



Construction Policy Bulletin

CPB 09-12 Claim Settlement Request Memorandum Confidentiality

References: *Construction Manual* Section 5-405D, "District Construction Review of Preliminary Construction Claim Findings"
Section 5-405E(4), "Board of Review Settlements"
Section 5-406, "Claim Payment"
Section 5-407, "Overhead"
Table 5-4.4, "Delegation of Authority"
Construction Policy Bulletin CPB 06-9 "Payment of Construction Disputes with Merit"

Effective Date: August 25, 2009

Approved: 
MARK LEJA
Chief
Division of Construction

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Background

Construction contract claims can be settled before the district director determination of claims notification letter is sent to the contractor. The district or the board of review, with direct involvement and consultation from a Caltrans attorney, documents such settlements in a claim settlement request memorandum. No claim can be settled between issuing the district director determination of claims notification letter and filing the arbitration. Construction contract claims settled after arbitration is filed are authorized by an approved request-for-settlement-authority memorandum, which a Caltrans attorney prepares. The Division of Construction chief or the deputy director for project delivery, depending on their settlement amount and delegated authority, approves both requests.

This new policy clarifies the methodology for evaluating construction claims, reinforces the expectation that entitlement claims with merit are paid as they are resolved, and acknowledges that a Caltrans attorney is directly involved in the preparation of the claim settlement request memorandum and request for claim settlement authority memorandums. The policy establishes procedures to ensure that the claim settlement request memorandum and request for claim settlement authority memorandum are privileged and confidential, and it establishes basic format and content guidelines for preparing the claim settlement request memorandum.

Existing Procedure

Claim settlements are documented according to Sections 5-405E(4), "Board of Review Settlements," and 5-406, "Claim Payment," of the *Construction Manual* (manual). Preparers of the claim settlement report refer to Section 5-406B, "Claim Payment Based on Negotiated Settlement," of the manual.

New Procedure

The deputy district director of construction takes the following steps after receiving and reviewing the preliminary construction claim findings:

- Determines which claims to resolve or reject.
- Separates the claims to be resolved into:
 - Claims with entitlement.
 - Claims warranting possible settlement.
 - Claims to refer to a board of review.
 - Claims of an administrative nature.
- Directs the district claims engineer to proceed with payment of claims with entitlement and to prepare a claim settlement report for each claim to be settled.
- Requests that a board of review be established to hear, review, and make recommendations on claims that may benefit from such a review.
- Sends resolved claims of an administrative nature back to the resident engineer for payment.

The deputy district director of construction or the board of review must get concurrence from the Division of Construction field coordinator to settle a claim. If the field coordinator agrees to settle a claim, the field coordinator requests that the Caltrans attorney consult with the district or the board of review and provide direction for preparing a draft claim settlement report.

The claim settlement report 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
- Recommendation

See the attached Sample Claim Settlement Request memorandum.

The deputy district director of construction or the district director, depending on delegated authority, submits the claim settlement request memorandum to the Division of Construction chief or to the chief engineer, depending on their delegated authority according to Table 5-4.4, "Delegation of Authority," of the manual for approval. A copy of Table 5-4.4 has been revised and is attached to this bulletin.

Table 5-4.4 lists requirements for recommendations and approvals of a claim settlement request memorandum. After approval, the district presents the negotiated settlement offer to the contractor. If the contractor agrees to the negotiated settlement offer, the district prepares and obtains approval of a contract change order.

The contract change order memorandum must refer to the corresponding claim settlement request memorandum and state that the contractor accepts the compensation in the change order as full resolution and settlement of the claim. The contractor must sign the negotiated settlement contract change order.

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.

If you have questions or comments, please contact Reza Hajjari, Division of Construction, at reza_hajjari@dot.ca.gov or (916) 654-6014.

Attachments: Claim Settlement Request Memorandum
Table 5-4.4, "Delegation of Authority"