

DISPUTE RESOLUTION PROCESS FOR CONSTRUCTION AND REPAIR CONTRACTS

The following regulations are applicable to the resolution of disputes with amounts in controversy in excess of \$15,000 arising between or among any parties involved in the county's construction and repair projects (including the county, the architect, the construction manager, the contractors, and the first-tier and lower-tier subcontractors) on Claims arising out of the contract or construction process. In no event shall the Owner be subject to arbitration proceedings pursuant to the Dispute Resolution Policy or these regulations. Unless otherwise specified in this Policy, if there is any conflict between this Policy and the Contract Documents, the terms of this Policy control.

Definition. A claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the parties to a Contract involved in the County's construction and repair projects arising out of or relating to the Contract or the construction process. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

Project Manager Defined. The architect, engineer, or county representative contracted with or appointed to oversee the project.

Resolution of Claims and Disputes. Claims, including those alleging an error or omission, shall be referred initially to the Project Manager for decision. A final decision by the Project Manager shall be required as a condition precedent to mediation or litigation of all Claims by a contractor arising prior to the date final payment is due. The Project Manager will initially decide disputes between any or all parties involved in the County's construction projects.

The Project Manager will review Claims and within twenty days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Project Manager is unable to resolve the Claim if the Project Manager lacks sufficient information to evaluate the merits of the Claim or if the Project Manager concludes that it would be inappropriate for the Project Manager to resolve the Claim.

In evaluating Claims, the Project Manager may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Project Manager in rendering a decision.

If the Project Manager requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Project Manager when the response or supporting data will be furnished or advise the Project Manager that no supporting

data will be furnished. Upon receipt of the response or supporting data, if any, the Project Manager will either reject or approve the Claim in whole or in part. The Project Manager will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Project Manager shall be final and binding on the parties but subject to mediation.

When a written decision of the Project Manager states that the decision is final but subject to mediation, then a demand for mediation of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision. Any failure to demand mediation within said 30 days' period shall result in the Architect's decision becoming final and binding upon the parties.

Upon receipt of a Claim against the Contractor or at any time thereafter, the Project Manager or the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Project Manager or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

If the Project Manager deems that a Claim is valid, the Project Manager shall require all parties to the dispute to share the cost of the Architect's review equitably. If the Project Manager deems that a Claim is invalid, the Project Manager shall require the complaining party to bear the cost of the Architect's review. In any event, the Project Manager may require the complaining party to submit a deposit equivalent to the Architect's hourly rate multiplied by the amount of time the Project Manager estimates, in the Architect's sole discretion, that will be necessary to review the Claim. The Project Manager shall return any unused portion of this initial deposit to the complaining party following the Architect's completion of the Architect's review of the Claim. Nothing in these regulations shall entitle the Project Manager to compensation for additional services from the Owner that is not authorized pursuant to the terms of the Owner-Project Manager Agreement.

Time Limits on Claims. Claims not involving the Owner or Architect must be initiated within 30 days after occurrence of the event giving rise to such Claim or within 30 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims involving the Owner or Architect shall be filed in strict conformance with the Contract documents. Nothing in the policy or these regulations and procedures shall extend the period within or the manner in which claims against the Owner or Architect must be submitted. Claims must be initiated by written notice to the Project Manager and the other party. Any Claim that is not initiated within the applicable time period is waived.

Continuing Contract Performance. Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract, unless instructed otherwise in writing by the Owner.

Mediation. Any Claim arising out of or related to a contract or the construction process on the County's construction or repair projects, except those waived Claims shall, after a final decision by the Architect, be subject to mediation as a condition precedent to the institution of legal proceedings by any contractor.

The parties shall endeavor to resolve their Claims by mediation; which, unless the parties mutually agree otherwise, shall be in accordance with rules established by the Owner.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.