


MANUAL CHANGE TRANSMITTAL		NO. 13-7
TITLE: Department of Transportation <i>Construction Manual</i>	APPROVED BY:  for Mark Leja, Chief Division of Construction	DATE ISSUED: June 27, 2013
SUBJECT AREA Table of Contents and various sections of the <i>Construction Manual</i>	ISSUING UNIT Division of Construction	
SUPERSEDES CPB 00-8, CPB 06-9, CPB 09-5, CPB 09-12, CPB 09-15, CPB 11-4, CPD 00-9, CPD 04-3, CPD 06-2, CPD 06-10, CPD 08-11	DISTRIBUTION All Requested Manual Holders	

This manual change transmittal delivers the revisions of Chapter 5, Section 4 of the *Construction Manual*. Updated sections may contain updated language, information, corrections, and references resulting from updates to the 2010 *Standard Specifications*, and from policy, and procedural changes. Change bars in the margins of the revised sections indicate text that was changed or added.

Please update your manual according to the table below.

Section	Incorporates	Remove Old Page(s)	Insert New/Revised Page(s)
Goldenrod, Chapter 5, Section 4, "Disputes"	None	5-4.i thru 5-4.iv	5-4.i thru 5-4.iii
Chapter 5, Section 4, "Disputes"	Refer to summary below for incorporated CPBs and CPDs.	5-4.1 thru 5-4.77	5-4.1 thru 5-4.56

Section 5-4, "Disputes"

- Updates references to align with 2010 *Standard Specifications*.
- Updates references to align with 2010 *Standard Specifications*.
- Update section title to align with 2010 *Standard Specifications*.
- Updates terminology to align with 2010 *Standard Specifications*.
- Updates cross references to other sections of the *Construction Manual*.
- Removes tables for alternative dispute review process. Those tables were moved to Chapter 3, Section 5.
- Updates Delegation of Authority table for arbitration and updated terminology.
- Revises arbitration information and relocates tables in reference to arbitration to include in a separate guidance manual.
- Revises number of days for Audits and Investigations to complete an audit from "45 days" to "90 days."
- Revises guidance for final determination issuance if a case for arbitration is filed.

- Incorporates the following Construction Policy Bulletins and Construction Procedure Directives:
 - CPB 00-8, "Contract Administration of Time-Related Overhead" (TRO Q Sheet and Instructions are not included).
 - CPB 06-9, "Payment of Construction Disputes with Merit."
 - CPB 09-5, "Minor B Contract Claim Process," (Claims Resolution Process flowchart not included).
 - CPB 09-12, "Claim Settlement Request Memorandum Confidentiality," (with CSR Sample).
 - CPB 09-15, "Revised Table 5-4.4, 'Delegation of Authority,' of *Construction Manual*."
 - CPB 11-4, "Construction Response to Audit Reports."
 - CPD 00-9, "Processing Claim Settlement Reports."
 - CPD 04-3, "Distribution of Claim Documents."
 - CPD 06-2, "Serving Legal Division with a Copy of a Contract Complaint in Arbitration."
 - CPD 06-10, "Office of Administrative Hearings' Change of Address," (with attached example).
 - CPD 08-11, "Construction Claims Information System," (with uniform CCIS event codes and dates attachment).

Chapter 5 Contract Administration

Section 4 Disputes

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This manual is being updated to reflect changes from the 2006 to the 2010 *Standard Specifications*. Bracketed section numbers refer to the 2006 *Standard Specifications*.

Section 4 Disputes

Section 4 Disputes

5-401 General

5-401 General

The objective of this section is to provide guidance to the contract administrative team, including the resident engineer, the construction engineer, and other Caltrans personnel to ensure that contract disputes, protests, requests for information, potential claims, and claims are addressed and resolved timely and consistently.

A contract dispute is a disagreement between the contractor and Caltrans over the need to revise the contract. Contractors initially submit disputes as requests for information to the resident engineer. Begin the process of addressing and resolving any dispute upon receiving the contractor's request for information. Resolving a dispute involves ascertaining the relevant facts, determining responsibilities, and compensating the contractor if merit exists, or refusing compensation with clear reasons when no merit exists.

Disputes stem from disagreements in the interpretation of plans, specifications, bid proposals, material handouts, and other contract documents. The resident engineer acknowledges each dispute upon receipt. Try to resolve disputes as early as possible, in accordance with the contract, and at the lowest responsible level.

The resident engineer, with the support of the construction engineer, other Caltrans resources, and district management, is responsible for administering the dispute resolution process. Consult with additional subject matter experts to aid in the evaluation of a dispute.

Arbitration is available 240 days after contract acceptance or when authorized by the district director's final determination of claims letter. The arbitration process is initiated by filing a complaint with the Office of Administrative Hearing within 90 days from receipt of the district director's final determination of claims. The Caltrans Legal Division is the lead for defending Caltrans in arbitration. The districts and the Division of Construction support the Legal Division's arbitration defense.

Provisions for contract claims are incorporated into minor B contracts based on the California Government Code. Resident engineers must follow Section 5-405I, "Minor B Contracts," of this manual, when resolving disputes on minor B contracts.

To document contract disputes and claim resolution activities on your timesheet, use Activity Code 1290 for federal aid projects, or Activity Code 2290 for non-federal aid projects. For more information on these activity codes, refer to Chapter 6, "Activity Codes," of the *Coding Manual*.

Dispute resolution begins by gathering facts and determining the responsibilities of the parties involved to achieve a thorough understanding of the dispute. Contractors must provide complete information in support of the dispute or risk losing the right to pursue the dispute as a claim and in arbitration.

5-402 Claims Avoidance

After the contractor provides the necessary information, analyze the dispute and provide a timely response in accordance with contract requirements and Caltrans policies and procedures. Take appropriate actions, within the scope of the contract and within your authority, to resolve the dispute. If you lack the authority to resolve the dispute, discuss the issue with the construction engineer, construction manager, and the Division of Construction field coordinator. Promptly issue and obtain approval of a change order if the dispute has merit. Advise the contractor in writing, explaining in detail, reasons for the lack of merit if the contractor's dispute has no merit.

5-402 Claims Avoidance

Claims avoidance is the most prudent step a resident engineer can take to minimize the number and size of claims. Claims are minimized or avoided if the resident engineer appropriately engages with the contractor and properly administers 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, and procedures, including federal and state laws applicable to the proper administration of the contract. Knowing the contractual responsibilities will help in the timely resolution of the contractor's dispute.

Take the following suggested actions to minimize claims:

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

5-403 Requests for Information, Potential Claim Records, and Claims

5-403 Requests for Information, Potential Claim Records, and Claims

Contractual dispute provisions allow the contractor to claim additional compensation or be denied compensation based on merit. Section 5-1.42, "Requests for Information," and Section 5-1.43 [9-1.04], "Potential Claims and Dispute Resolution," of the *Standard Specifications* include provisions for requests for information, potential claims, and claims.

During the course of the project, and up to receiving the proposed final estimate, the contractor must submit a contract dispute as a request for information or potential claim to the resident engineer. Disputes become claims when the contractor lists them as exceptions to the proposed final estimate.

After receiving a request for information, initial potential claim record, supplemental potential claim record, or a full and final potential claim record from the contractor, note on the document the date and time of receipt and the name of the person who received it.

For additional guidance refer to Section 3-521, “Requests for Information and Potential Claim Records,” of this manual.

5-403A Requests for Information

Section 5-1.42, “Requests for Information,” of the *Standard Specifications* requires the contractor to submit a request for information upon recognition of any event or question of fact arising under the contract. Resident engineers must respond to requests for information within the time specified in the contract.

You must make every effort to respond fully to the contractor with the information being requested. If you are unclear about what information is being requested, ask the contractor to clarify the request. If you need more information, notify the contractor that additional information is being sought and provide the estimated date for receiving the additional information and completing the response. If you are unable to provide the information being requested, respond with the reasons why the information cannot be provided.

5-403B Potential Claim Records

Section 5-1.43 [9-1.04], “Potential Claims and Dispute Resolution,” of the *Standard Specifications* requires the contractor to minimize and mitigate the impacts of potentially claimed work or events. It also requires that the contractor comply with all the provisions of this section. Failure to do so is a waiver of the potential claim and a waiver of the right to a corresponding claim for the disputed work in the administrative claims process and would act as 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

5-403C Documentation

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

5-403D Claims

The contractor submits a written claim for an unresolved dispute by listing it as an exception to the proposed final estimate. In addition, administrative and overhead claims may occur as exceptions to the proposed final estimate as described in Section 9-1.17D [9-1.07B], “Final Payment and Claims,” of the *Standard Specifications*.

All claims included in the exceptions to the proposed final estimate should be considered in the review of claims by the resident engineer for resolution before the final estimate.

**5-404
Alternative Dispute
Resolution**

If an exception to the proposed final estimate was not previously submitted in accordance with Section 5-1.43 [9-1.04], it is considered a new claim. This does not apply to exceptions for administrative or overhead claims.

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.

