

## Appendix 14. Resolution of Company Claims

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## APPENDIX 14

### Resolution of Company Claims

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#### 14.1 GENERAL

The parties intend by this Appendix 14 that differences between the parties, arising under the Contract, be brought to the attention of the SRWA Engineer or Construction Manager at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The parties agree to initially strive to resolve all disputes amicably and in an informal manner. Informal discussions or negotiations with the SRWA Engineer or Construction Manager or other SRWA representatives concerning informal resolution of a dispute shall not toll or suspend the claim filing and other deadlines provided below, unless expressly so provided by the SRWA Engineer or Construction Manager in writing.

#### 14.2 COMPLIANCE REQUIRED

The Company shall not be entitled to any additional time to complete the Design-Build Work or to the payment of any additional compensation for claimed extra work (or otherwise on account of any claim, cause, act, failure to act, or happening of any event or occurrence) unless either SRWA has issued a Change Order pursuant to the Contract or a claim has been timely filed and approved pursuant to this Appendix 14. If the Company fails to file a written claim within the claim deadline of Section 14.4, then the Company shall have waived any right or remedy to thereafter pursue the claim against SRWA in any administrative, arbitration or litigation proceeding.

#### 14.3 SCOPE OF CLAIMS

A “claim” for purposes of this Appendix 14 means a separate demand by the Company for (a) a time extension (including a demand for relief from damages or penalties for delay assessed by SRWA under the Design-Build Contract), (b) the payment of money or damages arising from Design-Build Work done by, or on behalf of, the Company pursuant to the Contract and payment of which is not otherwise expressly provided for or the Company is not otherwise entitled to, or (c) an amount for the payment of which is disputed by SRWA.

#### 14.4 FILING OF CONTRACT CLAIM; CONTENTS; FILING DEADLINE

##### 14.4.1 Contract Claim Required

If the Company desires to pursue a claim, it must file a “Contract Claim” with the SRWA Engineer or Construction Manager. A Contract Claim must (a) be in writing, (b) be labeled or clearly indicated as a claim under the Design-Build Contract, (c) set forth in detail the reasons why the Company believes additional compensation or a time extension is or may be due, the nature of the costs involved, and, insofar as possible, the amount of the claim, and (d) include (or reference earlier provided) documents that support and substantiate the claim as to both entitlement and quantification of time, money, or both.

##### 14.4.2 Contract Claim Filing Deadline

A Contract Claim must be submitted to the SRWA Engineer or Construction Manager within the following claim filing deadlines: (a) if a deadline is set forth in the Contract for filing of the particular claim, then the Contract Claim must be filed by the time specified in the Contract;

(b) if the claim relates to extra, additional or unforeseen Design-Build Work for which the Company intends to demand additional compensation, a time extension, or both, the Contract Claim must be given to the SRWA Engineer or Construction Manager prior to the time that the Company commences performance of the Design-Build Work giving rise to the potential claim for additional compensation or time extension; and (c) for all other claims not included within (a) or (b), the Contract Claim must be filed on or before 15 days after the date of the occurrence, event or circumstance giving rise to the claim. In no event shall a Contract Claim be filed later than the date of Final Completion.

#### **14.5 PROCESSING OF DIFFERENT CLAIM TYPES**

State law provides for three types of Contract Claims, which will be processed and resolved under different sections of this Appendix.

##### **14.5.1 Claim Under \$375,000**

Any Contract Claim for money or damages of \$375,000 or less or for a time extension, and including any claim for a time extension that includes claimed delay damages that do not exceed \$375,000 (i.e., any claim subject to California Public Contract Code Sections 20104-20104.6) shall be processed and resolved in accordance with Section 14.6.

##### **14.5.2 Claim Over \$375,000**

Any Contract Claim for money or damages of more than \$375,000, and including any claim for a time extension that includes claimed delay damages exceeding \$375,000 (i.e., any claim not subject to California Public Contract Code Sections 9204 or 20104-20104.6) shall be processed and resolved in accordance with Section 14.7.

##### **14.5.3 Claim by Registered or Certified Mail**

Any Contract Claim for a time extension or for money or damages (regardless of dollar amount) that is sent to SRWA by registered mail or certified mail with return receipt requested (i.e., any claim subject to California Public Contract Code Section 9204) shall be processed and resolved pursuant to Section 14.8.

