordinator decides if the facts and circumstances warrant a detailed analysis requiring a state audit review. This determination may involve significant analysis of many variables, including concurrent delays as evidenced by the Critical Path Method (CPM) schedule and time impact analyses. The Division of Construction field coordinator will inform the resident engineer to deny the claim and audit request if there is no justification.

If the audit report complies with Section 9-1.17D, “Final Payment and Claims,” of the *Standard Specifications* and the Division of Construction field coordinator decides an audit request is warranted, draft the audit request memorandum. Refer to Section 5-410A, “Audit Request Procedure,” of this manual for guidance on requesting an audit.

5-410 Audits

The Independent Office of Audits and Investigations provides a service to Construction by performing audits. Their audit services include:

- Reviewing contractor-submitted audits for overhead claims.
- Reviewing the contractor’s project files.
- Auditing the contractor’s records.
- Reviewing cost escalation claims.

- Reviewing costs for contract termination.
- Reviewing costs for complicated work-character changes.
- Reviewing costs for complicated item adjustments.
- Reviewing costs for differing site conditions.

5-410A Audit Request Procedure

When it is determined that an audit by the Independent Office of Audits and Investigations is needed, the deputy district director of construction gets concurrence from the Division of Construction field coordinator and submits the audit request memorandum to the Division of Construction. For guidance, refer to the example “Audit Request Memorandum” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

The memo must include the following information, as appropriate:

- Contract number
- Contractor name
- District contact person’s name, title, and phone number
- A justification

The justification must explain the reasons the contractor has entitlement on the claims and the associated costs that a Caltrans audit needs to verify. If appropriate, the justification must be accompanied by a summary of delay-related claim descriptions, a chronology of events, and amounts. For a sample summary of delay-related claims, refer to the examples “Summary of Delay-Related Claims” and “General Contract Information and Contract Chronology” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

Upon receipt of the district’s audit request memorandum, the Division of Construction sends a memorandum to the audit manager of the Independent Office of Audits and Investigations requesting an audit. The policy of Audits and Investigations is to complete audits within 100 days after receiving an audit request memorandum.

5-410B Construction Response to Audit Reports

The initiator of the request for the audit must provide an acceptable corrective action plan in response to audit findings and recommendations.

The Division of Construction is responsible for the corrective action plans for force account audits authorized under Section 5-1.27, “Records,” of the *Standard Specifications*. Approval of the district corrective action plans may not be delegated below the level of district division chief of construction.

A corrective action plan must be submitted to the external audit chief for the Independent Office of Audits and Investigations.

The district will use the final audit report or draft audit findings to decide if the contractor is due any payment adjustments. The final audit report is a matter of public record, and its distribution is not limited.

If compensation is due, the Division of Construction field coordinator will request that district construction processes a change order for payment in accordance with the overhead claim administration delegation of authority in Table 5-4.2, "Claims Resolution Authority—Entitlement." Note the name of the person authorizing the change order in the change order memorandum.

Other delay-related expenses besides overhead, such as escalated materials, equipment, and labor costs, may be included in the contractor's claim. The escalated costs may be included in the audit request if complex. Account for simple cases of escalated costs because of delays caused by Caltrans, unless they are easily combined into an audit for overhead. Unlike audits for overhead, escalated cost audits may be performed before receiving the contractor's written statement of claims. An independent CPA audit is not required to support escalated cost claims because of delays caused by Caltrans.

Force account markups are not included in any escalated cost calculation. Recovery of additional overhead incurred because of escalated costs requires submittal of an overhead claim with an independent CPA audit report.

5-411 Arbitration

The contractor is entitled by law to file a complaint in arbitration no later than 90 days after receipt of the written district director final determination of its claims. If the contractor has diligently pursued and exhausted the administrative procedures specified in the contract, the contractor is entitled to file for arbitration of its claims 240 days after contract acceptance if the district director determination of claims has not been issued. The arbitration process is initiated by filing a complaint with the Office of Administrative Hearings.

The Caltrans Legal Division handles all construction contract arbitrations. When a contractor files for arbitration, all contacts with the contractor regarding the specific project must go through the designated attorney. The resident engineer, the construction engineer, and other personnel involved with the contract, must assist in the arbitration process. This assistance may be in the form of preparing calculations, performing technical analyses, preparing documents, assisting in the discovery process, or providing testimony. Keep project records at one location for ease of discovery by the Legal Division.