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 or for 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 Resolution
Process**

5-405 Claims Resolution Process

The following established claims processing milestones ensure that the claims process is completed within the statutory requirement of 240 days after contract acceptance. The number of days referenced below refers to the number of calendar days elapsed after contract acceptance. For each contract accepted, the district must record actual milestone dates and monitor the progress of the claims resolution process.

Districts are responsible for populating and updating the Division of Construction’s claims database. This includes ensuring that specific required milestones, events, and dates, are current and correct. Refer to Table 5-4.1, “Required Post Acceptance Event Codes and Dates.” Project claims information should be maintained and updated by the 15th of each month to ensure reliability of the data.

5-405A Issue Proposed Final Estimate—Target Day 40

The district must issue 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.

Issuance of the proposed final estimate should not be postponed while waiting for additional information from the contractor. Ensure 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.

5-405B 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.

No further action is required other than processing the final estimate if the contractor returns the proposed final estimate indicating acceptance, or the contractor does not

return the proposed final estimate within the required 30-day period. 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.

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

5-405C Preliminary Construction Claim Findings Completed—Target Day 110

By target day 110, the resident engineer completes the preliminary construction claim findings, which includes the compilation of the existing information and documents in Category 62 of the contract records. The construction engineer sends the preliminary construction claim findings to the deputy district director of construction. Refer to Section 5-411, "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 ensures that each claim, excluding overhead claims or administrative disputes that occur after issuance of the proposed final estimate, is a continuation of a previously submitted potential claim. If the contractor fails to comply with the contract requirements for submitting the statement of claims, document the failure in the preliminary construction claim findings for each claim. Failures identified within the potential claim process should be documented in detail in Category 62 of the project records, and should only be referenced in the preliminary construction claim findings. Contractor failures identified in the claim process must be fully detailed within the preliminary construction claim findings and may include, but are not limited to the following:

- Failure to provide a statement of claims within the 30-day time 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
- 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 these types of 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 5-407, “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 Division of Audits and Investigations may review the audit. For additional details, refer to Section 5-408, “Overhead Claims,” of this manual.

5-405D 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 the “Review of Claims by Deputy District Director of Construction” notification letter. This notifies the contractor which claims are resolved, claims which 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 Example 5-4.1, “Sample Review of Claims by Deputy District Director of Construction Notification Letter,” for more information.

5-405E 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 Example 5-4.2, “Sample Board of Review Notification Letter.” The resident engineer, supported by Caltrans personnel discussed below, is responsible for preparing and delivering the presentation at the board of review meeting with support by other Caltrans personnel.

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 both the contractor and Caltrans, and provides objective recommendations within 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 must 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.

5-405E (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.
- Ensure board members have 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.

5-405E (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 up to \$250,000, at least one member

- Total claims between \$250,000 and \$1,000,000, two members
- Total claims 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 the Office of 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 sourced to the district where 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 sourced to 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.

5-405E (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 by tape, court reporter, or video. 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 the *Standard Specifications*, allowing 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.

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 further analysis 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 5-412, “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, “Administrative Review,” 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 Example 5-4.3, “Sample District Director Determination of Claims—Board of Review Held, Not Attended by Contractor.”

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 impact, the board members must consult with the Division of Construction before sending the report to the district director.

5-405E (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 5-406A, “Claim Settlement Process,” and Table 5-4.2, “Delegation of Authority,” of this manual.

5-405F 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.

5-405G 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, listing references to the supporting documents. Incorporate into the construction claims findings the resolution of the administrative claims by the resident engineer, the analysis of claims which were not heard by a board of review, and the board of review findings. For detailed information on preparing the construction claim findings, refer to Section 5-413, "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 5-414, "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 additional time for approved change orders.

5-405H 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 determination of claims. The district construction claims engineer sends the approved determination of claims to the contractor within 230 days after contract acceptance. Refer to Example 5-4.4, "Sample District Director Determination of Claims—Major and Minor A Contracts."

After the district director determination 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, ensure 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 a case for arbitration and the final determination of claims has not yet been issued, the district must nevertheless send a final determination of claims to the contractor. Prepare a draft of the final determination of claims. The format of the final determination of claims may be similar to Example 5-4.4, “Sample District Director Determination of Claims—Major and Minor A Contracts.” 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.

No claim can be addressed between issuing the district director determination of claims notification letter and filing the arbitration. After arbitration is filed, any construction contract claims settled are authorized by an approved request-for-settlement-authority memorandum, prepared by a Caltrans attorney. The Division of Construction chief or the deputy director for project delivery, depending on their settlement amount and delegated authority, approves both requests.

5-405I Minor B Contracts

By law, the contractor has a maximum of 1 year from contract acceptance to file a claim with the California Victims Compensation and Government Claims Board 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.

5-405I (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.

5-405I (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.

**5-406
Claim
Settlements**

5-405I (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 5-411, “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 5-413, “Construction Claim Findings Preparation and Guidelines,” of this manual).

5-405I (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.

5-405I (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.

5-405I (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 California Victims Compensation and Government Claims Board or Superior Court, as applicable.

5-505I (7) California Victims Compensation and Government Claims Board, 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 California Victims Compensation and Government Claims Board, 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 California Victims Compensation and Government Claims Board, Superior Court, or Division of Construction.

The contractor has 6 months to file a complaint in Superior Court after the California Victims Compensation and Government Claims Board or the chief, 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.

5-406 Claim Settlements

A negotiated claim settlement is defined as a compromise of the contract requirements to settle a dispute in Caltrans’ best interest. Negotiated 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' designated attorney will explore the possibility of settlement with the contractor.

All negotiated settlements must be approved by the Division of Construction chief or the deputy director for Project Delivery. Refer to Table 5-4.2, "Delegation of Authority," for the negotiated 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.

5-406A 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.

5-406A (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 Example 5-4.5, "Claim Settlement Request Memorandum."

5-406A (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 standard change order clauses. 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.

5-406B 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."

5-407 Claim Payments

5-407 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 [4-1.03], "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, "Delegation of Authority." For detailed information on contract payments, refer to Section 3-9, "Payment," of this manual.

5-408 Overhead Claims

5-408 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) [9-1.07B], "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 independent CPA audit 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.



5-408A 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.

5-408B 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.

5-408C Contractor Submitted Audits

The Division 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.

The Division of 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 [9-1.07B], "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. Refer to Figure 5-4.1, "Audit Process," of this manual which illustrates the review of the audit process.

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 [9-1.07B], "Final Payment and Claims," of the *Standard Specifications* and with those policies contained within the *CPA Audit Desk Guide* 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, see the Code of Federal Regulations, Title 48, Part 31.205 (48 CFR 31.205). The independent CPA audit report may be faxed to the Division of Audits and Investigations for assistance in these regards. Deny the audit request if the audit report does not comply with Section 9-1.17D [9-1.07B], "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 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 [9-1.07B], “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 5-409A, “Audit Request Procedure,” of this manual for guidance on requesting an audit.

5-409 Audits

The Division 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.

5-409A Audit Request Procedure

When it is determined that an audit by the Division 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. Refer to Example 5-4.6, “Sample Audit Request Memorandum” and Figure 5-4.1, “Audit Process,” for guidance.

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 Examples 5-4.7, “Sample Summary of Delay-Related Claims,” and 5-4.8, “Sample General Contract Information and Summary of Chronology.”

Upon receipt of the district’s audit request memorandum, the Division of Construction prioritizes the audit request and sends a memorandum to the audit manager, Division of Audits and Investigations, requesting an audit. The Division of Audits and

Investigations' policy is to complete the audit within 90 days after receiving the audit request memorandum.

5-409B 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 [9-1.03C], "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 Division 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, "Delegation of Authority." 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 due to 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 due to delays caused by Caltrans.

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

5-410 Arbitration

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. The arbitration process is initiated by filing a complaint with the Office of Administrative Hearing.

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 analysis, preparing documents, assisting in the discovery process, or providing testimony. Keep project records at one location for ease of discovery by the Legal Division.

5-410 Arbitration

**5-411
Preliminary
Construction Claim
Findings and
Category 62
Preparation and
Guidelines**

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 which 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.

5-411 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 of the project records. When you receive exceptions to the proposed final estimate from the contractor, complete the preliminary construction claim findings. Refer to Example 5-4.9, “Sample Construction Claim Findings.”

5-411A 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 Example 5-4.10, “Sample Claim Checklist” of this manual
- 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 diaries



- Assistant resident engineer diaries
- Applicable parts of plans and specifications
- Relevant change orders
- Photographs
- Calculations and analysis
- Weekly Statement of Working Days
- Critical path method schedules
- Other pertinent information

Refer to Section 5-405D, “District Construction Review of Preliminary Construction Claim Findings Completed—Target Day 130” of this manual for more information.

5-412 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 is 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

5-412A Format

A board of review report follows the general format below:

5-412A (1) Introduction

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

5-412A (2) Items That Are Common to All Claims

List items such as the chronology and general information.

5-412

Board of Review Report Preparation and Guidelines

5-412A (3) Summary of Resolved Claims

Reference claims that were entirely or partially settled.

5-412A (4) Individual Claim Information

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

5-412A (5) General Description of the Claim

Briefly describe the nature of the claim.