#### **14.6 CONTRACT CLAIM FOR \$375,000 OR LESS OR FOR TIME EXTENSION.**

##### **14.6.1 Applicability**

This Section 14.6 applies to any Contract Claim for \$375,000 or less in value (except as otherwise provided by Sections 14.5.3 and 14.8), including any claim for a time extension or for a time extension that includes claimed delay damages of \$375,000 or less. These claims are subject to California Public Contract Code Sections 20104 to 20104.6. If there is any conflict between this Section 14.6 and the statute, the statute will govern.

##### **14.6.2 SRWA Response to Contract Claim**

The SRWA Engineer or Construction Manager shall respond in writing to the Contract Claim within 60 days of receipt of the claim (or within 45 days of receipt for claims of less than \$50,000), or may request, in writing, within 30 days of receipt of the claim, any additional

documentation supporting the claim or relating to defenses to the claim SRWA may have against the Company. If additional information is thereafter required, it shall be requested and provided pursuant to this Subsection, upon mutual agreement of the SRWA Engineer or Construction Manager and the Company. The SRWA Engineer or Construction Manager's written response to the claim, as further documented, shall be submitted to the Company within 30 days after receipt (or 15 days after receipt for claims of less than \$50,000) of the further documentation, or within a period of time no greater than that taken by the Company in producing the additional information or requested documentation, whichever is greater. SRWA shall not fail to pay money as to any portion of a Contract Claim that is undisputed except as otherwise provided in the Contract Documents.

#### 14.6.3 Meet and Confer

If the Company disputes the SRWA Engineer or Construction Manager's written response, or the SRWA Engineer or Construction Manager fails to respond within the time prescribed, the Company may notify the SRWA General Manager, in writing, either within 15 days of receipt of the SRWA Engineer or Construction Manager's response or within 15 days of the SRWA Engineer or Construction Manager's failure to respond within the time prescribed, respectively, and demand an informal conference to meet and confer for settlement of the issues in dispute. Upon such a demand, SRWA shall schedule a meet and confer conference within 30 days for the parties to consider settlement of the dispute. If the Company fails to timely demand a meet and confer conference within the applicable 15-day period, then the Company shall be deemed not to dispute the SRWA Engineer or Construction Manager's written response to the Contract Claim and the SRWA Engineer or Construction Manager's decision on the Contract Claim shall be final, conclusive and binding, and the Company shall be deemed to have waived all its rights to further protest, judicial or otherwise.

#### 14.6.4 California Government Code Claim

Following the meet and confer conference, if the Contract Claim or any portion remains in dispute, the Company may file a California Government Code Claim as provided in California Government Code title 1, division 3.6, part 3, chapters 1 (commencing with Section 900) and 2 (commencing with Section 910) (the "Government Claims Act"). The running of the period of time within which the Company must file a California Government Code Claim shall be tolled from the time the Company submits a timely Contract Claim pursuant to Section 14.4 until the time that the Contract Claim is denied as a result of the meet and confer process under Section 14.6.3, including any period of time utilized by the meet and confer process. SRWA shall respond to any California Government Code Claim in accordance with the Government Claims Act.

#### 14.6.5 Lawsuit

If the claim is not resolved pursuant to Section 14.6.4, the Company may file a lawsuit on the claim within the limitations period provided by the Government Claims Act. If the Company fails to timely file a lawsuit within the limitations period of the Government Claims Act, then SRWA's response to the California Government Code Claim shall be final, conclusive and binding on the Company, and the Company thereafter shall be barred from filing a lawsuit on the claim.

#### 14.6.6 Mediation

If the Company timely files a lawsuit, then within 60 days, but no earlier than 30 days, following the filing of responsive pleadings, the court shall submit the matter to non-binding mediation (unless waived by mutual stipulation of both parties). The mediation process shall provide for the selection within 15 days by both parties of a disinterested third person as mediator, shall be commenced within 30 days of the submittal, and shall be concluded within 15 days from the commencement of the mediation unless a time requirement is extended upon a good cause showing to the court or by stipulation of both parties. If the parties fail to select a mediator within the 15-day period, any party may petition the court to appoint the mediator. The mediator's fees and expenses shall be split and paid equally between the parties. The court may, upon request by any party, order any witnesses to participate in the mediation process.