The arbitration payment process is a joint effort involving the Division of Construction, the Legal Division, the district, the Division of Budgets, and the Division of Accounting. The Division of Construction arbitration engineer is responsible for updating the database that includes tracking, monitoring, and reporting all arbitration cases. The Division of Construction arbitration engineer is the point of contact regarding status of ongoing arbitration cases, coordinating arbitration payments, and providing statistics on all arbitration cases.

5-412 Preliminary Construction Claim Findings and Category 62 Preparation and Guidelines

Preparation of the preliminary construction claim findings can be completed quickly by incorporating documents contained in Category 62, “Disputes,” of the project records. Complete the preliminary construction claim findings when you receive exceptions to the proposed final estimate from the contractor. Refer to the example “Construction Claim Findings” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

5-412A Preliminary Construction Claim Findings Format

The preliminary construction claim findings consists of the following sections:

- Title page
- Table of contents
- Project chronology
- General information
- List of claims
- Contractor’s exceptions to the proposed final estimate
- Exhibits obtained from Category 62, “Disputes”

A well-organized Category 62, “Disputes,” of the project records is imperative for preparing the construction claim findings. Refer to Section 5-102C, “Description of Categories,” of this manual for more details about the file categories. For each claim, Category 62 should include:

- Claim checklist, refer to the example “Claim Checklist” at:
<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>
- Request for Information (RFI)
- Form CEM-6201D, “Initial Potential Claim Record” and Caltrans’ response
- Form CEM-6201E, “Supplemental Potential Claim Record” and Caltrans’ response
- Form CEM-6201F, “Full and Final Potential Claim Record” and Caltrans’ response
- All correspondence
- District’s position paper for the DRB
- Contractor’s position paper for the DRB
- DRB recommendation
- Resident engineer daily reports
- Assistant resident engineer daily reports
- Applicable parts of plans and specifications
- Relevant change orders
- Photographs

- Calculations and analysis
- Weekly Statements of Working Days
- Critical path method schedules
- Other pertinent information

Refer to Section 5-406D, “District Construction Review of Preliminary Construction Claim Findings Competed—Target Day 130” of this manual for more information.

5-413 Board of Review Report Preparation and Guidelines

The district construction claims engineer and deputy district director of construction use the board of review report to complete the construction claim findings that are the basis of the district director determination of claims.

In preparing the board of review report, the board members should follow the guidelines below:

- State opinions, facts, positions, conclusions, determinations, and recommendations in the report. However, the important items to be presented are facts, contract language, and the results of applying the contract to the facts.
- Do not use words such as “think,” “feel,” and “believe.”
- Quantify all items. If the contractor was inefficient, state that conclusion’s basis. If such inefficiency occurred frequently, state how many times and over what time frame.
- Do not use tables within the board recommendations.
- Begin each individual claim on a new page.
- Do not include any language indicating that the report’s findings comprise the final determination. For all claims, the district director makes the final determination.

The following establishes the format, content, and guidelines for writing the board of review report and the board of review recommendations. For a sample of a board of review report, contact the Office of Contract Administration in the Division of Construction

5-413A Format

A board of review report follows the general format below.

5-413A (1) Introduction

The board of review report will start with an introductory paragraph describing the board meeting attendees and date of occurrence.

5-413A (2) Items That Are Common to All Claims

List items such as the chronology and general information.

5-413A (3) Summary of Resolved Claims

Reference claims that were entirely or partially settled.

5-413A (4) Individual Claim Information

Reference each individual claim number, title, and the amount.

5-413A (5) General Description of the Claim

Briefly describe the nature of the claim.

5-413A (6) Contractor's Position

Quote directly from the contractor's RFI, potential claim records, or written statement of claims. Add any other pertinent information provided in other documentation.

5-413A (7) District's Position

The district's position must be compiled from the responses to potential claim records, and supported by exhibits that include related correspondence.

5-413A (8) Comments of the Board

In this section of the report, include the following:

- Any new material or change in position if raised by the contractor at the board meeting.
- Any board requests for additional information or analysis and any general discussion of that information or analysis.
- Other information the board considers relevant to the issue.

The following are some examples of clauses that may be used in this section:

- "At the board of review meeting, the contractor informed the board . . ."
- "At the board of review meeting, the contractor submitted additional information to support the contractor's claim."
- "At the request of the board, the resident engineer reviewed the contractor's submittal and noted . . ."
- "The resident engineer informed the board . . ."
- "At the request of the board . . ."

5-413A (9) Findings of the Board

Format this section of the board of review report as a series of bullets listing the board's conclusions and providing the board's findings. The bullets will convey the board's reasoning and follow a progression that illustrates what was required, what happened, and what the board concluded was relevant to its recommendation. The following are some examples of phrases that may be used in this section, beginning with the statement, "The board concluded that:

- The contract provided for . . .
- The work included . . .
- Based on bid item number [xx], description . . .