5-412A (6) Contractor's Position

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

5-412A (7) District's Position

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

5-412A (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...."

5-412A (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 about 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.

5-413 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.

5-413 Construction Claim Findings Preparation and Guidelines

Concurrently, the district construction claims engineer prepares the draft district director determination of claims. Refer to Section 5-414, “District Director Determination of Claims 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 Example 5-4.9, “Sample Construction Claim Findings.”

5-413A Format

The construction claim findings follow the format below:

5-413A (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*.
- Names of the contractor, resident engineer, and other personnel with significant involvement.
- Date.

5-413A (2) Table of Contents

Number all pages in the table of contents.

5-413A (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)

5-413A (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

5-413A (5) Summary of Claims

Provide the following information:

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

5-413A (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

5-413A (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.

5-413A (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.

5-413A (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

5-413A (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, critical path method analysis, cost analysis, correspondence, and diaries.

Include a separate section stating deficiencies if the contractor has failed to comply with Section 9-1.17C [9-1.07B], "Proposed Final Estimate," of the *Standard Specifications*.

5-413A (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.

5-413A (12) Tabular Reference to Supporting Information

5-413A (13) Summary of Resolved Claims in Tabular Format for All Claims

5-413A (14) Deputy District Director of Construction Signature Block

5-413A (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
- Critical path method schedule, time impact analysis, or revised schedule
- Photographs

5-413B 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 non-working.
- When referring to days, when applicable, include the month, day number, and year.

5-413C 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.

5-414 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

5-414 District Determination of Claims Preparation and Guidelines

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 see Example 5-4.4, “Sample District Director Determination of Claims—Major and Minor A Contracts,” of this manual.

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.

5-415 Copy Distribution of Claim Documents

5-415 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.

Example 5-4.1 Sample Review of Claims by Deputy District Director of Construction Notification Letter
(1 of 2)

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION

[Resident Engineer's OFFICE NAME in all caps]

[RE's Address]

[RE's City, State Zip]

[RE's] PHONE: [(area code) XXX-XXXX]

[RE's] FAX: [(area code) XXX-XXXX]

TTY 711

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CERTIFIED MAIL RETURN RECEIPT REQUESTED

[Date]

[Dist-EA]

[Dist-Co-Rte-PM]

Federal Aid Project: [FA#]

[Contractor's name]

[Contractor's title]

[Name of contractor's business]

[Address]

[City, State ZIP]

Subject: Review of Claims

Ladies and Gentlemen:

I have reviewed your exceptions to the Proposed Final Estimate and have made the following determinations:

- Resolved claims

Claim ID	Title	Amount
[List claims that have been resolved]		

- Administrative claims being further reviewed by the resident engineer

Claim ID	Title	Amount
[List administrative claims sent to the resident engineer for further review]		

- Claims that will not benefit from a review by a board of review

Claim ID	Title	Amount
[List claims that will not be heard by a board of review]		

- Claims that will be heard by a board of review

Claim ID	Title	Amount
[List claims that will be heard by a board of review]		

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[*Contractor's name*]

[*Date*]

Page 2 of 2

You will be notified of the date, time and the location of the board of review meeting in a follow up letter.

In accordance with Section 9-1.17D, "Final Payment and Claims," of the 2010 *Standard Specifications* (Section 9-1.07B, "Final Payment and Claims," of the 2006 *Standard Specifications*), your attendance at the board of review meeting is mandatory.

Sincerely,

[*Deputy District Director of Construction's name*]

Deputy District Director of Construction

cc: Board of Review Secretary
Resident Engineer
Structure Representative
Construction Engineer
Area Bridge Engineer
Construction Manager
District construction claims engineer
District Construction Office
Division of Construction Field Coordinator
Division of Construction – Office of Contract Administration

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Example 5-4.2 Sample Board of Review Notification Letter (1 of 2)

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION

[Resident Engineer's OFFICE NAME in all caps]

[RE's Address]

[RE's City, State Zip]

[RE's] PHONE: [(area code) XXX-XXXX]

[RE's] FAX: [(area code) XXX-XXXX]

TTY 711

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CERTIFIED MAIL RETURN RECEIPT REQUESTED

[Date]

[Dist-EA]

[Dist-Co-Rte-PM]

Federal Aid Project: [FA#]

[Contractor's name]

[Contractor's title]

[Name of contractor's business]

[Address]

[City, State ZIP]

Subject: Board of Review Meeting

Ladies and Gentlemen:

Following up on the "Review of Claims by Deputy District Director of Construction" notification letter sent to you on [date], the district construction has scheduled a board of review meeting to be held at [time] on [date] at [location] to hear the following claims:

<u>Claim ID</u>	<u>Title</u>	<u>Amount</u>
-----------------	--------------	---------------

[List claims to be heard by the board of review as shown on the "Review of Claims by Deputy District Director of Construction Notification Letter"]

Both the contractor and Caltrans will be afforded the opportunity to make verbal presentation in support of their previously submitted written positions on the claim(s) listed above.

Caltrans policy requires that an attorney from the Legal Division be present if the contractor intends to be represented by legal counsel at the board of review. Please advise in writing if you plan on having legal representation in this matter.

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| Example 5-4.2 Sample Board of Review Notification Letter (2 of 2)

[*Contractor's name*]

[*Date*]

Page 2 of 2

| In accordance with 9-1.17C, "Proposed Final Estimate" of the *2010 Standard Specifications* (Section 9-1.07B, "Final Payment of Claims," of the *2006 Standard Specifications*), your attendance at the board of review meeting is mandatory.

Sincerely,

| [*Board of Review Secretary's name*]

Board of Review Secretary

cc: Resident engineer
Structure representative
Construction engineer
Area bridge engineer
Construction manager
District construction claims engineer
District construction office
Board of review members
Division of Construction field coordinator
Deputy district director of construction
Division of Construction, Office of Contract Administration

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Example 5-4.3 Sample District Director Determination of Claims—Board of Review Held and Not Attended by the Contractor

STATE OF CALIFORNIA - BUSINESS, TRANSPORTATION AND HOUSING AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION

[Resident Engineer's OFFICE NAME in all caps]

[RE's Address]

[RE's City, State Zip]

[RE's] PHONE: [(area code) XXX-XXXX]

[RE's] FAX: [(area code) XXX-XXXX]

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CERTIFIED MAIL RETURN RECEIPT REQUESTED

[Date]

[Dist-EA]

[Dist-Co-Rte-PM]

Federal Aid Project: [FA#]

[Contractor's name]

[Contractor's title]

[Name of contractor's business]

[Address]

[City, State ZIP]

Ladies and Gentlemen:

On [date of board of review meeting], the district convened a board of review meeting for the purpose of reviewing the following claims:

<u>Claim ID</u>	<u>Title</u>	<u>Amount</u>
-----------------	--------------	---------------

[List claims referenced in the Board of Review Meeting Notification Letter]

Your absence at that meeting, an administrative procedure set forth in the contract as part of the Caltrans claim process, has nullified those claims.

The final estimate is being issued as authorized by 9-1.17C, "Proposed Final Estimate," of the 2010 *Standard Specifications* (Section 9-1.07B, "Final Payment of Claims," of the 2006 *Standard Specifications*), in accordance with the district director's final determination of claims sent to you on [date]. Payment in the amount of [dollars] on claim numbers [1, 2, etc.] is included on the final estimate. This amount fully resolves claim numbers [1, 2, etc.]. Enclosed is a copy of the final estimate.

The claims resolution process under the contract is now concluded.

Sincerely,

[Deputy District Director of Construction's name]

Deputy District Director of Construction

Attachment

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DEPARTMENT OF TRANSPORTATION

[Resident Engineer's OFFICE NAME in all caps]

[RE's Address]

[RE's City, State Zip]

[RE's] PHONE: [(area code) XXX-XXXX]

[RE's] FAX: [(area code) XXX-XXXX]

TTY 711

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CERTIFIED MAIL RETURN RECEIPT REQUESTED

[Date]

[Dist-EA]

[Dist-Co-Rte-PM]

Federal Aid Project: [FA#]

[Contractor's name]

[Contractor's title]

[Name of contractor's business]

[Address]

[City, State ZIP]

Subject: Final Determination of Claims

Ladies and Gentlemen:

District [district number] has reviewed the [number of exceptions] exceptions [claims] that [contractor's name] filed in response to the proposed final estimate. These exceptions total \$ [amount].

On [date], [contractor's employees names] of [contractor's name] and District [district number] staff met with the Board of Review and supported their positions on claims submitted to the Board of Review as identified in the "Review of Claims by Deputy District Director of Construction" notification letter dated [date]. The board of review subsequently issued its findings and recommendations and submitted its report.

In addition, claim identified in "Review of Claims by Deputy District Director of Construction" notification letter dated [date] as not benefiting from a Board of Review hearing have been separately investigated by district personnel and referred to me within the construction claim findings. Having considered the information submitted to me, I have made the following determination, in accordance with the authority vested in me under provisions of the contract:

Claim No. X	Claim Description	[\$Amount Claimed]
1. That.....		
2. That.....		
3. Etc.		

