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Southern California Rapid Transit District

METRO RAIL PROJECT

**CONTRACT CLAIMS
MANAGEMENT PROCEDURE**

**CONSTRUCTION/INSTALLATION
AND PROCUREMENT CONTRACTS**

REVISION 0

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CONTRACT CLAIMS MANAGEMENT PROCEDURE
CONSTRUCTION/INSTALLATION AND PROCUREMENT CONTRACTS

1.0 PURPOSE

This procedure establishes the process by which the Southern California Rapid Transit District (SCRTD) manages contractor claims on Metro Rail construction/installation and procurement contracts. Important factors in avoiding contract claims also are addressed, including the process by which contractor claims may be resolved through SCRTD's established contract change control procedure.¹

2.0 SCOPE

This procedure applies to contractor claims for modification of contract price, schedule of performance, contract specifications and related drawings, or other contract terms and conditions. The procedure does not address the management of certain unique types of claims, such as contract termination claims, insurance and accident/workers' compensation claims, bond/surety claims, or warranty claims.

Contractor claims may be simple or complex, involving demands for limited or extensive contract remedies. This procedure identifies all steps required to process claims that may involve a variety of technical, contractual, or legal issues. It is designed to ensure that the SCRTD is able to substantiate its position on a claim that may elude settlement and involve subsequent litigation.

3.0 DEFINITIONS

The following definitions have been established by the SCRTD:

Change: Any formal, express, implied, or necessary alteration of a Metro Rail contract provision or requirement, whether directed by the SCRTD or determined to result from an SCRTD action, SCRTD failure to act, or SCRTD-responsible condition. Such contract changes are addressed in Metro Rail contract General Conditions; e.g., see Articles 32-36 of Metro Rail construction contracts. For an administrative

1 SCRTD Metro Rail Project, Change Control Procedure--
Construction/Installation and Procurement Contracts,
Revision 1, March 1988.

classification, see Section 5.0, Types of Changes, in the SCRTD's Change Control Procedure.

Change Order: A document issued to the contractor by the SCRTD modifying the contract. The contract modification may adjust the contract dollar amount and/or time allowed to perform the contract work; the contract design or technical specifications; quantities; delivery points; methods or rates; or other provisions of the contract. Change Orders may be issued in two forms:

- Proposed Change Orders--Bilateral Change Orders that are mutually acceptable to the contractor and the SCRTD. See, e.g., Article 34.E of construction contract General Conditions.
- Directed Change Orders--Unilateral Change Orders issued by the SCRTD to a contractor without prior notice, or issued in the absence of agreement between the SCRTD and the contractor on contract cost and schedule adjustments. See, e.g., Article 34.A of construction contract General Conditions.

A Change Order that has been signed by the appropriate SCRTD approval authority, and has therefore become fully effective, may be referred to as an Executed Change Order.

Change Request: A formal proposal to initiate a change to Metro Rail baseline documents, consisting of a Change Request plus supporting documentation and a Finding-of-Fact Statement. Any proposed change to the Metro Rail baseline must be documented on a Change Request.

Claim: Any written demand by a contractor to the Contracting Officer or other SCRTD authorized representative for modification of a contract provision or for a contract price adjustment and/or time extension, even if the amount of money or time requested is unstated. Such demands can arise under several remedy provisions (General Conditions) of the contract, including the SUSPENSION OF WORK, CHANGES, DIFFERING SITE CONDITIONS, CLAIMS, and DISPUTES articles.

Constructive Change: A change determined to result not from a formal SCRTD Change Order but from an SCRTD action, SCRTD failure to act, or SCRTD-responsible condition which has the effect of requiring the contractor to perform work different from or in addition to that prescribed by the original terms of the contract.

Contract: A bilateral agreement under which a contractor agrees to perform certain specified work, provide services, or furnish equipment and materials, and the SCRTD in turn agrees to pay a specific amount for the same, both parties being bound by the terms and conditions of the agreement.

Contract Administrator: Within the SCRTD's Office of Contracts, Procurement and Materiel (OCPM), a professional staff member assigned to assist the Contracting Officer in dealing with contractual matters, including the evaluation of contract claims.