- The contract further provided . . .
- The contract time is subject to extensions for . . .
- Work began on [date].
- By correspondence dated [date] . . . the contractor directed the resident engineer's attention to . . .
- The contractor requested issuance of a change order to provide compensation for . . .
- On [date], the contractor submitted request for information, dated [date].
- On [date], the contractor submitted an initial potential claim record, dated [date].
- On [date], the contractor submitted a supplemental potential claim record, dated [date] . . . a claimed cost of \$ [value] and a claimed delay of [number] days.
- On [date], the resident engineer responded to the contractor's supplemental potential claim record and directed the contractor's attention to Section [xx] of the *Standard Specifications*.
- On [date], the contractor submitted the full and final potential claim record, dated [date] . . . with the claimed cost of \$ [value] and a claimed delay of [number] days.
- On [date], the resident engineer responded to the contractor's full and final potential claim record.
- With the return of the proposed final estimate, the contractor included a corresponding claim for \$ [value] and a claimed delay of [number] days.
- The contractor has been compensated for the work of bid item number [xx] and that the contractor is not entitled to any additional compensation for that work.

For each claim, the conclusions will be ended with a recommendation statement such as, "Therefore, it is recommended that the claim be allowed [or *denied*] in the amount of \$ [value]."

Facts and findings address what actually occurred, including only facts the board knows with certainty. Guesses or unverified information should not be used in the conclusion.

The board of review report should specifically address any prior dispute resolution advisor or dispute resolution board findings and recommendations pertaining to the claim, and provide its conclusions. Particular attention must be paid when the board of review's conclusion disagrees with those findings and recommendations.

5-414 Construction Claim Findings Preparation and Guidelines

The board of review report is incorporated as a part of the construction claim findings. The construction claim findings provide the basis for the district director determination of claims. The district construction claims engineer prepares the construction claim findings by refining the preliminary construction claim findings. Incorporate claims resolved and status, unresolved administrative claims addressed by the resident engineer, and claims addressed by the board of review. When preparing the construction claim findings document, consider that the document is used by a Caltrans attorney if claims are filed in arbitration.

Concurrently, the district construction claims engineer prepares the draft district director determination of claims. Refer to Section 5-415, “District Director Determination of Claims Preparation and Guidelines,” of this manual.

The district construction claims engineer transmits the construction claim findings to the deputy district director of construction for approval.

The district construction claims engineer then transmits the construction claim findings and the final district director determination of claims to the district director for approval.

The following sections provide format, content, and guidelines for preparing the construction claim findings. For an illustrative sample of the format and content of construction claim findings, refer to the example “Construction Claim Findings” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

5-414A Format

Construction claim findings follow the format below:

5-414A (1) Title Page

The title page states the following:

- “Construction Claim Findings”
- Contract identification data such as contract number, district, county, route, post mile, and federal project number, if applicable
- Applicable *Standard Specifications* and *Standard Plans* sections
- Names of the contractor, resident engineer, and other personnel with significant involvement
- Date

5-414A (2) Table of Contents

Number all pages in the table of contents.

5-414A (3) Project Chronology

The project chronology includes the following:

- Advertisement date
- Bid opening date
- Contract award date
- Contract approval date
- First working day (date and working day number)
- Date contractor began work
- Working days specified (number of days)
- Computed completion date (date and working day number)

- Change order time adjustment (number of days)
- Nonworking days (number of days)
- Working days not worked on controlling operation (number of days)
- Extended date for completion (date and working day number)
- Project completion date
- Contract acceptance date
- Overrun in contract time (number of working and calendar days)

5-414A (4) General Information

The general information section should be presented in a narrative format, and include the following:

- Description of the work
- Contractor's bid amount
- Proposed final estimate amount
- Date the proposed final estimate was sent to the contractor
- Date the contractor returned the proposed final estimate with exceptions
- Total number and amount of claims submitted

5-414A (5) Summary of Claims

Provide the following information:

- Identification numbers and titles
- Claimed amounts
- Recommended payments
- Remaining amounts

5-414A (6) Claim Categories

Show the segregation of claims into the following categories:

- Administrative claims
- Claims heard by board of review
- Claims not heard by board of review

5-414A (7) Claim Number, Title, and Claim Amount

A boldfaced, underlined title bar will be used for each claim. In the left-hand column, place the claim number. In the middle column, position the claim title. In the right-hand column locate the claim amount, including days claimed.

