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| SAN FRANCISCO PUBLIC UTILITIES COMMISSION INFRASTRUCTURE CONSTRUCTION MANAGEMENT PROCEDURES | |
| SECTION: SFPUC INFRASTRUCTURE CONSTRUCTION MANAGEMENT | APPROVED:  |
| PROCEDURE NO: 022 | DATE: 6/7/2019 |
| TITLE: CONSTRUCTION CLAIMS MANAGEMENT | REVISION: 1 |

1.0 Policy

All SFPUC Infrastructure CM team members are required to develop or review contract documents, administer contracts, implement procedures, and provide timely responses to project issues in a manner that will mitigate the opportunities for potential construction claims.

This SFPUC Infrastructure CM Procedure applies to all personnel working on SFPUC Infrastructure projects during construction to the extent that their work is affected by this CM Procedure and does not conflict with specific SFPUC policies or the Contract under which the Work is executed.

2.0 Description

This SFPUC Infrastructure CM Procedure establishes the requirements and responsibilities for the administration and resolution of Contractors' Claims during construction of SFPUC Infrastructure projects.

3.0 Definitions

3.1 Claim

A Claim is a written demand by a Contractor for an adjustment in the Contract Sum or Contract Time, or both, which is submitted in accordance with the Contract Documents.

3.2 Change Order

A Change Order is a written instrument prepared by the City, issued after the effective date of the Agreement and executed in writing by the City and the Contractor that modifies the contract document by making additions, deletions or revisions in the Work or any Contract term or condition.

3.3 Unilateral Change Order

When time does not allow for a Change Order to be negotiated, or when the City and the Contractor are unable to reach an agreement on the cost and/or time required to complete the change in the work proposed or requested, the City may issue an Unilateral Change Order instructing the Contractor to proceed with a change in the work based on the City's estimate of cost and/or time to perform the change in the work. Upon receipt of the Unilateral Change Order, the Contractor shall proceed with the ordered work.

3.4 Notice of Potential Claim (NOPC)

A NOPC is a written notice prepared by the Contractor disputing a directive, determination, Proposed Change Order, Unilateral Change Order, payment, or other act by the City (or RE), in the view of the contractor, impacting or potentially impacting payment, nonpayment, withholding of payment or the performance of the Work. The Contractor must submit a NOPC within seven (7) calendar days of the event, activity, occurrence or other cause giving rise to the potential claim.

3.5 Contract Claim

No later than 45 calendar days from the submittal of a timely NOPC, the Contractor may submit a timely, certified and documented Contract Claim for additional compensation of cost or time based on any disputed item. The Contract Claim shall comply with the General Conditions Specification Section 00 72 00, Article 13, Contract and Government Code Claims.

The Contractor shall submit with his Contract Claim a Contract Claim Certification as per the General Conditions Specification Section 00 72 00, Article 13, Contract and Government Code Claims.

The format of the Contract Claim shall also comply with the General Conditions Specification Section 00 72 00, Article 13, Contract and Government Code Claims.

3.6 Construction Management information System (CMIS)

The CMIS is an on-line management tool for the processing of contract documents based on established SFPUC Infrastructure CM Business Processes. Processing of Claims will utilize the CMIS which stores information pertinent to Claims Management and their processing status. The CMIS is configured for RE entry and administration of responses to Claims directly into the system.

4.0 Responsibilities

4.1 Resident Engineer (RE)

The RE manages the construction contract and is responsible for proactively avoiding Claims, maintaining a tough but fair attitude in dealing with the Contractor, immediately notifying the PM and Construction Manager upon receipt of a NOPC, and analyzing or assisting with the analysis of a Claim.

4.2 Field Contracts Administrator (FCA)

The Field Contracts Administrator provides support to the RE in administration of the terms and conditions of the contract, manages the contract change process including monitoring and tracking changes and claims resolution, prepares Records of Negotiation, and assists in the analysis of Claims.