Contracting Officer: The person with the authority to execute a contract, and to make related findings and determinations thereto, on behalf of the SCRTD. The Director-OCPM is the SCRTD's designated Contracting Officer.

Contracting Officer's Decision: A written communication from the Contracting Officer to the contractor relative to a contractual dispute between the SCRTD and the contractor which provides the Contracting Officer's conclusive determination regarding the subject dispute and informs the contractor of the facts and reasons upon which the conclusions of the Contracting Officer are based. Such a decision is final unless the contractor submits an objection in accordance with the DISPUTES article of the contract General Conditions. In such a case, the Contracting Officer's written response becomes the Contracting Officer's final decision.

Contracting Officer's Representative: A person designated by the Contracting Officer and delegated the authority to represent the SCRTD in matters pertaining to a particular contract, including the evaluation of contract claims.

Delay: In the context of a contract claim, any suspension, interruption, hindrance, or extension of contract work which may affect the contract schedule and/or the costs incurred by the contractor. The cause and effect may be compensable or non-compensable, in whole or in part; see, e.g., Articles 32 and 33 of Metro Rail construction contract General Conditions.

Differing Site Condition: Any subsurface or latent physical condition at the site, differing materially from that indicated in the contract, or any unknown physical condition at the site of an unusual nature, differing materially from that ordinarily encountered and generally recognized as inherent in work of the character provided for in the contract.

Dispute: A disagreement between the Contracting Officer or his authorized representative(s) and the contractor relative to any factual or contractual question arising under the contract, unless such question is specifically excepted under the terms of the contract, becomes a dispute when the contractor formally, in writing, objects to a Contracting Officer's decision. Typically, disputes arise as to whether there is merit, in whole or in part, to a contractor's claim, or as to the extent of a contract price adjustment or schedule extension due the contractor in connection with specific change work.

Finding-of-Fact Statement: A formal statement, prepared by the Resident Engineer or other originator of a Change Request, documenting his or her assessment of the factual, technical, and contractual basis for a contract claim and/or a contract change.

Notice of Claim: Any notice from the contractor to the SCRTD, advising of a contract change or constructive change for which the contractor believes he is due equitable compensation.

Project Engineer: Within the SCRTD's Transit Systems Development (TSD) Department, the individual assigned responsibility for the day-to-day technical management of a Metro Rail contract, and for reviewing contract claims and reviewing or preparing Change Requests.

Resident Engineer: Within consultant organizations, the individual responsible for providing on-site monitoring and technical oversight of a contractor's activities, and for preparing Change Requests in response to contractor-initiated change proposals or contract claim notices.