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Example 5-4.4 Sample District Director Determination of Claims—Major and Minor A Contracts (2 of 2)

[*Contractor's name*]

[*Date*]

Page 2 of 2

Claim No. Y	Claim Description	[\$ <i>Amount Claimed</i>]
-------------	-------------------	-----------------------------

1. That.....
2. That.....
3. Etc.

Summary

The payment of each of the various claims is summarized as follows:

Claim No.	Description	\$ Amount Claimed	\$ Amount Paid
X		\$ [<i>Amount</i>]	\$ [<i>Amount</i>]
Y		\$ [<i>Amount</i>]	\$ [<i>Amount</i>]
TOTAL		\$ [SUM]	\$ [SUM]

This concludes Caltrans' administration of the claims process. The district will process the final estimate in accordance with this Final Determination of Claims.

If you wish to pursue this matter further, arbitration is available, as provided in Section 9-1.22, "Arbitration," of the 2010 *Standard Specifications*. (Section 9-1.10, "Arbitration," of the 2006 *Standard Specifications*). You must file a complaint in arbitration within 90 days of receipt of this final decision at the following address:

Office of Administrative Hearings
Public Works Contract Arbitration Program
2349 Gateway Oaks Drive, Suite 200
Sacramento, CA 95833-4231

The copy of your complaint also must be served on the following:

Department of Transportation
Chief Counsel, Legal Division
1120 N Street MS 57
Sacramento, CA 95812

Sincerely,

[*Deputy District Director of Construction's name*]

District Director - District XX

cc: District construction file

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Example 5-4.5 Sample Claim Settlement Request Memorandum (1 of 4)

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

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To: [Name]
[Title]
DEPUTY DIRECTOR
DISTRICT DIRECTORS
DIVISION CHIEFS

Date: [mm/dd/20xx]

File: [District-EA]
[District, County-Road, Post Marker]

From: [Name]
District [XX] Director

Subject: CLAIM SETTLEMENT REQUEST

Confidential Attorney-Client Communication **Offer prepared at the direction of and in consultation with the Legal Division**

As authorized by Public Contract Code Section 9201, District [XX] of the Department of Transportation requests your confirming signature of approval to settle all contract claims on this project submitted by [contractor's name] (contractor) and its subcontractors. The district seeks authorization to pay the contractor a total of [\$\$\$,\$\$\$,\$\$\$] to settle all outstanding claims. The following facts summarize the district's [or Board of Review's] recommendation that paying this amount to settle all claims will best serve the interest of the state.

Project Description

[Include information such as brief description of the project, contractor's name, bid amount, and proposed final estimate amount.]

Chronology

Event	Date
Advertisement date	[mm/dd/20xx]
Bid opening date	[mm/dd/20xx]
Contract award date	[mm/dd/20xx]
Contract approval date	[mm/dd/20xx]
First working day (date and working day number)	[mm/dd/20xx]
Date contractor began work	[mm/dd/20xx]
Working days specified (number of days)	[mm/dd/20xx]
Computed completion date (date and working day number)	[mm/dd/20xx]
Change order time adjustment (number of days)	[mm/dd/20xx]
Nonworking days (number of days)	[mm/dd/20xx]
Working days not worked on controlling operation (number of days)	[mm/dd/20xx]
Extended date for completion (date and working day number)	[mm/dd/20xx]
Project completion date	[mm/dd/20xx]
Construction contract acceptance (CCA) date	[mm/dd/20xx]
Overrun in contract time (number of working and calendar days)	[mm/dd/20xx]
Date Proposed Final Estimate (PFE) was issued	[mm/dd/20xx]
Date contractor's exceptions to PFE were received	[mm/dd/20xx]

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Claims Settlement Request
Contract #

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Page 2 of 4

Time Extension Summary

Event	Calendar Days
Working (calendar) days specified	[XXX]
Time extension granted for change orders	[XXX]
Time extension granted for Holidays	[XXX]
Time extension granted for Contractor Requested Suspension	[XXX]
Time extension granted for Entitlement Claims	[XXX]
Time extension remaining in dispute	[XXX]
Time extension for director days	[XXX]

Description of Claims

On [mm/dd/20xx], the contractor submitted # exceptions to the proposed final estimate for a total amount of [\$\$\$,\$\$\$,\$\$].

The contractor describes each claim as follows:

[Describe what happened to initiate the claim. Describe the location, the persons, and the events that led to the claim. Discuss the Department's responsibility, any partial resolution of the claim, and the change order issued to partially resolve the claim. Discuss the remaining value of the claim.]

Summary of Claims

The district has concluded its entitlement analysis of the claims and determined that the contractor is entitled to additional compensation for the claims summarized below:

Claim #	Description	Original Claimed \$ Amount	Unresolved Claimed \$ Amount	District / BOR Recommended \$ Amount
Prime Contractor Claims				
X	Extra work...	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]
X	Late payment...	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]
X	Extended field office overhead...	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]
X	Extended home office overhead...	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]
Subcontractor Claims				
X	Subcontractor underpayment...	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]
	Subtotal	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]
	Interest	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]
Total		[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]	[\$\$\$,\$\$\$,\$\$]

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Claims Settlement Request
Contract #

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Page 3 of 4

Entitlement and Settlement Justification

The following justifies entitlement and settlement of the previously described claims.

[Discuss items such as the following to justify entitlement or settlement of the various claims.]

Disputed project features include . . .

Impacted construction operations include . . .

During construction many contractual changes and additions took place . . .

During construction the following unanticipated events and conditions were encountered . . .

The above-described changes and problems caused the following impacts: . . .

The general nature of this work was different because . . .

A significant amount of delay in completion of the project was experienced because . . .

The contractor's direct costs increased because . . .

The contractor's overhead costs increased because . . .

These disputes should be resolved because of the following entitlement contract provisions: . . .

These disputes should be settled because . . .

[Discuss the total claims amount, interest, and costs as a whole. Summarize each claim as shown below.]

Claim #	Description	Entitlement \$ Amount	Settlement \$ Amount	Interest \$ Amount	Line Total \$ Amount
X	Extra work...	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]
X	Late payment...	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]
X	Extended field office overhead...	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]
X	Extended home office overhead...	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]
X	Subcontractor underpayment...	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]
Totals		[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]	[\$\$,,\$\$,,\$\$]

Funding Status

[Discuss the total cost of the contract to date, the source of funding, and whether available funds are adequate to pay for the settlement of the claims or if supplemental funds need to be secured.]

[Discuss project's funding, remaining contingency balance, zeroed out bid items and change orders.]

[If supplemental funds are to be secured, address the process that will be used to obtain the funds, that is, G-11, G-12, SFR-CTC vote, or funds from local partners. Estimate when the funds would become available.]

Consequences of Not Settling

[State the risk exposure to the Department if certain claims are not settled and the contractor decides to file for arbitration. Make a reference to the legal, expert witness and engineering support costs that would be expended to defend the Department in the arbitration proceedings.]

Recommendation

[State the district's recommendation for resolution of these construction claims.]

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Claims Settlement Request
Contract #

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Page 4 of 4

[Refer to Table 5-4.2, “Delegation of Authority.”]

Prepared by:

<hr/> <p><i>[Name]</i> Date</p> <p>Chair, Board of Review</p> <p><i>[or District Claims Engineer]</i></p>	and	<hr/> <p><i>[Name]</i> Date</p> <p>Assistant Chief Counsel</p> <p>Legal Division—Contracts</p>
---	-----	--

Recommended by:

<hr/> <p><i>[Name]</i> Date</p> <p>Deputy District Director, Construction</p> <p>District <i>[XX]</i></p>	<hr/> <p><i>[Name]</i> Date</p> <p>Field Coordinator</p> <p>Division of Construction</p>
---	--

<hr/> <p><i>[Name]</i> Date</p> <p>District Director</p> <p>District <i>[XX]</i></p> <p><i>[when amount is >\$1million, otherwise delete]</i></p>	<hr/> <p><i>[Name]</i> Date</p> <p>Chief</p> <p>Division of Construction</p> <p><i>[when amount is >\$1million, otherwise delete]</i></p>
--	--

Approved by:

<hr/> <p><i>[Name]</i> Date</p> <p>Chief</p> <p>Division of Construction</p> <p><i>[when amount is ≤\$1million, otherwise delete]</i></p>	<hr/> <p><i>[Name]</i> Date</p> <p>Deputy Director</p> <p>Project Delivery</p> <p><i>[when amount is >\$1million, otherwise delete]</i></p>
---	--

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Example 5-4.6 Sample Audit Request Memorandum

State of California
DEPARTMENT OF TRANSPORTATION

Business, Transportation and Housing Agency

Memorandum

*Flex your power!
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To: **[Name]**, CHIEF
DIVISION OF CONSTRUCTION

Date: **[mm/dd/20xx]**

File: **[Optional]**

From: **[Name]**, CHIEF
Office of Contract Administration

Subject: **REQUEST FOR STATE AUDIT**

The contractor, **[name]** returned exceptions to the proposed final estimate, dated **[date]**, and specified **[overhead, escalated cost, or impacted item work]** claims due to a state-directed suspension as shown on the attached summary of delay related claims. The contractor was permitted to work on non-controlling items of work during the period of suspension. Caltrans directed the suspension for a redesign of most of the project.

