

SECTION 10 PROTESTS AND CLAIMS BY CONTRACTOR

10-1 GENERAL - The processing of protests and claims by the Contractor shall be in accordance with Article 1.5, "Resolution of Construction Claims," Section 20104 through Section 20104.6 of the Public Contract Code, and as specified herein.

Should the final day of any time limit specified herein for responding to a protest, request for information or data, or to file a claim, fall on a Saturday, Sunday or City Holiday, then the final date of receipt shall not be later than close of business of the next business day.

10-2 PRE-CLAIM WRITTEN PROTEST - If work demanded by the Engineer is considered by the Contractor to be outside the requirements of the Contract, or if he considers any decision, of the Engineer to be unfair or to be outside the requirements of the Contract; the Contractor shall, upon such work being demanded or such decision being made, proceed without delay to perform the work or conform to the decision and shall give written notice of protest to the Engineer. The protest shall be filed with the City no later than the close of the third (3rd) business day after the day the event upon which the claim is based occurred.

The written notice shall include the date and circumstances of the order or decision, and the Contractor's reasons for objecting thereto.

The Engineer will consider and investigate the protest and his decision thereon shall be final and conclusive, except in the case of gross error. In the event of a gross error, the Engineer may reconsider his findings and thereafter his findings shall be final and conclusive.

Except for such protests that are made of record in the manner specified, the Contractor waives all grounds for protest to such orders or decisions of the Engineer.

10-3 WRITTEN CLAIM

10-3.1 General - For a claim by the Contractor to be considered by the Engineer it must be submitted in writing within thirty (30) calendar days after receipt of the Engineer's written decision upon a written protest in accordance with Section 10-2 above, or thirty (30) calendar days after completing the protested work, if that is later. The claim shall be accompanied by no less than the following information and data:

- 1) The claim shall set forth clearly and in detail, for each item of additional compensation or time adjustment claimed, the reasons for the claim;
- 2) References to applicable provisions of the specifications;
- 3) The nature and amount of cost or time involved, or both;
- 4) The computations used in determining such cost or time, or both, and all other pertinent factual data;
- 5) Certified payroll records for the labor charges being claimed;
- 6) A notarized certificate, in the form contained herein, certifying that all statements, information, data and computations, etc. submitted with the claim are true, accurate, and supported by the Contractor's records.
- 7) Support documents such as material tags, invoices, Superintendent's notes and diaries pertaining to the claim.

Claims filed by the Contractor shall be in sufficient detail to enable the Engineer to ascertain the validity and amount of those claims.

10-3.2 Contractor's Records - The Contractor shall keep full and complete records of the costs and additional time incurred for any work for which a claim for additional time or compensation is made. The engineer or any designated claim investigator or auditor shall have access to those records and any other records as may be required by the Engineer to determine the facts or contentions involved in the claims. Failure by the Contractor to permit immediate access to those records shall be sufficient cause for denying the claim. Anecdotal recollection of events prepared after-the-fact shall not be admissible as records to document the claim.

10-3.3 Contractor's Certificate - Claims submitted by the Contractor shall be accompanied by a notarized certificate conforming to and containing the following language:

Under the penalty of law for perjury or falsification and with specific reference to the California False Claims Act, Government Code Section 12650 et. Seq., the undersigned,

(Name)

_____, of
(Title)

(Company)

hereby certifies that the claim for the additional compensation and time, if any, made herein for the work on the Contract for (Project Title) is a true statement of the actual costs incurred and time sought, and is fully documented and supported under the Contract with the CITY OF LAFAYETTE.

Dated _____

Failure to submit the notarized certificate with a claim will be sufficient cause for denying the claim.

Any costs or expenses incurred by the City in reviewing or auditing any claims that are not supported by the Contractor's cost accounting or other records shall be deemed to be damages incurred by the City within the meaning of the California False Claims Act. Said damage may be withheld from any payment due or to become due to the Contractor.

10-3.4 Engineers Review of Claim and Action

10-3.4.1 Claims less than \$50,000 - Within thirty (30) days following the receipt of the claim the Engineer shall approve or deny the claim or may request in writing additional information and data as may be necessary to evaluate the claim.

If additional information or details are required by the Engineer to determine the validity and amount of the claims, the Contractor shall furnish additional information or details so that they are received by the Engineer no later than the fifteenth (15th) day after the receipt of the written request by the Engineer. Failure by the Contractor to submit the additional information and details shall be sufficient cause for denying the claim.

Within fifteen (15) calendar days after the receipt of additional information or data as requested herein the Engineer shall respond to the Contractor's claim in writing.

10-3.4.2 Claims in excess of \$50,000 but less than \$375,000 - Within sixty (60) days following the receipt of the claim the Engineer shall approve or deny the claim or may request in writing additional information and data as may necessary to evaluate the claim.

If additional information or details are required by the Engineer to determine the validity and amount of the claims, the Contractor shall furnish additional information or details so that they are received by the Engineer no later than the fifteenth (15th) day after the receipt of the written request by the Engineer. Failure by the Contractor to submit the additional information and details shall be sufficient cause for denying the claim.

Within fifteen (15) calendar days after the receipt of additional information or data as requested herein the Engineer shall respond to the Contractor's claim in writing.

10-4 MEET AND CONFER - If the claimant disputes the Engineer's written response to a claim, or the Engineer fails to respond within the time prescribed herein, the claimant may so notify the City in writing. The written notification must be within fifteen (15) calendar days of receipt of the City's response or within fifteen (15) calendar days of the City's failure to respond within the time prescribed. Upon receipt of the notification City will schedule an informal conference to meet and confer for settlement of the issues in dispute. City shall schedule the meet and confer conference within thirty (30) calendar days of the receipt of the notification from the Contractor, or within such other time frame as may be mutually agreed upon in writing. The conference shall be attended by the City Engineer and the Contractor, and other such persons as mutually agreed to.

Within thirty (30) days following the meet and confer conference the City Engineer will submit a written and final determination of any claims which remain in dispute with the Contractor.

If following this determination the claim or any portion thereof remains in dispute, the Contractor may file a claim pursuant to Chapter 1 (commencing Section 900) and Chapter 2 (commencing with Section 920) of Part 3 of Division 3.6 of Title 1 of the Government Code. For purposes of those provisions, the running of the time period within which a claim must be filed shall be tolled from the time the claimant submits the written claim pursuant to Section 10-3.1 "General" until the time the claim is denied, including any period OF TIME UTILIZED BY THE MEET AND CONFER CONFERENCE.

10-5 CIVIL ACTION PROCEDURES; MEDIATION AND ARBITRATION - Civil actions filed to resolve claims subject to Article 1.5, "Resolution of Construction Claims," of the Public Contract Code shall follow the procedures set forth by Section 20104.4 of the Public Contract Code.

Any orders or decisions of the Engineer rendered on a protest by the Contractor shall be final and binding on the Contractor if he fails to submit or document a claim in the manner and within the times above stated. Such failure shall constitute a waiver of all claims in connection therewith, whether direct, indirect, or consequential in nature.