1.0 Policy

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

This procedure applies to all personnel working on the Water System Improvement Program (WSIP) to the extent that their work is affected by this WSIP Construction Management (CM) Procedure and does not conflict with specific San Francisco Public Utilities Commission (SFPUC) policies or the Contract under which the Work is executed.

2.0 Description

This procedure establishes the requirements and responsibilities for the administration and resolution of Contractors' Claims during construction of WSIP projects.

3.0 Definitions

3.1 Claim

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

3.2 Change Order

A Change Order is a written instrument prepared by the City issued after the effective date of the Agreement and executed in writing by the City and the Contractor that changes the Work, the amount of the Contract.
Sum, the extent of the Contract Time and/or any other Contract term or condition.

3.3 **Unilateral Change Order**

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

3.4 **Notice of Potential Claim**

A Notice of Potential Claim is a written notice prepared by the Contractor disputing a directive, determination, Proposed Change Order, Unilateral Change Order, payment, or other act by the City (or Project CM) impacting or potentially impacting the performance of the Work.

3.5 **Contract Claim**

No later than 45 days from the submittal of a timely Notice of Potential Claim, Contractor may submit a timely, certified and documented contract claim for additional compensation of cost or time based on any disputed item. The contract claim shall comply with Contract Specifications Division 0, Section 0700, Article 13.

3.6 **Construction Management information System (CMIS)**

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

4.0 **Responsibilities**

4.1 **Project Construction Manager (Project CM)**

The Project CM manages the construction contract and is responsible for proactively avoiding Claims; maintaining a tough but fair attitude in dealing with the Contractor; immediately notifying the Regional Project Manager (RPM) and Regional Construction Manager (RCM) upon receipt of a Notice of Potential Claim; and analyzing or assisting with the analysis of a Claim.
4.2 **Field Contracts Administrator (FCA)**

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

4.3 **Construction Schedule/Cost Specialist**

The Construction Schedule/Cost Specialist provides cost and schedule analysis support for the review of Notices of Potential Claims and Claims.

4.4 **Regional Construction Manager (RCM)**

The RCM directs the construction management organization for a region, including managing assigned Project CM’s; resolves conflicts between the Contractor and the Project CM; reviews and advises regarding approval of recommended contractual actions against the Contractor; and assists the RPM in reviewing and developing strategies to address Claims.

4.5 **Regional Project Manager (RPM)**

The RPM reviews and directs the analysis of the merit of a claim, and leads the development of a negotiation plan.

4.6 **WSIP Construction Deputy Director (WSIP CDD)**

The WSIP CDD is the final decision maker for the validity of Contractor Claim within the SFPUC construction management organization prior to any request for services of DRA or DRB.

5.0 **Implementation**

5.1 **Claims Mitigation**

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

5.1.2 The Contractor may, from time to time, informally express a dispute with an action by the Project CM. Should the Contractor make an informal expression of a dispute, the Project CM must attempt to resolve the dispute promptly to avoid a Notice of Potential Claim. This could involve an agreement with the Contractor to refer the issue to the Dispute Resolution Advisor (DRA) or Dispute Review Board (DRB), if either process is included in the Contract.
5.2 **Notice of Potential Claim**

5.2.1 The Contractor may submit a Notice of Potential Claim to the Project CM not later than 7 calendar days after a potential claim event. The Notice shall describe the potential claim event, include an estimate of any cost and/or time impact, and reference any relevant Contract provisions with sufficient specificity to enable the Project CM to review the Notice.

5.2.2 The Project CM shall send an e-mail acknowledgement to the Contractor within 2 working days of receipt of the Notice of Potential Claim and forward the Notice to the FCA, RCM, City RCM and RPM.

5.2.3 The FCA shall, alternatively, identify an existing CMIS Issue or initiate an Issue regarding the Notice of Potential Claim. All documentation associated with the Notice and with any precedent contractual action shall be linked to the Issue.

5.2.4 The FCA shall log the Notice of Potential Claim in the CMIS Change Management module, identifying the “Document Type” as a Claim (“CLM”), and linking the Change Management record to the Issue previously identified or initiated.

5.2.5 Within 5 working days of receipt of the Notice, the Project CM and FCA will conduct a preliminary analysis of the Notice of Potential Claim and report the results to RCM, City RCM and RPM. All correspondence and other documentation logged in CMIS shall be linked to the pertinent Issue. All documents generated during the course of analysis shall be attached as PDF documents to the Change Management record.