Project work involved the removal and replacement of concrete pavement with fast-setting hydraulic cement concrete.

It is requested that Caltrans audit determine if additional compensation for overhead and escalated costs is owed to the contractor for this project. The justification for this request is as follows:

- Contract time was extended by the suspension by more than 15 percent
- The contractor worked an additional season (as evidenced by the effect on the scheduled completion date) due to the suspension.

The district contact for project information will be **[name]**, **[resident engineer or claims engineer]**, at **[telephone number]**.

Attached is an independent certified public accountant audit report, submitted by the contractor in conformance with Section 9-1.17C, "Proposed Final Estimate" of the 2010 *Standard Specifications* (Section 9-1.07B, "Final Payment of Claims," of the 2006 *Standard Specifications*). Summary of delay related claims, general contract information, and the delay related chronology of the project is also attached. The Division of Construction field coordinator has included a signature of concurrence with this request as shown below.

[Name], Field Coordinator
Division of Construction

[Name], Deputy District Director
Construction

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Example 5-4.7 Sample Summary of Delay-Related Claims

Contract No.
Contractor

<u>Claim No.</u>	<u>Claim Description</u>	<u>Amount Claimed</u> (A)	<u>District Analysis</u> (B)
<u>Delay Claims</u>			
3	Field Office Overhead	\$22,011.06	\$0.00
4	Home Office Overhead	\$11,655.88	\$0.00
5	Labor Cost Increases	\$5,987.00	\$0.00
6	Material Cost Increases	\$7,685.00	\$7,685.00
7	Material Storage Costs	\$3,877.00	\$0.00
<u>Impacted/Unproductive Item Work</u>			
8	Item #4 - Traffic Control	\$8,012.98	\$0.00
9	Item #9 - Roadway Excavation	\$4,409.76	\$4,409.76
<u>Subcontractor Claims</u>			
12	WWW Fence Co. Material Costs	\$9,894.03	\$9,894.03
13	Electrical Experts, Inc. Labor Cost Increases	<u>\$2,288.09</u>	<u>\$0.00</u>
TOTALS		\$75,820.80	\$21,988.79

(A) Amounts claimed are those indicated by contractor.

(B) Amounts which district staff can research and analyze for possible entitlement.

(C) Amounts should be audited for possible entitlement.

GENERAL CONTRACT INFORMATION

The bridge work to be done consists, in general, of constructing earthquake retrofit modifications on the following bridges as shown on the project plans and briefly described below:

Bridge Description and Bridge Numbers

New CIDH piles with connecting pile extensions and anchor heads constructed at every fourth bent (148 new piles), and 3,520 composite column casings installed on existing pile extensions.

The bid amount was: \$ 4,899,362.00

The final cost was: \$ 5,204,479.07

The proposed final estimate (PFE) was mailed to the contractor on September 28, 2012 and was returned with exceptions on October 25, 2012. The total amount claimed was \$1,636,903.82.

CHRONOLOGY

EVENT	CALENDAR DATE	WORKING DAY NO.	NO. OF DAYS
Contract Approved	10/4/2010		
Working Day Begin	10/19/2010	402	
Begin Work	6/21/2012	556	
Working Days Specified or Bid			180
CO Days Extension			0
Other Days Extension			4
Non-working Days			
Weather			89
Suspension Days			210
Extended Completion Date	9/24/2012	885	
Work Completed	8/22/2012	863	
Contract Accepted	8/24/2012	865	
Contract Overran	0 Working Days (0 Calendar Days)		

**DEPARTMENT OF TRANSPORTATION
CENTRAL REGION**

**05-123454
05-Scr-1-17.5/26.0**

CONSTRUCTION CLAIM FINDINGS

FOR PROJECT IN DISTRICT 5

ON STATE ROUTE 1

LOCATED IN

**SANTA CRUZ COUNTY IN AND
NEAR SANTA CRUZ AT VARIOUS LOCATIONS FROM SAN LORENZO BRIDGE
TO LAGUNA ROAD**

March 26, 2013

Applicable Standard Specifications	2010 Edition
Applicable Standard Plans	2010 Edition
CONTRACTOR	Contractor's Corporate Identification
RESIDENT ENGINEER	Name
STRUCTURE REPRESENTATIVE	Name
CONSTRUCTION ENGINEER	Name
BRIDGE CONSTRUCTION ENGINEER	Name
CONSTRUCTION MANAGER	Name
DISTRICT CLAIMS ENGINEER	Name
BOR CHAIRPERSON	Name
BOR MEMBER	Name
BOR MEMBER	Name
DEPUTY DISTRICT DIRECTOR OF CONSTRUCTION	Name

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Applicable Specifications.....	
Notification of Claim.....	
Contractor's Position	
District's Position.....	
Board of Review Findings	
Administrative Claims:	
Claim #3	Item 27—Reconstruct Fence—11.6M
Background	
Contractor's Position	
District's Position.....	
Findings	
Claim #4	Item 124—Rock Slope Protection—10M3
Background	
Contractor's Position	
District's Position.....	
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Claim #5	CO #11—DEWR's 6 and 8
Background	
Contractor's Position	
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Example 5-4.9 Sample Construction Claim Findings (3 of 9)

Claim #1—PCC Pavement Grinding Claim (ID #46) Exhibits

Exhibit 1	Contractor's RFI	1 Sheet
Exhibit 2	Resident Engineer's Letter	2 Sheets
Exhibit 3	Contractor's Initial Potential Claim Record	1 Sheet
Exhibit 4	Contractor's Supplemental Potential Claim Record	2 Sheets
Exhibit 5	Resident Engineer's Response	2 Sheets
Exhibit 6	Contractor's Full and Final Potential Claim Record	10 Sheets
Exhibit 7	Resident Engineer's Response	3 Sheets
Exhibit 8	Contractor's DRB Position Paper	8 Sheets
Exhibit 9	District's DRB Position Paper	7 Sheets
Exhibit 10	DRB's Recommendation	5 Sheets
Exhibit 11	Contractor's Response to DRB Recommendation	1 Sheet
Exhibit 12	Resident Engineer's Response to DRB Recommendation	1 Sheet
Exhibit 13	Specification Excerpts	2 Sheets
Exhibit 14	Plan Sheet Excerpts	3 Sheets
Exhibit 15	Resident Engineer's Photographs	3 Sheets
Exhibit 16	Diaries	9 Sheets

Claim #2—Differing Site Condition Claim—CIDH Piling at San Lorenzo Bridge (ID #34) Exhibits

Exhibit 1	Contractor's Differing Site RFI	1 Sheet
Exhibit 2	Resident Engineer's Determination Letter	2 Sheets
Exhibit 3	Contractor's Initial Potential Claim Record	1 Sheet
Exhibit 4	Contractor's Supplemental Potential Claim Record	2 Sheets
Exhibit 5	Resident Engineer's Response	2 Sheets
Exhibit 6	Contractor's Full and Final Potential Claim Record	5 Sheets
Exhibit 7	Resident Engineer's Response	5 Sheets
Exhibit 8	Contractor's DRB Position Paper	8 Sheets
Exhibit 9	District's DRB Position Paper	7 Sheets
Exhibit 10	DRB's Recommendation	5 Sheets
Exhibit 11	Contractor's Response to DRB Recommendation	1 Sheet
Exhibit 12	Resident Engineer's Response to DRB Recommendation	1 Sheet
Exhibit 13	Materials Information Handout	9 Sheets
Exhibit 14	Log of Test Borings	2 Sheets
Exhibit 15	Resident Engineer's Photographs	3 Sheets
Exhibit 16	Diaries	9 Sheets
Exhibit 17	Contractor's Basis for Changed Amount of Compensation	1 Sheet
Exhibit 18	Board of Review Report	9 Sheets

Claim #3 Item 27—Reconstruct Fence—Exhibits

Exhibit 1	Contractor’s Written Statement of Claim for Item 27.....	2 Sheets
Exhibit 2	Resident Engineer’s Response Letter.....	1 Sheet

Claim #4 Item 124—Rock Slope Protection—Exhibits

Exhibit 1	Contractor’s Written Statement of Claim for Item 124.....	1 Sheet
Exhibit 2	Resident Engineer’s Response Letter.....	1 Sheet

Claim #5 CO #11—DEWR’s 6 and 8—Exhibits

Exhibit 1	Contractor’s Written Statement of Claim for CO #11-DEWR’s 6 and 8.....	Sheet
Exhibit 2	CO #11 - DEWR 6	1 Sheet
Exhibit 3	CO #11 – DEWR 8	1 Sheet
Exhibit 4	Resident Engineer’s Response Letter.....	2 Sheets

PROJECT CHRONOLOGY

EVENT	DATE	WORKING DAY NO.	NO. OF DAYS
Advertisement date	02/15/2011		
Bid opening date	05/25/2011		
Contract award date	06/27/2011		
Contract approval date	07/18/2011		
First working day	08/02/2011	599	
Begin work	08/03/2011	600	
Working days specified			300
Computed completion date	10/17/2012	901	
ContractChange order time adjustment		8	
Non-working days			6
Suspension days			14
Working days that contractor did not work on the controlling operation			11
Extended date for completion	12/14/2012	940	
Date work completed	12/06/2012	934	
Contract acceptance date	12/06/2012	934	
Overrun in contract time		0 working days (= 0 calendar days)	

GENERAL INFORMATION

This project consisted of constructing a cast-in-place, prestressed, concrete box girder bridge supported on cast-in-drilled-hole concrete piling. Also, existing highway 1 was realigned with portland cement concrete pavement over aggregate base over imported borrow.