4.3 Construction Scheduler and Estimator

The Construction Scheduler and the Estimator provide cost and schedule analysis support for the review of NOPCs and Claims.

4.4 Construction Manager

The Construction Manager directs the construction management organization for a facility, including manages assigned REs, resolves conflicts between the Contractor and the RE, reviews and advises regarding approval of recommended contractual actions to bring the Work into compliance with the Contract Documents, and assists the Project Manager (PM) in reviewing and developing strategies to address Claims.

4.5 Project Manager (PM)

The PM reviews and directs the analysis of the merit of a Claim, and leads the development of a negotiation plan.

4.6 Construction Management Bureau (CMB) Manager

The CMB Manager is the final decision maker when determining the validity of a Contractor Claim within the SFPUC construction management organization prior to any request for services from the Dispute Resolution Advisor (DRA) or Dispute Review Board (DRB).

5.0 Implementation

5.1 Claims Mitigation

5.1.1 The RE shall, through his/her actions and the actions of the CM team, ensure that directives, interpretations of the Contract requirements, and responses to the Contractor are conducted in a timely, fair, defensible and consistent manner that reduces the potential or opportunity for the Contractor to dispute such actions and submit a Claim.

5.1.2 The Contractor may, from time to time, informally express a dispute with an action by the RE. Should the Contractor make an informal expression of a dispute, the RE must attempt to resolve the dispute promptly to avoid a NOPC.

5.2 Notice of Potential Claim

- 5.2.1 To reserve the right for its claim, the Contractor shall submit a NOPC to the RE not later than seven (7) calendar days after a potential claim event. The Notice shall describe the potential claim event, include an estimate of any cost and/or time impact, and reference any relevant Contract provisions with sufficient specificity to enable the RE to review the Notice.
- 5.2.2 The RE shall make all efforts to send an e-mail acknowledgement to the Contractor within two (2) working days of receipt of the NOPC and forward the Notice to the FCA, Construction Manager, and PM.
- 5.2.3 The FCA shall log the NOPC in the CMIS Change Management module, identifying the "Document Type" as a Claim ("CLM").
- 5.2.4 Within five (5) working days of receipt of the Notice, the RE and FCA shall make all efforts to conduct a preliminary analysis of the NOPC and report the results to the Construction Manager and PM. All correspondence and other documentation logged in CMIS shall be linked to the pertinent Issue. All documents generated during the course of analysis shall be attached as PDF documents to the Change Management record.
- 5.2.5 Based on consultation with the PM and the Construction Manager, the RE may meet with the Contractor to discuss and resolve the NOPC. All such meetings between the City and the Contractor shall be documented in the CMIS Meeting Minutes module.
- 5.2.6 The RE and Contractor may refer the NOPC to the DRA or DRB if either process is included in the Contract. The Contract Documents shall be reviewed for contractual timelines and submittal requirements, including requirements for certification of the Claim.

5.3 Contract Claim

- 5.3.1 The Contractor must submit a written certified Contract Claim to the RE within 45 calendar days of submitting a NOPC in accordance with Contract Specification Section 00 72 00, Article 13.02.
- 5.3.2 Within two (2) working days of receipt of a Claim the RE sends an acknowledgement of receipt on official City letterhead and immediately notifies the FCA, Construction Manager and PM.
- 5.3.3 If non-compliant, the RE rejects the Claim and notifies the Contractor. The Contractor may request review of the Contract Claim and the City's response by the CMB Manager in

accordance with Contract Specification Section 00 72 00, Article 13.02E (Procedure for Review of a Contract Claim).