#### 14.6.7 Arbitration

If the matter remains in dispute following the mediation or if the parties waive the mediation, then the case shall be submitted to judicial arbitration pursuant to California Code of Civil Procedure part 3, title 3, chapter 2.5 (commencing with Section 1141.10), notwithstanding Section 1141.11 of that code. The Civil Discovery Act of 1986 (California Code of Civil Procedure part 4, title 3, chapter 3, article 3 (commencing with Section 2016)) shall apply to any proceeding brought under this subdivision consistent with the rules pertaining to judicial arbitration. The arbitrator shall be experienced in public works construction law. The arbitrator's fees and expenses shall be split and paid equally by the parties, except where the arbitrator, for good cause, determines a different division. The court may, upon request by any party, order any witnesses to participate in the arbitration process. Any party who, after receiving an arbitration award, requests a trial de novo but does not obtain a more favorable judgment shall (in addition to payment of any costs and fees under Code of Civil Procedure part 3, title 3, chapter 2.5 (commencing with Section 1141.10)) pay the attorney's fees of the other party arising out of the trial de novo.

#### 14.6.8 Interest

In any lawsuit filed under this Subsection, SRWA shall pay interest at the legal rate on any arbitration award or judgment. The interest shall begin to accrue on the date the lawsuit is filed in court.

### **14.7 CONTRACT CLAIM FOR MORE THAN \$375,000**

#### 14.7.1 Applicability

This Section 14.7 applies to any Contract Claim that exceeds \$375,000 in value (except as otherwise provided by Sections 14.5.3 and 14.8), including any claim for a time extension that includes claimed delay damages exceeding \$375,000.

#### 14.7.2 SRWA Response to Contract Claim

The SRWA Engineer or Construction Manager shall respond in writing to the Contract Claim within 60 days of receipt of the claim, or may request, in writing, within 30 days of receipt of the claim, any additional documentation supporting the claim or relating to defenses to the claim that

SRWA may have against the Company. If additional information is thereafter required, it shall be requested and provided pursuant to this Subsection, upon mutual agreement of the SRWA Engineer or Construction Manager and the Company. The SRWA Engineer or Construction Manager's written response to the claim, as further documented, shall be submitted to the Company within 30 days after receipt of the further documentation. If the Company fails to timely dispute the SRWA Engineer or Construction Manager's decision on the matter in accordance with Section 14.7.3, then the Company shall be deemed not to dispute the SRWA Engineer or Construction Manager's written response to the Contract Claim and the SRWA Engineer or Construction Manager's decision shall be final, conclusive and binding, and the Company shall be deemed to have waived all its rights to further protest, judicial or otherwise.

#### 14.7.3 California Government Code Claim

If the Company disputes the SRWA Engineer or Construction Manager's written response to the Contract Claim, the Company may file a California Government Code Claim as provided by the Government Claims Act. SRWA shall respond to any California Government Code Claim in accordance with the Government Claims Act.

#### 14.7.4 Lawsuit

If the claim is not resolved pursuant to Section 14.7.3, the Company may file a lawsuit on the claim within the limitations period provided by the Government Claims Act. If the Company fails to timely file a lawsuit within the limitations period of the Government Claims Act, then SRWA's response to the California Government Code Claim shall be final, conclusive and binding on the Company, and the Company thereafter shall be barred from filing a lawsuit on the claim.

#### 14.7.5 Judicial Reference

If the Company timely files a lawsuit, the case shall be submitted to judicial reference pursuant to California Code of Civil Procedure Sections 638 and 640 through 645.1 (or any successor statute) and California Rules of Court title 3, division 9 (commencing with Section 3.900). As authorized by Code of Civil Procedure Section 638, a referee will consider and decide all factual and legal issues in the action. Each party acknowledges that it will not have any right to a jury trial or to have any judicial officer besides the referee hear or decide the action. When the Company initiates the superior court lawsuit, it shall, at the same time it files the complaint in the action, also file a motion for appointment of a single referee.