5.2.6 Based on consultations with the RPM, RCM and City RCM, the Project CM may meet with the Contractor to discuss and resolve the Notice of Potential Claim. All such meetings between the City and the Contractor shall be documented in the CMIS Meeting Minutes module, and the minutes shall be linked to the pertinent Issue.

5.2.7 The Project CM and Contractor may refer the Notice of Potential Claim to the DRA or DRB if either process is included in the Contract. All minutes and other documentation generated during the Dispute Resolution process shall be logged in the Filing Cabinet module under Item #00803.01, and linked to the pertinent Issue.

5.3 **Contract Claim**

5.3.1 The Contractor must submit a written Contract Claim to the Project CM within 45 calendar days of submitting a Notice of Potential Claim in accordance with Contract Specifications Section 0700, Article 13.02.
5.3.2 Within 2 working days of receipt of a Claim the Project CM sends an acknowledgement of receipt on official City letterhead and immediately notifies the FCA, RCM and RPM.

5.3.3 The FCA initiates the change process by initiating a Change Order Request from within the Change Management record generated in the CMIS (paragraph 5.2.4) and reviews the Claim for conformance and compliance to the Contract requirements. (See WSIP CM Procedure 016, Change Management.)

5.3.4 If non-compliant, the Project CM rejects the Claim and notifies the Contractor. (What actions does the contractor take?) The action required by the contractor is stated in the General Conditions. These are WSIP CM procedures. Not contractor procedures.

5.3.5 If compliant, the Project CM convenes, within 5 calendar days of receipt of the Claim, a meeting with the FCA, RCM, City RCM, RPM, and other project CM team members, as required, to discuss the overall merits of the Claim, review the Project CM’s previous analysis of the Notice of Potential Claim and develop a plan to analyze and respond to the Claim.

5.3.6 The RCM, City RCM, and RPM review the response plan with the WSIP Construction Deputy Director who determines when to engage the City Attorney’s office and the WSIP Program Management Consultant, and whether to engage any outside claims support.

5.3.7 The RPM may designate a claims manager to lead the analysis of the Claim and prepare the formal response to the Contractor. Project CM team members and outside claims specialists (if required) must complete the analysis and a negotiation plan within 30 days to allow for sufficient internal review before responding formally to the Contractor. All correspondence initiating during the review of the Claim shall be logged in the CMIS Correspondence module.

5.3.8 The Project CM, RCM, City RCM and RPM present the response and negotiating plan to the WSIP Construction Deputy Director for endorsement.

5.3.9 Within 45 calendar days of receipt of the Contract Claim the City RCM shall submit a written response to the Contractor, either denying or accepting the Claim in whole or in part, or requesting that negotiations be conducted. The response shall be logged in the CMIS as a Negotiation generated from within the pertinent Change Management record. All non-correspondence documentation generated during the review shall be attached to the responsive Negotiation document.
5.3.10 If the WSIP Construction Deputy Director determines to proceed with negotiations with the Contractor, the Project CM convenes a negotiation meeting with Contractor. Negotiations are led by the person designated by the WSIP Construction Deputy Director, with support from other CM team members. The FCA records minutes of the negotiations within the CMIS Meeting Minutes module, and links the minutes to the pertinent Issue.

5.3.11 Negotiations are conducted until a settlement is reached and are logged, as the Project CM deems necessary to record significant modifications to the original Claim, as additional Negotiations within the pertinent Change Management. The WSIP Construction Deputy Director determines when to terminate negotiations that have reached impasse.

5.3.12 If negotiations are successful, the FCA initiates and processes a Change Order from within the pertinent Change Management for execution by the Contractor and the City.

5.3.13 If negotiations are not successful, or the City RCM initially denies the Claim within 45 calendar days, or the 45 calendar days limit to initiate a Claim from its Notice of Potential Claim expires with no response to the Contractor, the Claim is deemed denied in its entirety. The Contractor may, within 10 days of the conclusion of unsuccessful negotiations, request a review of the Claim by the WSIP Construction Deputy Director.

5.3.14 Within 60 calendar days, the WSIP Construction Deputy Director (or designee) issues a determination on the Contractor’s request which shall constitute the final administrative determination of the City. If no action is taken by the WSIP Construction Deputy Director within 60 days, the original response of the City shall constitute the final administrative determination of the City.