- 5.3.4 If compliant, the RE convenes, within five (5) calendar days of receipt of the Claim, a meeting with the FCA, Construction Manager, PM, and other CM team members as required, to discuss the overall merits of the Claim, review the RE's previous analysis of the NOPC and develop a plan to analyze and respond to the Claim.
- 5.3.5 The CM and PM review the response plan with the CMB Manager who determines when to engage the City Attorney's Office and whether to engage any outside claims support.
- 5.3.6 The PM may designate a Claims Manager to lead the analysis of the Claim and prepare the formal response to the Contractor. CM team members and outside claims specialists (if required) must complete the analysis and a negotiation plan within 30 days to allow for sufficient internal review before responding formally to the Contractor. All correspondence initiating during the review of the Claim shall be logged in the CMIS Correspondence module.
- 5.3.7 The RE, Construction Manager, and PM present the response and negotiating plan to the CMB Manager for endorsement.
- 5.3.8 Within 45 calendar days of receipt of the Contract Claim, the RE shall submit a written response to the Contractor, either denying or accepting the Claim in whole or in part, or requesting that negotiations be conducted. The response shall be logged in the CMIS as a Negotiation document. All non-correspondence documentation generated during the review shall be attached to the responsive Negotiation document.

If City does not respond to a Contract Claim within the 45-day period, the Claim is deemed denied in its entirety.
- 5.3.9 If the CMB Manager determines to proceed with negotiations with the Contractor, the RE convenes a negotiation meeting with the Contractor. Negotiations are led by a person designated by the CMB Manager, with support from other CM team members. The FCA records minutes of the negotiations within the CMIS Meeting Minutes module, and links the minutes to the Negotiation Document.
- 5.3.11 Negotiations are conducted until a settlement is reached and are logged, as the RE deems necessary to record significant modifications to the original Claim, as additional Negotiations. The CMB Manager determines when to terminate negotiations that have reached an impasse.
- 5.3.12 If negotiations are successful, the FCA initiates and processes a Change Order from within the pertinent Change Order Business Process for execution by the Contractor and the City.

5.3.13 If negotiations are not successful, or the RE initially denies the Claim within 45 calendar days, or the 45 calendar days limit to submit a Claim from its NOPC expires with no response to the Contractor, the Claim is deemed denied in its entirety. The Contractor may, within 10 days of the conclusion of unsuccessful negotiations, request a review of the Claim by the CMB Manager.

5.3.14 Within 60 calendar days of the date of the request for review, the CMB Manager (or designee) issues a determination on the Contractor's request which shall constitute the final administrative determination of the City. If no action is taken by the CMB Manager within 60 days, the original response of the City shall constitute the final administrative determination of the City.

5.3.15 The Contractor may take the Claim to DRA/DRB to work on amicably resolving the claim. SFPUC Infrastructure CM Procedure No's. 025 and 026 highlight the process of resolving claims and disputes if the claims failed to be amicably resolved between the Contractor and CM team.

5.4 Lessons Learned Report

If the Claim results in a cost or schedule adjustment, the Construction Manager, with assistance of the RE, shall prepare a Lessons Learned Report for the subject Claim. This report should not contain the name of the Contractor. The report should concentrate on analyzing the root cause of the Claim and how a similar situation can be mitigated. Circulation of this report is limited to other Construction Managers and REs engaged in similar work. The RE shall use the Claim and Negotiation Documents created to gather Claim-related documentation to track actions and history regarding the Claim, and to describe the Lessons Learned. The Claim's narratives, along with the linked documentations, serve as the basis for the Lessons Learned Report.

6.0 Other Procedural Requirements

None

7.0 References

7.1 Technical Specifications

Section 00 72 00, Article 13 General Conditions, Contract and Government Code Claims

7.2 SFPUC Infrastructure CM Procedures

No. 011 Construction Change Management
No. 025 Dispute Resolution Advisor (DRA)
No. 026 Dispute Review Board (DRB)

7.3 Others

NONE

8.0 Attachments

022 - 1 Revision Control Log

Attachment 022 - 1
Revision Control Log

| Revision No. | Revision Date | What changed? |
|---------------------|----------------------|---|
| Rev 1 | 6/7/19 | <ul style="list-style-type: none">• Minor format changes;• Revision Control Log updated. |
| Rev 0 | 11/14/16 | Signed |