5-414A (8) Description of the Claim

Provide the following information:

- An explanation of what caused the claim.
- Pertinent statements of facts related to the issue, not beliefs or opinions.
- A reference to the applicable specifications relating to the claim. You may include a separate section titled “Applicable Specifications,” listing the section numbers and excerpts.
- The circumstances leading to each claim. Use facts supported with exhibits that include daily reports or letters.
- Relevant dates if the claim includes time considerations.
- A statement of actions and responses made by Caltrans and the contractor.
- The method and time of notification of the claim.

5-414A (9) Contractor’s Position

Quote directly from the contractor’s RFI, potential claim records, or written statement of claims. Add any other pertinent information provided in other documentation. Do not interpret the contractor’s position. If the contractor has not stated the basis for the claim, note that the basis was not stated. State whether a cost analysis was submitted.

Provide the information in the following order:

- Full and Final Potential Claim Record
- Supplemental Potential Claim Record
- Initial Potential Claim Record
- Contractor’s RFI pertaining to the claim
- Reference table to contractor’s supporting exhibits

5-414A (10) District’s Position

The district’s position must be compiled from the responses to potential claim records, and supported by exhibits including related correspondence. Additional arguments supporting the district’s position are not required. If the contractor provides reasons for changing the amount of requested additional compensation from that stated in the full and final documentation, additional opposing statements may be included.

Provide the information in the following order:

- Resident engineer’s response to the Full and Final Potential Claim Record.
- Resident engineer’s response to the Supplemental Potential Claim Record.
- Resident engineer’s response to the RFI.
- A list of exhibits including change orders for partial resolution of the potential claim, photographs, CPM analysis, cost analysis, correspondence, and daily reports.

Include a separate section stating deficiencies if the contractor has failed to comply with Section 9-1.17C, “Proposed Final Estimate,” of the *Standard Specifications*.

5-414A (11) Findings and Recommendations

State the district's conclusions on the merit of the claim in bullets, following the format of the board of review report.

Briefly state the reason for the conclusions based on the information provided.

Recommend denial if there is no merit, but do not deny the claim. Only the district director has the authority to deny the claim.

5-414A (12) Tabular Reference to Supporting Information

5-414A (13) Summary of Resolved Claims in Tabular Format for All Claims

5-414A (14) Deputy District Director of Construction Signature Block

5-414A (15) Exhibits

Include the following exhibits as appropriate:

- Copy of the contractor's written statement of claims
- Correspondence
- Cost data
- RFIs and potential claim records
- Detailed chronology of correspondence, other documents, or events
- CPM schedule, time impact analysis, or revised schedule
- Photographs

5-414B Helpful Hints

When preparing the construction claim findings, the following hints may be helpful:

- Identify specific references in the following manner: "Section [xx] of the special provisions requires . . ."
- Quote all excerpts. Avoid paraphrasing them.
- Include all pertinent correspondence.
- Include pertinent photographs.
- Identify the central issue, identify irrelevant contentions, and provide a response to every relevant contention that the contractor makes.
- Use exact dates and numbers.
- State whether days are working or nonworking.
- When referring to days, when applicable, include the month, day number, and year.

5-414C Things to Avoid

When preparing the construction claim findings, avoid the following:

- Using the words “denied,” “rejected,” or “determined.” Only the district director can use these terms in the district director determination of claims.
- Including a copy of Sections 1 through 9 of the *Standard Specifications*.
- Making the background section of the district’s position a chronology of letters or events. Write the background as a narrative, referencing any relevant letters or events, if appropriate.
- Including correspondence, photographs, or other exhibits that have no direct bearing on the claim.

5-415 District Director Determination of Claims Preparation and Guidelines

The district director makes the final determination of claims in consideration of the construction claim findings and supporting documents. The district director determination of claims is a stand-alone document and does not reference the board of review report, or construction claim findings. The district director determination is presented in a bulleted format, listing the construction claim findings.

For a sample district director determination of claims refer to the example “District Director Determination of Claims—Major and Minor A Contracts” at:

<https://construction.onramp.dot.ca.gov/claim-correspondence-examples>

Once the district director determination of claims is completed, send it to the contractor by hand delivery or deposit in the U.S. mail. Issue the final estimate in writing.

Once the district director determination of claims is submitted to the contractor, there should be no further contact or discussion concerning merits of claims. If the contractor pursues unresolved claims in arbitration, Caltrans’ Legal Division coordinates any necessary responses.