The bid amount was \$12,654,308.00. The proposed final estimate was \$13,013,459.85.

The proposed final estimate was mailed to the contractor on January 14, 2013, and was returned with five (5) exceptions on February 12, 2013. The total amount of the exceptions is \$48,302.62.

SUMMARY OF CLAIMS

Claim ID No./Title	Claimed Amount	Recommended Payment	Remaining Amount
1 (ID #46) PCC Pavement Grinding Claim	\$ 25,209.00	\$ 0.00	\$ 25,209.00
2 (ID #34) Differing Site Condition Claim	18,482.00	0.00	18,482.00
3 Item 27 Reconstruct Fence – 11.6M	2,030.00	0.00	2,030.00
4 Item 124 Rock Slope Protection – 10M3	1,925.00	1,925.00	0.00
5 CO #11 – DEWR's 6 and 8	656.62	314.67	341.95
Total Claim Amounts	\$ 48,302.62	\$ 2,239.67	\$ 46,062.95

Example 5-4.9 Sample Construction Claim Findings (6 of 9)

NON-ADMINISTRATIVE CLAIMS:

CLAIM #1 PCC PAVEMENT GRINDING CLAIM (ID #46) \$25,209.00

Background [*Use background from resident engineer's response to full and final documentation of potential claim in conjunction with guidelines in Section 5-413A(8), "Description of the Claim," of the Construction Manual.*]

Section 10-1.01, "Order of Work," of the special provisions and Sheet SC-1 of the project plans require the contractor to construct this project in multiple stages and describe PCC pavement of variable widths and orientations relative to the lane lines.

On March 8, 2012, the contractor completed profilographing the PCC pavement surface from stationing 10 + 240 to 12 + 010 and found that multiple areas exceeded the profile index requirements of Section 40-1.01D(13)(d), "Concrete Pavement Smoothness," of the *Standard Specifications*. The contractor proposed that a change order be executed to modify the profile index requirements (see Exhibit 1) by a request for information (RFI) on March 9, 2012. The resident engineer required the contractor to remedy the deficient areas to conform to the final finishing requirements (see Exhibit 2). The contractor submitted an initial potential claim record on March 14, 2012 (see Exhibit 3) followed by a supplemental potential claim record (see Exhibit 4). The resident engineer provided a response to the supplemental potential claim record finding no merit in the contractor's potential claim (see Exhibit 5).

The contractor referred this dispute issue to the dispute review board. The dispute review board heard the subject of this claim and issued a unanimous recommendation on June 14, 2012 in Caltrans' favor (see Exhibit 10).

This issue was not heard by a board of review.

Applicable Specifications

Special provisions:	Section 10-1.01, "Order of Work" (see Exhibit 13)
Standard Specifications:	Section 40-1.01D(9), "Concrete Pavement
Smoothness"	
Smoothness" (see Exhibit 13)	Section 40-1.01D(13)(d), "Concrete Pavement

Notification of Claim

Date of RFI:	March 9, 2012 (see Exhibit 2)
Initial Potential Claim Record:	March 14, 2012 (see Exhibit 3)
Supplemental Potential Claim Record:	March 29, 2012 (see Exhibit 4)
Full and Final Potential Claim Record:	May 31, 2012 (see Exhibit 6)
Notification was timely?:	Yes

Contractor's Position [*Use the contractor's potential claim submittals in conjunction with guidelines in Section 5-413A (9), "Contractor's Position," of the Construction Manual.*]

Exhibits 1, 3, 4, 6, 8, and 11 are documents in which the contractor has stated their position on this dispute. These exhibits provide the contractor's consistent basis for claim in this matter. The contractor's detailed position in this matter is taken verbatim from their supplemental potential claim record dated March 29, 2012:



Example 5-4.9 Sample Construction Claim Findings (7 of 9)

“We should be compensated for the additional cost of grinding the PCC pavement between stationing 10+240 and 12+010. Because of the staging requirements that provide necessary traffic handling throughout the contract’s duration, we were required to utilize a variety of construction methods in constructing the PCC pavement that consisted of variable widths and orientations. This non-standard construction has caused numerous irregularities in the finished surface of the PCC pavement. It is obvious that the profile index requirements Section 40-1.01D(13)(d), “Concrete Pavement Smoothness,” of the *Standard Specifications* did not contemplate such constraints as experienced on this contract. It is therefore unreasonable for us to absorb the grinding costs in obtaining the profile index demanded by the State.”

District’s Position [*Use the resident engineer’s responses in conjunction with guidelines in Section 5-413A (10), “District’s Position,” of the Construction Manual.*]

The district’s position in this matter is stated in exhibits 2, 5, 7, and 9. The following compilation provides the district’s position on this issue:

The contractor’s claim for additional compensation associated with grinding of PCC pavement to meet the profile index requirements Section 40-1.01D(13)(d), “Concrete Pavement Smoothness,” of the *Standard Specifications* is without merit. The contractor has stated that the staging requirements of the contract in conjunction with construction of PCC pavement in variable widths and orientations created the non-compliant profile index of the finished surfaces in question. District maintains that the primary cause leading to the remedial grinding of PCC pavement was due to the contractor’s lack of quality control in placing PCC pavement.

The contract specified the staging requirements within Section 10-1.01, “Order of Work,” of the special provisions and on the Sheet SC-1 of the Project Plans. While the staging requirements of this contract may have influenced the contractor’s means and methods utilized in constructing the PCC pavement, these constraints were not unknown at time of bid and were not changed during the course of the contract. In addition, the contractor’s own profilographs show many areas where PCC pavement surfaces were produced within the profile index requirements and that many of these areas involved pavement of variable widths along multiple orientations. These results along with satisfactory results from other contracts with similar constraints and construction methods verify that profile index requirements can be met without remedial grinding if proper care is taken during the placement operations. The contractor was informed of these facts by the resident engineer on multiple occasions as evidenced in exhibits 2, 5, and 7.

Profile index requirements on finished PCC pavement surfaces are contractually defined Section 40-1.01D(13)(d), “Concrete Pavement Smoothness,” of the *Standard Specifications*. The contractor’s argument that these requirements should not be applied to the PCC pavement for this contract is without merit. The department has consistently utilized the profile index requirements on finished PCC pavement surfaces constructed in stages. The only exception to this practice is when portions of the existing pavement are to remain in the finished contract. In such cases, the department will contractually exclude those areas and related transitions from the profile index requirements. On this contract there is no existing PCC pavement that remained in the final PCC pavement from stationing 10 + 240 to 12 + 010.

In summary, the remedial grinding of PCC pavement performed by the contractor to meet the contractual profile index requirements is due to the contractor’s own means and methods utilized in constructing said pavement. Had the contractor exercised additional quality control during placement of the PCC pavement, the need for remedial grinding would have been significantly reduced or eliminated in its entirety. The contract payments made per cubic meter for PCC pavement constitute full payment for pavement meeting all contract requirements including profile index requirements. The contractor’s claim in this matter is without merit.

Example 5-4.9 Sample Construction Claim Findings (8 of 9)