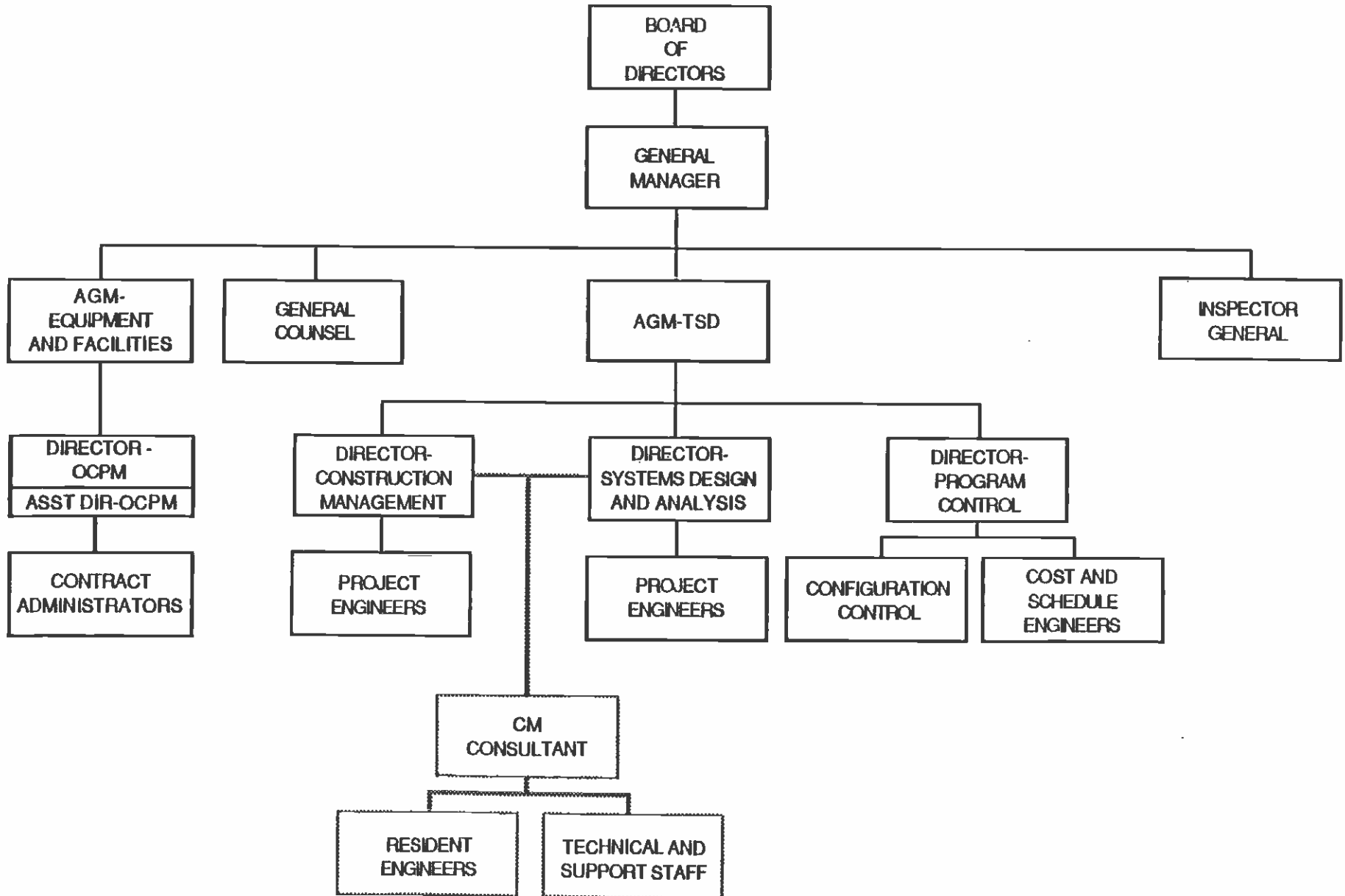
4.0 AUTHORITY AND RESPONSIBILITY

Overall responsibility for resolution of contractor claims rests with the SCRTD's Contracting Officer. Support in the claims management and resolution process is provided by the following groups or organizations (see Exhibit 1):

- SCRTD Contracts (OCPM). Each claim is referred to a cognizant Contract Administrator, responsible for coordinating the claim resolution process through settlement of the claim or the issuing of a final Contracting Officer's decision.
- SCRTD Legal Department. Counsel is responsible for review and advice relative to all contractual or legal issues involved in a claim.
- SCRTD Inspector General's Office. This office is responsible for conducting any necessary audits or other investigation of contract costs or quantification techniques subject to claim.
- TSD Program Control Office. This office is responsible for developing or coordinating a complete evaluation of contract cost or schedule impact subject to claim. The Configuration Control section coordinates the distribution of claim evaluation materials and documentation, and claim-related Change Requests and Change Orders.

Exhibit 1
 Key Players in Metro Rail Contract Claims Management

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- TSD Construction Management Office and Systems Design and Analysis Office. These offices, represented by a Director and assigned Project Engineers, are responsible for participating in reviews of contractor claim submittals.
- Construction Management (CM) Consultant. The CM Consultant is the day-to-day project manager for work performed under Metro Rail procurement and construction/installation contracts.² With regard to contractor claims, the CM Consultant is responsible for maintaining a Claims Log and for participating in reviews of contractor claim submittals.

In addition, if a claim cannot be resolved and may result or has resulted in litigation, the matter may be reviewed and resolved by the SCRTD General Manager or the SCRTD Board of Directors.

5.0 CLAIMS AVOIDANCE AND CLAIM CHARACTERISTICS

Contract claims should, whenever possible, be avoided or resolved by means of bilateral contract modifications, precluding disputes and possible litigation. Important factors in claims avoidance are addressed in Section 5.1. Sections 5.2 and 5.3 identify the types and causes of contract claims which may arise under SCRTD contracts.