5-416 Copy Distribution of Claim Documents

The district must process and distribute copies of claims documents produced during the claims resolution process. The district is also responsible for retaining copies in the project files.

Table 5-4.1. Required Post Acceptance Event Codes and Dates (1 of 2)

Event Code	Definition	Applicable Date
ACF	Arbitration Case Filed	Use the date that the contractor filed a complaint with the Office of Administrative Hearing.
BORR	Board of Review Recommendation	Use the issuance date of the board of review recommendation report.
CED	Construction Expenditures Done	Input the date that all construction expenditures were completed.
DCS	District Claim Settlement Memorandum Sent to Headquarters Construction	Use the date that the district sent the memorandum to Headquarters Construction.
DDD	District Director Determination Sent to Contractor	Use the date that the district sent the final district director determination of claims letter to the contractor, regardless of who signed the letter.
DDS	Review of Claims by the Deputy District Director of Construction Sent to the Contractor	Use the date that the district sent the letter to the contractor.
LCFC	Legal Case File Closed	Use the date that the Legal Division arbitration attorney returns the legal case files to the district and no longer charges against the expense authorization.
PFEAE	Proposed Final Estimate Returned with Administrative Exceptions, Including Item of Work Exceptions, CCO Work, and Extra Work Bill Exceptions	Use the date that the contractor returned the PFE designated by the earliest date stamp by the mail room or resident engineer. Internal routing time is not considered in this event date code.
PFEC	Proposed Final Estimate Returned with Claims	Use the date that the contractor returned the PFE designated by the earliest date stamp by the mail room or resident engineer. Internal routing time is not considered in this event date code.
PFENE	Proposed Final Estimate Returned without Claims and Administrative Exceptions	Use the date that the contractor returned the PFE designated by the earliest date stamp by the mail room or resident engineer. Internal routing time is not considered in this event date code.

Table 5-4.1. Required Post Acceptance Event Codes and Dates (2 of 2)

Event Code	Definition	Applicable Date
PFER	Proposed Final Estimate Received	Use the date that the contractor received the proposed final estimate.
PFES	Proposed Final Estimate Sent to the Contractor	Use the date that the contractor is sent the proposed final estimate by certified mail.

Claims that the contractor is entitled to in accordance with the contract can be resolved at any time during construction, during the claims resolution process, or after arbitration has been filed. Table 5-4.3 shows claims resolution authority from the start of work to the district director’s determination of claims for notices, protests, potential claims, and claims, based on settlement amount. Table 5-4.4 shows arbitration settlement authority for requests for settlement, from filing of arbitration to prior to arbitrator’s decision. The deputy district director of Construction is responsible for obtaining FHWA concurrence on all Projects of Division Interest settlements.

Table 5-4.2. Claims Resolution Authority—Entitlement

Period	Items	Entitlement Authority
Before issuance of proposed final estimate	Notices, protests, and potential claims	Authority to approve change orders resolving entitlement may be delegated under the authority to approve change orders.
From return of proposed final estimate to district director determination of claims	Claims	Deputy district director of construction approves. Authority, including authority to resolve entitlement, may be delegated to construction managers, but not to construction engineers.

Table 5-4.3 Claims Resolution Authority—Settlement Before Arbitration Filing

Responsible Party	Settlement ≤ \$200,000 per issue	Settlement >\$200,000 to \$5 million (or ≤10% of bid more than \$50 million)	Settlement >\$5 million (or >10% of bid more than \$50 million)
District, in consultation with Legal Division	Prepares request	Prepares request	Prepares request
Deputy district director of construction or Region Division Chief of Construction	Recommends approval and submits request for approval	Recommends approval and submits request for approval	Recommends approval
District director or Region director	Approves	No action	Recommends approval and submits request for approval
Division of Construction field coordinator	Reviews for consistency for region- or district-level approval	Recommends approval	Recommends approval
Division of Construction chief	No action	Approves	Recommends approval
Project Delivery deputy director	No action	No action	Approves

Table 5-4.4 Claims Resolution Authority—Settlement After Arbitration Filing

Responsible Party	Settlement ≤ \$5 million (or ≤10% of bid more than \$50 million)	Settlement > \$5 million (or >10% of bid more than \$50 million)
Legal Division	Prepares request and submits it for approval	Prepares request and submits it for approval
Deputy district director of construction or Region Division Chief of Construction	Recommends approval	Recommends approval
Division of Construction field coordinator	Recommends approval	Recommends approval
District director or Region director	No action	Recommends approval
Division of Construction chief	Approves	Recommends approval
Project Delivery deputy director	No action	Approves