Findings and Recommendations

- That the contract details the PCC pavement work to be performed including staging requirements shown on project plan sheet SC-1 and as specified in Section 10-1.01, “Order of Work,” of the special provisions.
- That the contractor constructed PCC pavement between stationing 10+240 and 12+010 between the dates of September 12, 2011 and March 5, 2012.
- That this PCC pavement was constructed in multiple stages of variable widths and multiple orientations relative to the lane lines.
- That the contractor profilographed the completed PCC pavement surfaces on March 8, 2012. Section 40-1.01D(13)(d), “Concrete Pavement Smoothness,” of the *Standard Specifications*.
- That the contractor requested a change order on March 9, 2012 to modify profile index requirements for the PCC pavement.
- That on March 13, 2012 the resident engineer denied the contractor’s request for a change order to modify the profile index requirements for the PCC pavement and requested the contractor provide details for how the non-compliant areas of the PCC pavement would be remedied.
- That on March 14, 2012 the contractor submitted an initial potential claim record for grinding PCC pavement along with a proposal for remedial work.
- That on March 16, 2012 the resident engineer accepted the contractor’s proposal for correcting the non-compliant PCC pavement.
- That the grinding of PCC pavement areas to meet profile index requirements occurred between the dates of April 2, 2012 and April 4, 2012.
- That the contractor submitted each potential claim document in conformance with timeframes specified in the contract.
- That the contractor submitted this dispute as an exception to the proposed final estimate within the contractual timeframe specified in the contract.
- That the contractor requested \$25,209.00 for this claim issue which corresponds to the full and final documentation of potential claim.
- That the resident engineer’s letter dated March 13, 2012 and resident engineer’s responses to the supplemental notice of potential claim and full and final documentation of potential claim correctly reference the contract requirements with respect to final finishing surface requirements (profile index) of the PCC pavement Section 40-1.01D(13)(d), “Concrete Pavement Smoothness,” of the *Standard Specifications*.
- That Section 40-1.01D(13)(d), “Concrete Pavement Smoothness,” of the *Standard Specifications* provides the payment provisions for PCC pavement, which includes full compensation for doing all the work involved in constructing the PCC pavement, complete in place, as shown on the plans, and as specified in the specifications. • That the contractor’s means and methods utilized in constructing the PCC pavement were the cause for the non-compliant finished surfaces of PCC pavement.
- That the contractor was capable of meeting the required finish surface requirements as demonstrated at other locations with similar geometric constraints that met the required profile index.
- That additional quality control on the contractor’s part would have reduced or eliminated the need for remedial grinding of PCC pavement surfaces.
- That remedial costs associated with grinding PCC pavement surfaces to meet required profile index requirements specified in the contract are to be borne by the contractor in their entirety.
- That the contractor has been properly paid through bid item payments and no further compensation is due.
- That it is recommended the claim be denied.

SUMMARY OF RESOLVED CLAIMS

<u>Claim No.</u>	<u>Title</u>	<u>Amount Claimed</u>	<u>Recommended Payment</u>
1 (ID #46)	PCC Pavement Grinding Claim	\$25,209.00	Unresolved
2 (ID #34)	Differing Site Condition Claim	\$18,482.00	Unresolved
3	Item 27 Reconstruct Fence – 11.6M	\$ 2,030.00	\$ 0.00
4	Item 124 Rock Slope Protection – 10M3	\$ 1,925.00	\$ 1,925.00
5	CO #11 – DEWR's 6 & 8	\$ 656.62	\$ 314.67

SIGNATURES

Respectfully submitted,

[DISTRICT CONSTRUCTION CLAIMS ENGINEER'S NAME]

Claims Engineer

Findings Approved,

[DEPUTY DISTRICT DIRECTOR OF CONSTRUCTION'S NAME]

Deputy District Director, Construction

Example 5-4.10 Sample Claim Checklist (1 of 2)

Identification Number _____
 Title _____

Notification Details

Date	Date	On Time	Amount Claimed
Written notice/protest	_____	Yes___ No___	\$ _____
Initial NOPC	_____	Yes___ No___	\$ _____
Supplemental NOPC	_____	Yes___ No___	\$ _____
Full and Final Doc	_____	Yes___ No___	\$ _____

State Response

	Date	Merit	On time
To Supplemental	_____	Yes___ No___	Yes___ No___
Comments	_____		

	Date	Merit	On time
To Full and Final	_____	Yes___ No___	Yes___ No___
Doc Comments	_____		

Background _____

Contractor Position _____

District Position _____

5-4.56 Disputes

DRB Information [if applicable]

DRB held Yes___ No___ Date _____

DRB Recommendation in favor of: State _____ Contractor _____

DRB Accepted by: State: Yes___ No___ Contractor: Yes___ No___

Payment detail CCO No. _____ Amount _____

Comments _____



Example 5-4.10 Sample Claim Checklist (2 of 2)

Exhibits x = included

- Contractor's exceptions to PFE _____
- Written notice or protest _____
- Initial NOPC (6201 A) _____
- Supplemental NOPC (6201 B) _____
- Full & Final Documentation (6201 C) _____
- State response _____
- To Supplemental NOPC _____
- To Full and Final Documentation _____
- Other correspondence _____
- Dispute Review Board _____
- State position paper _____
- Contractor position paper _____
- DRB recommendation _____
- Diaries _____
- Resident Engineer _____
- Assistant _____
- Plan sheets _____
- Specifications _____
- Contract Change Orders _____
- Photographs _____
- Calculations & analysis _____
- Weekly Statement of Working Days _____
- CPM Schedules _____
- Other (list) _____

Table 5-4.1 Required Post Acceptance Event Codes and Dates

Event Code	Definition	Applicable Date
ACD	Arbitration Case Determination	Use the date that the arbiter's decision (determination) is made.
ACF	Arbitration Case Filed	Use the date that the contractor filed his complaint with the Office of Administrative Hearing.
ACH	Arbitration Case Hearing	Use the first hearing date that the parties meet with the arbitrator to present the facts of the case.
ACP	Arbitration Case Payment Processed	Use the date that the ACP was deposited in the U.S. Postal Service or that the ACP was hand-delivered to the contractor.
BORR	Board of Review Recommendation	Use the issuance date of the board of review recommendation report.
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.
DED	District Expenditures Done	Input the date that all district expenditures were completed.
PFEAE	Proposed Final Estimate Returned with Administrative Exceptions, Including Item 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.
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.

Table 5-4.2 Delegation of Authority (1 of 4)

Claims Resolution		
Period	Item(s)	Entitlement Authority ¹
Before issuance of the 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 ² .
From return of the proposed final estimate	Claims	<p>Authority to approve change orders resolving entitlement may be delegated under the authority to approve change orders².</p> <hr/> <p>For change orders subject to district approval:</p> <ul style="list-style-type: none"> Deputy district director of construction approves. Authority may be delegated to construction managers, but not to construction engineers. Send copy to the Division of Construction change order engineer. (Overhead claims³) <hr/> <p>For change orders subject to Division of Construction approval:</p> <ul style="list-style-type: none"> Deputy district director of construction signs under "submitted by" on change order memorandum⁴. Division of Construction field coordinator provides signature of approval on change order memorandum⁴. (Overhead claims³)
To deputy district director of construction's letter		
From deputy district director of construction's letter	Claims	<p>Approvals of change orders resolving entitlement are subject to the district directors determination and the delegation of authority for change orders².</p> <hr/> <p>For change orders subject to district approval:</p> <ul style="list-style-type: none"> Deputy district director of construction approves. Authority may be delegated to construction managers, but not to construction engineers. Send copy to the Division of Construction change order engineer. (Overhead claims³) <hr/> <p>For change orders subject to Division of Construction approval:</p> <ul style="list-style-type: none"> Deputy district director of construction signs under "submitted by" on change order memorandum⁴. Division of Construction field coordinator signs recommending approval on change order memorandum⁴. Division of Construction chief signs approval on change order memorandum⁴. (Overhead claims³)
To District Director Determination of Claims		

Table 5-4.2 Delegation of Authority (2 of 4)