5.1 Claims Avoidance

An objective of SCRTD Metro Rail Project policy is the avoidance of contract claims and resulting litigation through proper management and administration of all phases of the project. This objective can be achieved only through a concerted effort on the part of all project management personnel. Exhibit 2 outlines many of the factors that are important in contract claims avoidance.

One of the most important factors in claims avoidance is a willingness on the part of project managers to recognize and promptly respond to legitimate changes under the various SCRTD construction/installation and procurement contracts. If merit is evident in contractor notices and submittals under contract provisions for changes, differing site conditions, suspension

2 Except for Contract A650, Passenger Vehicles, which is being managed by the Systems Engineering and Analysis (SE&A) Consultant. For claims submitted by the passenger vehicle contractor, the SE&A Consultant performs the same functions as the CM Consultant does on other contracts.

EXHIBIT 2
Key Elements in Claims Avoidance

- PRE-CONTRACT AWARD--Enhancement of the contracting process through:
 - Quality contract documents
 - Site reviews
 - Comprehensive response to bidders' questions
 - Sound contractor selection criteria
 - Resolution of bid defects/mistakes where possible.

- PROJECT MANAGEMENT--Management assistance without interference, through:
 - Maintenance of on-site interfaces and communication channels
 - Attendance at progress review meetings involving prime contractors and subcontractors
 - Requests for pertinent information, and project research initiatives
 - Maintenance of good records including comprehensive key event chronologies
 - Assistance to small/disadvantaged subcontractors, where possible
 - Encouragement of comprehensive problem reports
 - Resolution/avoidance of administrative delays
 - Prompt resolution of problems which hold up work (e.g., special procedures for review of differing site condition problems)
 - Promotion of comprehensive plans to avoid/mitigate/recover from the impact of problems.

- POST-CONTRACT AWARD--Identification and management of risk through:
 - On-site review meetings
 - Specification and drawing reviews
 - Comprehensive review of project plans including:
 - Schedules
 - Procurement plans
 - Subcontract plans
 - Manpower plans
 - Financial management plans.

- CONTRACT MANAGEMENT--Institution of prudent policies, including:
 - Provision for foreseeable levels of change
 - Recognition of contract changes
 - Resolution of problems through efficient change management procedures
 - Moderation and flexibility in addressing key issues such as:
 - Contractor assumption of risk
 - Contract deviations and waivers
 - Schedule extensions which in turn limit potential liquidated damages

of work, or notice of claim, then a contract Change Request must be expeditiously processed and the contractor's claim resolved through a contract Change Order. This approach obviously serves to avoid contract disputes or litigation against the SCRTD.

5.2 Formal and Constructive Changes

A contract claim may be asserted with respect to a formal or directed contract change if compensation for the change is not agreed upon via a bilateral contract Change Order. However, claims under Metro.Rail Project contracts are more likely to result from constructive contract changes. The courts give the same effect to constructive changes as to formal written Change Orders under the CHANGES clause. Consequently, upon the occurrence of a constructive change, the SCRTD is obligated to provide an equitable adjustment of the contract.

Notwithstanding the language of the CHANGES clause with reference to a "written order," it is clear that a written order is not necessary under the constructive change doctrine. Any conduct of the SCRTD creates the potential for a claim. Such conduct may be an affirmative act, inaction, cumulative suggestions, or a course of conduct. There must, however, be a showing of some affirmative action or inaction on the part of an authorized SCRTD representative. If a contractor performs additional work without any communication or as a result of the conduct of an unauthorized SCRTD representative, the contractor may very well be held to have been a volunteer and no adjustment is due.

5.3 Causes of Contractor Claims

Constructive changes and resultant claims are generated for a variety of reasons:

(1) Defective Drawings or Specifications

If a contractor incurs additional expense or delay by attempting to comply with faulty design and/or mistakes in specifications, drawings, etc., the contractor may have a basis for claim under the contract CHANGES clause.

(2) Differing Site Conditions

When a contractor encounters subsurface or latent physical conditions that differ materially from those indicated in the contract, and there is an impact on the cost or time of performance, the contractor may have a basis for claim under the DIFFERING SITE CONDITIONS clause.