5.3.15 The Contractor will take the Claim to DRA/DRB to work on amicably resolving the claim. Procedure No’s. 019 and 031 highlights the process of resolving claims and disputes if failed to be amicably resolved between Contractor and CM team.

5.4 Lessons Learned Report

If the Claim results in a price or schedule adjustment, the City RCM, with assistance of the Project CM, shall prepare a Lessons Learned Report for the subject Claim. This report should not contain the name of the Contractor. The report should concentrate on analyzing the root cause of the claim and how a similar situation can be mitigated. Circulation of this report is limited to other RCM’s and Project CM’s engaged in similar work. The Project CM shall use the Issue created to gather Claim-related documentation to track actions and history regarding the Claim, and to
describe the Lessons Learned. The Issue’s narratives, along with the linked documentation, serve as the basis for the Lessons Learned Report.
6.0 Other Procedural Requirements

None

7.0 References

Contract Specifications Section 00700, Article 13
Business Process No. 003a Change Management
WSIP CM Procedure No. 016 Change Management
WSIP CM Procedure No. 031 Dispute Resolution Advisor
WSIP CM Procedure No. 019 Dispute Review Board

8.0 Attachments

013 – 1 Claims Management Flow Chart
013 – 2 Revision Control Log
CLAIMS MANAGEMENT FLOW CHART

LEGEN
City RCM – City Regional Construction Manager
PCM – Project Construction Manager
RCM – Regional Construction Manager
RPM – Regional Project Manager
FCA – Field Contracts Administration
WSIP CDD – WSIP Construction Deputy Director
DRA – Dispute Resolution Advisor
DRB – Dispute Resolution Board
Contractor – Construction Contractor

If Contractor or PCM do not agree on informal dispute resolution, then Contractor will proceed with work, but might continue the dispute for satisfactory resolution by other contractual process.

Contractor submits Notice of Potential Claim along with supporting documents including impacts to cost and schedule.

b. PCM advises Contractor of findings and offers to meet with Contractor for resolution.

PCM performs agreed changes within authority.

Resolution?

Yes

No

Contractor submits Formal Claim with supporting documentation.

PCM: a. Notifies FCA, RCM, City RCM and RPM of action, and for them to review Claim.
b. FCA, RCM, City RCM, RPM and DRA or DRB review Notice of Potential Claim.

If non-compliant, PCM rejects Claim and notifies Contractor.

Compliant?

No

Yes

If compliant, then PCM convenes a meeting with FCA, RCM, City RCM and RPM to analyze and develop response to Claim. Team reviews the response and forwards to WSIP CDD for endorsement.

To Sheet 2
Team reviews the Negotiation Plan with the SIP CDD. RPM responds to Contractor within 45 days receipt of Contract Claim.

- **Accept**
  - RPM accepts Claim and instructs the PCM and FCA to implement the Change Order Process.
  - PCM attempts to negotiate with Contractor for satisfactory mutual agreement.
    - **Yes**
      - FCA prepares Contract Change Order for execution by the Contractor and City.
    - **No**
      - Negotiation is unsuccessful, Contractor requests intervention of WSIP CDD, 60-days duration limit. WSIP CDD makes the determination.
        - **Accept**
          - WSIP CDD Accepts the Contractor Claim.
        - **Denial / Partial Acceptance**
          - If no action by WSIP CDD within 60-days, then the original response of City shall constitute the final administrative determination by City. Contractor and City pursue resolution with the services of DRA (P031) or DRB (P019).
### Attachment 013 – 2
#### Revision Control Log

<table>
<thead>
<tr>
<th>Revision No.</th>
<th>Revision Date</th>
<th>What changed?</th>
</tr>
</thead>
</table>
| Rev 1        | March 23, 2011    | • Section 2.0; Revised Text  
• Section 3.0; 3.3 and 3.6 Revised Text  
• Section 4.0; 4.1, 4.2 and 4.5 Revised Text;  
• Revised Section 5.0; 5.2, 5.3; 5.3.3, 5.3.4, 5.3.7, 5.3.9, 5.3.10, 5.3.11, 5.3.12, and 5.3.13; and 5.4 Revised Text |
| Rev 0        | March 31, 2009    | Signed        |