Claims Resolution																																	
Period	Item(s)	Negotiated Settlement Authority ⁶																															
From start of work To deputy district director of construction's letter	Notices, protests, claims, and potential claims	<p>Approval authority and responsibilities for a confidential claim settlement request depend on the settlement amount, as follows^{2,7,11}:</p> <table> <tr> <th><u>Settlement</u></th><th><u>Responsible Party</u></th><th><u>Action</u></th></tr> <tr> <td rowspan="6">≤ \$1.0M</td><td>• District, in consultation with the Legal Division</td><td>Prepares request⁸</td></tr> <tr> <td>• Deputy district director of construction</td><td>Recommends approval</td></tr> <tr> <td>• Deputy district director of construction</td><td>Submits request for approval⁴</td></tr> <tr> <td>• Division of Construction field coordinator</td><td>Recommends approval</td></tr> <tr> <td>• Division of Construction chief</td><td>Approves</td></tr> <tr> <td></td><td></td></tr> <tr> <td rowspan="7">> \$1.0M</td><td>• District, in consultation with the Legal Division</td><td>Prepares request⁸</td></tr> <tr> <td>• Deputy district director of construction</td><td>Recommends approval</td></tr> <tr> <td>• District director</td><td>Recommends approval⁹</td></tr> <tr> <td>• District director</td><td>Submits request for approval</td></tr> <tr> <td>• Division of Construction field coordinator</td><td>Recommends approval</td></tr> <tr> <td>• Division of Construction chief</td><td>Recommends approval</td></tr> <tr> <td>• Project Delivery deputy director</td><td>Approves</td></tr> </table>	<u>Settlement</u>	<u>Responsible Party</u>	<u>Action</u>	≤ \$1.0M	• District, in consultation with the Legal Division	Prepares request ⁸	• Deputy district director of construction	Recommends approval	• Deputy district director of construction	Submits request for approval ⁴	• Division of Construction field coordinator	Recommends approval	• Division of Construction chief	Approves			> \$1.0M	• District, in consultation with the Legal Division	Prepares request ⁸	• Deputy district director of construction	Recommends approval	• District director	Recommends approval ⁹	• District director	Submits request for approval	• Division of Construction field coordinator	Recommends approval	• Division of Construction chief	Recommends approval	• Project Delivery deputy director	Approves
<u>Settlement</u>	<u>Responsible Party</u>	<u>Action</u>																															
≤ \$1.0M	• District, in consultation with the Legal Division	Prepares request ⁸																															
	• Deputy district director of construction	Recommends approval																															
	• Deputy district director of construction	Submits request for approval ⁴																															
	• Division of Construction field coordinator	Recommends approval																															
	• Division of Construction chief	Approves																															
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	• District director	Submits request for approval																															
	• Division of Construction field coordinator	Recommends approval																															
	• Division of Construction chief	Recommends approval																															
	• Project Delivery deputy director	Approves																															
From deputy district director of construction's letter To District Director Determination of Claims ¹⁰	Claims	<p>Approval authority and responsibilities for a confidential claim settlement request depend on the settlement amount, as follows^{2,7,11}:</p> <table> <tr> <th><u>Settlement</u></th><th><u>Responsible Party</u></th><th><u>Action</u></th></tr> <tr> <td rowspan="5">≤ \$1.0M</td><td>• District, in consultation with the Legal Division</td><td>Prepares request⁸</td></tr> <tr> <td>• Deputy district director of construction</td><td>Recommends approval</td></tr> <tr> <td>• Deputy district director of construction</td><td>Submits request for approval^{9,10}</td></tr> <tr> <td>• Division of Construction field coordinator</td><td>Recommends approval</td></tr> <tr> <td>• Division of Construction chief</td><td>Approves</td></tr> <tr> <td rowspan="7">> \$1.0M</td><td>• District, in consultation with the Legal Division</td><td>Prepares request⁸</td></tr> <tr> <td>• Deputy district director of construction</td><td>Recommends approval</td></tr> <tr> <td>• District director</td><td>Recommends approval</td></tr> <tr> <td>• District director</td><td>Submits request for approval^{9,10}</td></tr> <tr> <td>• Division of Construction field coordinator</td><td>Recommends approval</td></tr> <tr> <td>• Division of Construction chief</td><td>Recommends approval</td></tr> <tr> <td>• Project Delivery deputy director</td><td>Approves</td></tr> </table>	<u>Settlement</u>	<u>Responsible Party</u>	<u>Action</u>	≤ \$1.0M	• District, in consultation with the Legal Division	Prepares request ⁸	• Deputy district director of construction	Recommends approval	• Deputy district director of construction	Submits request for approval ^{9,10}	• Division of Construction field coordinator	Recommends approval	• Division of Construction chief	Approves	> \$1.0M	• District, in consultation with the Legal Division	Prepares request ⁸	• Deputy district director of construction	Recommends approval	• District director	Recommends approval	• District director	Submits request for approval ^{9,10}	• Division of Construction field coordinator	Recommends approval	• Division of Construction chief	Recommends approval	• Project Delivery deputy director	Approves		
<u>Settlement</u>	<u>Responsible Party</u>	<u>Action</u>																															
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	• Deputy district director of construction	Recommends approval																															
	• District director	Recommends approval																															
	• District director	Submits request for approval ^{9,10}																															
	• Division of Construction field coordinator	Recommends approval																															
	• Division of Construction chief	Recommends approval																															
	• Project Delivery deputy director	Approves																															

Table 5-4.2 Delegation of Authority (3 of 4)

Arbitration																																			
Period	Item(s)	Negotiated Settlement Authority ¹²																																	
From filing of arbitration	Request for settlement	<p>Approval authority and responsibilities for the confidential Request for Settlement Authority memorandum resolving claims in arbitration depend on the settlement amount, as follows¹³:</p> <table> <tr> <th>Settlement</th><th>Responsible Party</th><th>Action</th></tr> <tr> <td rowspan="6">≤ \$1.0M</td><td>• Legal Division¹⁴</td><td>Prepares request</td></tr> <tr> <td>• Legal Division</td><td>Recommends approval</td></tr> <tr> <td>• Legal Division</td><td>Submits request for approval</td></tr> <tr> <td>• Deputy district director of construction</td><td>Recommends approval</td></tr> <tr> <td>• Division of Construction field coordinator</td><td>Recommends approval¹⁵</td></tr> <tr> <td>• Division of Construction chief</td><td>Approves</td></tr> <tr> <td rowspan="8">> \$1.0M</td><td>• Legal Division¹⁴</td><td>Prepares request</td></tr> <tr> <td>• Legal Division</td><td>Recommends approval</td></tr> <tr> <td>• Legal Division</td><td>Submits request for approval</td></tr> <tr> <td>• Deputy district director of construction</td><td>Recommends approval</td></tr> <tr> <td>• Division of Construction field coordinator</td><td>Recommends approval</td></tr> <tr> <td>• District director</td><td>Recommends approval¹⁵</td></tr> <tr> <td>• Division of Construction chief</td><td>Recommends approval¹⁵</td></tr> <tr> <td>• Project Delivery deputy director</td><td>Approves</td></tr> </table>	Settlement	Responsible Party	Action	≤ \$1.0M	• Legal Division ¹⁴	Prepares request	• Legal Division	Recommends approval	• Legal Division	Submits request for approval	• Deputy district director of construction	Recommends approval	• Division of Construction field coordinator	Recommends approval ¹⁵	• Division of Construction chief	Approves	> \$1.0M	• Legal Division ¹⁴	Prepares request	• Legal Division	Recommends approval	• Legal Division	Submits request for approval	• Deputy district director of construction	Recommends approval	• Division of Construction field coordinator	Recommends approval	• District director	Recommends approval ¹⁵	• Division of Construction chief	Recommends approval ¹⁵	• Project Delivery deputy director	Approves
Settlement	Responsible Party	Action																																	
≤ \$1.0M	• Legal Division ¹⁴	Prepares request																																	
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	• Division of Construction field coordinator	Recommends approval																																	
	• District director	Recommends approval ¹⁵																																	
	• Division of Construction chief	Recommends approval ¹⁵																																	
	• Project Delivery deputy director	Approves																																	
Arbitration	Settlements reached before the arbitrator issues a decision	<ul style="list-style-type: none"> • Use negotiated settlement authority request for settlement item for the period from filing of arbitration to arbitration hearing (above). • Division of Construction issues the change order and notifies the district to process estimate. 																																	
	Arbitrator issues a decision award to contractor	<ul style="list-style-type: none"> • Follow the same level of approval authority and memorandum preparation as for settlement shown above. • District processes request for additional funding, if required. • The Division of Construction issues the change order and notifies the district to process estimate. 																																	
	Arbitrator issues a decision award to Caltrans	<ul style="list-style-type: none"> • Division of Construction establishes an accounts receivable with the Division of Accounting. • Division of Construction coordinates additional judicial remedies with the Legal Division, if required. 																																	

Notes:

1. Entitlement—merit, even partial, requiring compensation under Public Contract Code, section 10227 and Section 3-403, "Changes," of this manual.
2. Section 5-311, "Change Order Approval," of this manual.

Table 5-4.2 Delegation of Authority (4 of 4)

Notes (continued):

3. Approval authority on change order memorandum for overhead entitlement:
 Field office overhead: <\$200K, Division of Construction's field coordinator
 \$200K to \$1.0M, Division of Construction chief
 >\$1.0M, Project Delivery deputy director
 Home office overhead: ≤\$1.0M, Division of Construction chief
 >\$1.0M, Project Delivery deputy director
4. Revise the change order memorandum as appropriate.
5. The District Director Determination (DDD) is Caltrans' final written decision of the claims. After the DDD is issued, no further discussion with the contractor regarding claims should occur.
6. Negotiated Settlement—according to Public Contract Code section 9201 and Section 5-406, "Claim Settlements."
7. Attach the change order and change order memorandum to the claim settlement request and submit it to the Division of Construction. Attach form CEM-2702, "Overrun in Contract Time," to the claim settlement request if recommending action related to time extensions, liquidated damages, or engineering and inspection costs. The Division of Construction change order engineer will provide authorization or notify the district to authorize approval. File the approved claim settlement request in the Division of Construction confidential files. Destroy all drafts.
8. The Division of Construction field coordinator, deputy district director of construction, Legal Division representative, Division of Construction chief, and FHWA transportation engineer meet to discuss the settlement offer. If the offer is greater than \$1.0M, the Project Delivery deputy director may also attend.
9. The deputy district director of construction is responsible for obtaining FHWA concurrence with the settlement on high-profile and non-delegated projects.
10. The district, after obtaining approval from the Division of Construction field coordinator, negotiates the settlement and submits the settlement request to the district director.
11. The claim settlement request is the written decision of the claim. After the claim settlement request is approved, no further discussion with the contractor regarding the settled claim should occur.
12. Negotiated Settlement—according to Public Contract Code section 9201 and Section 5-406, "Claim Settlements."
13. Attach form CEM-2702, "Overrun in Contract Time," to the claim settlement request if recommending action related to time extensions, liquidated damages, or engineering and inspection costs.
14. The Division of Construction field coordinator, deputy district director of construction, Legal Division representative, Division of Construction chief, and FHWA transportation engineer meet to discuss the settlement offer. If the offer is greater than \$1million, the Division of Project Delivery deputy director may also attend.
15. The Division of Construction field coordinator is responsible for obtaining FHWA concurrence with the settlement on high-profile and non-delegated projects.