(3) Method of Performance

Unless otherwise provided by contract, a contractor is entitled to follow his preferred method of contract performance, consistent with good engineering and construction practices, even though another method of performance exists which may be preferred by the SCRTD. Consequently, if the SCRTD causes a contractor to perform in a manner different from the manner in which the contractor wishes to perform, a constructive change may result and the contractor may have a basis for claim.

(4) Acceleration

If the SCRTD requires a contractor to accelerate performance to complete work in advance of the contract schedule, and the contractor incurs added costs (e.g., overtime and premium pay), a constructive change may result and the contractor may have a basis for claim. A refusal to grant schedule extensions for excusable or SCRTD-responsible delays may also require a contractor to accelerate performance in order to complete work within the original contract performance period, again giving rise to a basis for claim.

(5) Deceleration

Deceleration occurs when a contractor is directed or otherwise forced to relax or extend the schedule for performance of contract work. If added costs are incurred as a result of a directed or constructive schedule extension, the contractor may have a basis for claim.

(6) Insufficient Change Order Compensation

This type of allegation may arise when a contractor believes that sufficient compensation for a contract change has not been recognized by the SCRTD. The contractor may assert SCRTD responsibility for additional cost or schedule impact beyond that recognized in a unilateral Change Order or may assert that the SCRTD's offer in negotiation is inadequate.

(7) Cardinal Change

A contractor may allege a cardinal change, i.e., an SCRTD breach of contract due to Change Orders that go beyond the general and intended scope of the contractual work.

(8) Late, Defective, or Changed SCRTD-Furnished Equipment

A contractor may assert that work-around, repair work, rip-out, and delay costs have resulted because equipment or components have not been supplied by the SCRTD in accordance with schedule or specification.

(9) Late, Defective, or Changed SCRTD-Furnished Information, Drawings, or Specifications

Such allegations are based on contract provisions or principles that require the SCRTD's timely supply of technical information necessary for design details and construction. The SCRTD's contractual obligation usually relates to information necessary for proper interface design, installation, and testing of SCRTD-furnished equipment.

(10) Nondisclosure of Technical Information

A contractor may require the benefit of superior SCRTD technical knowledge apart from a specific information item. A claim may follow where the contractor asserts adverse impact because the necessary information was not provided.

(11) Improper Project Administration

Contractor claims may assert that improper SCRTD monitoring, review, or approvals cause added work and delay. For example, a contractor may submit a claim for:

- Excessive design reviews, audits, comments, and objections
- Excessive and unreasonable resubmittals of data or reports required by contract
- Excessive ad hoc or periodic requirements for summaries and justification of contract progress and status.

(12) Added Product Inspection and Test Requirements

Inspection and test requirements are specified by contract. Nevertheless, a contractor claim may allege extra-contractual or excessive quality control or testing procedures and unfounded deficiency reports, giving rise to added work and delay.

6.0 CONTRACT CLAIMS MANAGEMENT PROCESS

This procedure addresses the management of contract claims against the SCRTD. Exhibit 3 illustrates the overall claims management process, including the major phases in the process and the primary SCRTD organizational responsibilities. The process is described in detail in the following sections of this procedure.

As noted, it is appropriate to refer a contract claim for disposition by a contract Change Order whenever it can be determined that the contractor has presented a valid basis for claim and at least some rationale for quantifying impact (e.g., delay or additional cost). In general, the claim-related Change Order process follows that described in the SCRTD's Change Control Procedure -- Construction/Installation and Procurement Contracts. However, additional evaluation of a claim may be required to determine the proper scope of the claim-related Change Order settlement. Appendix A describes the process for conducting such evaluations.

6.1 Evaluation of Notice of Claim

The first phase of the contract claims management process involves an evaluation of the contractor's Notice of Claim to determine whether a proper basis for claim has been presented. This evaluation either results in preparation of a Change Request or a Letter of No Merit. The steps in the process are illustrated in Exhibit 4 and described below.