- a) Appointment of a referee shall be by mutual agreement within 30 days between the parties, and if unsuccessful, then by the court and will be governed by Code of Civil Procedure Section 640, and subject to objection by either party as provided by Code of Civil Procedure Section 641. The referee must be a retired judge or a licensed attorney with at least ten years substantive experience in public works construction matters.



- b) The parties shall be entitled to discovery and the referee shall oversee discovery and may enforce all discovery orders in the same manner as a superior court judge. The referee shall have the authority to consider and rule on appropriate pre-hearing and post-hearing motions in the same manner as a superior court judge. The referee will have the authority to set a briefing and hearing schedule for any such motion or for a hearing on the merits.
- c) The referee's statement of decision shall include findings of fact and conclusions of law. The statement of decision will stand as the decision of the superior court and, upon filing of the statement with the clerk of the court, judgment may be entered pursuant to Code of Civil Procedure Section 644, Subsection (a). The parties will have rights to appeal the final judgment so entered.
- d) Each Party will pay half of the costs of the referee and the administrative fees of the reference proceeding, and each party will bear its own costs, expenses and attorney fees for the reference proceeding.

## **14.8 CONTACT CLAIM SUBJECT TO SECTION 9204**

### 14.8.1 Applicability

This Section 14.8 applies to any Contract Claim for a time extension or for money or damages that the Company sends to the SRWA Engineer or Construction Manager by registered mail or certified mail with return receipt requested.

### 14.8.2 Claim Processing

The Contract Claim will be processed and resolved pursuant to California Public Contract Code Section 9204, which is summarized here:

- a) **SRWA Engineer or Construction Manager Review of Claim.** Within 45 days after receiving a complete Contract Claim, the SRWA Engineer or Construction Manager shall review the claim and provide the Company a written statement identifying what portion of the claim is disputed and what portion is undisputed. SRWA will pay any undisputed portion of the claim within 60 days from the date of the written statement. If the SRWA Engineer or Construction Manager fails to timely issue a written statement, the claim shall be deemed rejected in its entirety.
- b) **Meet and Confer Conference.** If the Company disputes the SRWA Engineer or Construction Manager's written statement or if the Contract Claim is deemed rejected, the Company may demand and the parties will conduct an informal conference to meet and confer regarding settlement in accordance with Section 9204, Subsection (d)(2). Within 10 business days following the conclusion of the meet and confer conference, the SRWA Engineer or Construction Manager shall provide Company a written statement identifying the portion (if any) of the claim remaining in dispute and any undisputed portion will be paid by SRWA within 60 days after this written statement.
- c) **Non-Binding Mediation.** Any remaining disputed portion of the claim shall be submitted to nonbinding mediation in accordance with Section 9204, Subsection (d)(2).

The foregoing is a summary of Section 9204. The details in the statute will govern the Contract Claim review, meet and confer conference, and mediation.

#### 14.8.3 Lawsuit and Reference

Public Contract Code Section 9204, Subsection (d)(2)(B) provides that “If mediation is unsuccessful, the parts of the claim remaining in dispute shall be subject to applicable procedures outside this section.” If the mediation under Section 9204, Subsection (d)(2) is unsuccessful and all or parts of the Contract Claim remain in dispute, then the Company may file a California Government Code Claim and pursue a lawsuit (with judicial reference) in accordance with the procedures set forth at Sections 14.7.3 through 14.7.5. The running of the period of time within which the Company must file a California Government Code Claim shall be tolled from the time the Company submits a timely Contract Claim pursuant to Section 14.4 until the conclusion of the unsuccessful mediation.

#### **14.9 CONTRACT DESIGN-BUILD WORK PENDING CLAIM RESOLUTION**

Unless otherwise directed in writing by the SRWA Engineer or Construction Manager, pending resolution of a claim under this Appendix 14, the Company shall continue to diligently perform the Design-Build Work in accordance with the Contract.

#### **14.10 TORT AND NON-CONTRACT CLAIMS**

The provisions of this Appendix 14 apply only to Contract-based claims and they shall not apply to tort claims or other claims not based on the Contract. Nothing in this Appendix 14 is intended to, nor shall be construed to, extend or change the time periods and deadlines under the Government Claims Act and other laws for filing such non-Contract based claims or lawsuits.