

**VOLUME 5, PART II**  
**CHAPTER 6**  
**CLAIMS RESOLUTION**

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## **INTRODUCTION**

The General Conditions provide procedures for resolving contractor disputes. The University's Representative is required to review change order requests and render a decision on the request. Mediation, arbitration, or litigation may follow this decision. Continuous negotiation is required throughout the dispute process.

### **6.1 CONTRACTOR CLAIMS**

**References:**

**- Long Form, General Conditions, Articles 4.3 to 4.5, Revision 4, July 1, 2006 (see [FM4\(III\)](#)).**

A claim is a written demand or assertion by the contractor seeking adjustment or interpretation of the terms of the contract documents, payment of money, extension of time, or other relief with respect to the contract documents, including a determination of disputes or matters in question between the University and contractor regarding the contract documents or the performance of the work.

A false claim is defined in the California Government Code sections 12650 et seq. A representative of the University shall not assert that a contractor has made a false claim without first consulting with the Office of the General Counsel to ascertain the accuracy of such assertion. Any assertion that a contractor has made a false claim must be made in good faith and shall be made only after the aforementioned consultation with General Counsel.

### **6.2 CONDITIONS FOR MAKING A CLAIM**

**References:**

**- Long Form, General Conditions, Article 4.2, Revision 4, July 1, 2006 (see [FM4\(II\)](#)).**

Before asserting a claim, the contractor must submit a Change Order Request.

### **6.2.1 Change Order Requests**

The contractor submits a Change Order Request if contractor asserts it is entitled to an adjustment of the contract sum or contract time, or other monetary relief, as a result of (1) extra work; or (2) materially differing site conditions; or (3) delays to final completion.

The University's Representative makes a final decision on change order requests.

## **6.3 NEGOTIATION**

### **References:**

**- Long Form, General Conditions, Article 4, Revision 4, July 1, 2006 (see [FM4\(II\)](#)).**

Negotiation is the first step toward and probably the best method of resolving most claims. Successful negotiation results in a resolution that is agreeable to both the contractor and the University; therefore, the University's Representative does not have to make a decision that could be later disputed (see 6.3.1 below), and administrative and other costs associated with mediation, arbitration, or litigation are saved. Negotiation may also be used after a decision on the claim is made by the University's Representative.

### **6.3.1 Decision on Claims**

### **References:**

**- Long Form, General Conditions, Article 4.5, Revision 4 , July 1, 2006 (see [FM4\(II\)](#)).**

If negotiation is unsuccessful, the University's Representative issues a decision on a contractor's claim. Failure of the University's Representative to render a decision within a specified time period is deemed a denial of the claim.

Either the University or the contractor may dispute the decision of the University's Representative, and may elect arbitration (see 6.5 below) or litigation (see 6.6 below).

At any time after the decision by the University's Representative, the University and the contractor may resolve their differences using negotiation or mediation (see 6.4 below).

## **6.4 MEDIATION**

### **References:**

**- Long Form, General Conditions, Article 4.6, Revision 4, July 1, 2006 (see [FM4\(II\)](#)).**

Mediation is a voluntary procedure that may be used where both parties agree to use a facilitator to assist them reach a settlement.

## 6.5 ARBITRATION

### References:

- Long Form, General Conditions, Article 4.4, 4.5 and 4.8, Revision 4, July 1, 2006 (see [FM4\(III\)](#)).

Arbitration is mandatory procedure for claims resolution unless the aggregate of unresolved claims is \$100,000 or more, and is governed by rules of the American Arbitration Association, as modified by the General Conditions. The arbitrator is chosen by mutual agreement between the University and contractor, and a formal hearing the claim is conducted. The arbitrator issues a decision which is binding on the parties and is generally not subject to appeal. To initiate arbitration, the disputing party must submit a written demand for arbitration to the American Arbitration Association.

If either party to the contract has given a timely notice of election to arbitrate, that party may demand arbitration of the decision made by the University's Representative (see 6.3.1 above), including instances when mediation is terminated (see 6.4 above), within the time limits specified in the General Conditions.

If a demand for arbitration is made on a claim or the aggregate of unresolved claims is \$100,000 or more, either of the parties may elect to litigate (see 6.6 below).

## 6.6 LITIGATION

### References:

- Long Form, General Conditions, Paragraphs 4.4 and 4.5, Revision 4, July 1, 2006 (see [FM4\(III\)](#)).

If either party to the contract has given a timely notice of election to litigate, either party may litigate a claim or the aggregate of unresolved claims totaling \$100,000 or more.

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