

**MWD**

METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

February 19, 1993

To: Board of Directors (Legal & Claims Committee--Information)
From: Assistant General Counsel
Subject: Administration of Claims Arising Out of Metropolitan's
Construction Contracts

Report

Your committee requested a summary of the manner in which the District administers construction claims. As demonstrated below, construction claims arise in a number of different situations. The way such claims are handled depends upon the manner in which they originate.

Construction claims can be divided into two main categories: those that arise under Section 10 of the General Conditions (boilerplate provisions of District construction contracts) because of a District-ordered change in the work, or those arising out of Section 18 of the General Conditions, where the construction contractor protests an action of the District's representative and requests that additional compensation and/or a time extension be granted.

Section 10 changes arise in the following circumstances: (1) the District issues new or revised design drawings subsequent to award of contract; or (2) the District directs a change of work in the field, which change it acknowledges as beyond the scope of the contract. The District then requests the contractor to provide a quotation of the cost of performing the additional or changed work. Once received, the District's field representative reviews the contractor's claim for additional compensation, and accepts it or attempts to negotiate a settlement with the contractor's field representative. If agreement is reached, the District's field representative prepares a memo to the contract administration branch recommending preparation of an extra work order. Contract administration then undertakes an independent review of the contractor's claim for additional compensation, and prepares an extra work order if it concludes such is in the District's best interest.

The extra work order, which must be signed by the Chief Engineer and reviewed and surnamed by the Legal Department, requires that the extra work be described and certified by the Engineering Division. Additionally, it usually contains language acknowledging that the District's payment for the changed or additional work constitutes a full and complete settlement of all known and unknown claims of the contractor, including its subcontractors and suppliers, for such work. In reviewing the extra work order, Legal checks the Engineer's certification that the work is outside the scope of work of the original contract, the back-up documentation supporting the amount of compensation to be paid to the contractor, and the settlement language. Once approved, the extra work order is forwarded to the contractor for its signed acceptance and a fully executed copy is sent to the Controller to authorize payment of the settlement amount to the contractor.

If the District's field representative cannot negotiate a lump sum settlement with the contractor, or if the scope of the additional work cannot be adequately defined at the time the work is ordered, he prepares a memorandum recommending that the changed or additional work be performed on a cost-plus basis. Contract administration then prepares an extra work order for the Chief Engineer's signature, which order directs that the work be performed on a cost-plus basis in accordance with Section 11 of the General Conditions. Legal also surnames this extra work order, examining the Engineer's statement that the work is outside the scope of the original contract. This document, which does not require acceptance by the contractor, is forwarded to the contractor and the Controller. The contractor is then paid on the basis of its submitted invoice(s), as verified by the District's field representative.

Section 18 claims arise when there is disagreement between the contractor and the District's field representative over specific requirements of the contract. For example: (1) the contractor encounters a site condition it contends is different from what it could reasonably expect based upon the construction contract documents, and the District disagrees; (2) the contractor requests a time extension which the District believes is unjustified; (3) the contractor disputes the District's interpretation of a contract issue arising out of its rejection of a shop drawing or non-conforming work, its issuance of a field work memorandum directing the contractor's compliance with the contract, or some other circumstance,

contending that the District's interpretation is inconsistent with the contract documents; or (4) the contractor submits a claim for delay and/or impact, arising out of a specific instance or based upon cumulative circumstances. These claims are initially reviewed and sometimes negotiated at the field level. The District's field representative then prepares a memorandum to contract administration either recommending the issuance of an extra work order or denial of the claim. Contract administration then undertakes an independent review of the claim. If it concludes negotiation of the claim is in the District's best interest, it directs the field representative to continue negotiation, and if negotiations are successful, an extra work order is prepared as described above. If it concludes the claim should be denied, a denial letter is prepared. Legal does not surname or review this correspondence.

If the claim is unresolved and is under \$375,000, Public Contract Code section 20104 et seq. provides a specific procedure to be followed, including a meet and confer session with the contractor. Legal's participation in such sessions usually depends upon whether the contractor brings its attorney. If the claim is over \$375,000, Section 18 provides that the contractor can appeal denial of the claim to the General Manager. Legal does not usually participate in such review unless specifically requested by the General Manager.

If the contractor files a claim in accordance with the California Tort Claims Act, which filing is a condition precedent to the contractor's commencement of litigation for additional compensation, such claim is usually forwarded to Legal for review. The deputy general counsel assigned to handle the matter then meets with contract administration to review the claim and make a recommendation to the General Counsel regarding its disposition. If the claim is not resolved, litigation generally ensues.

During the course of construction, whether or not in response to claims anticipated or received, Legal responds to questions from contract administration and field representatives for specific advice on a particular matter.

Board Committee Assignment

This letter is referred for information to the Legal and Claims Committee because of its authority to study, advise

and make recommendations regarding claims brought against the District pursuant to Administrative Code section 2416(a).

Recommendation

For information only.


Karen Tachiki

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