(1) Submit Notice of Claim

To initiate and maintain a contract claim under a remedy provision of the contract General Conditions, a contractor is required to submit a Notice of Claim within five working days³ after the SCRTD action, SCRTD failure to act, SCRTD-responsible condition, or other basis for claim is apparent. Delayed notices may be considered, but only if and to the extent that the SCRTD position has not been prejudiced by the delay.

3 Within 15 days for systems contracts.

Exhibit 3
Overall Claims Management Process

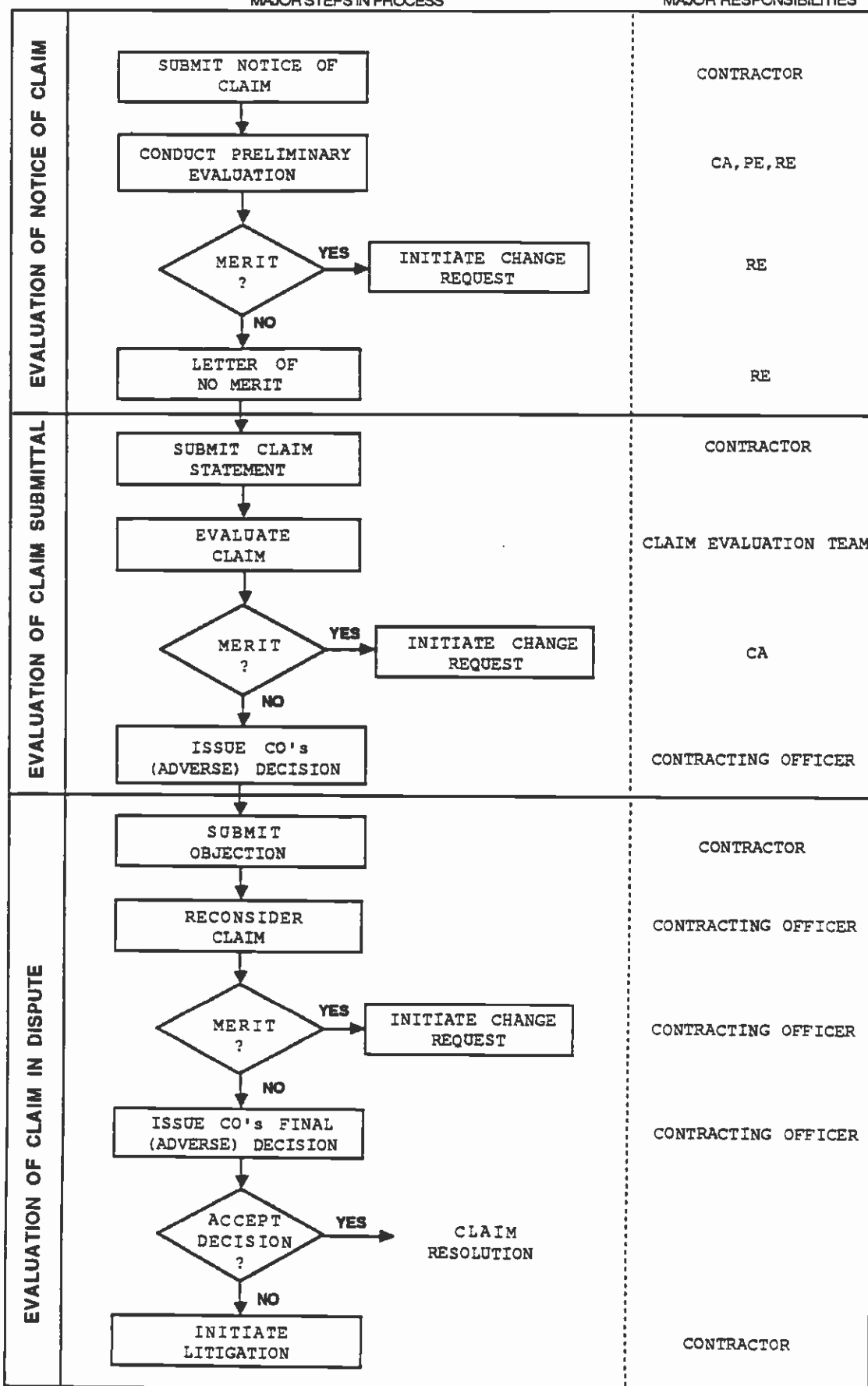
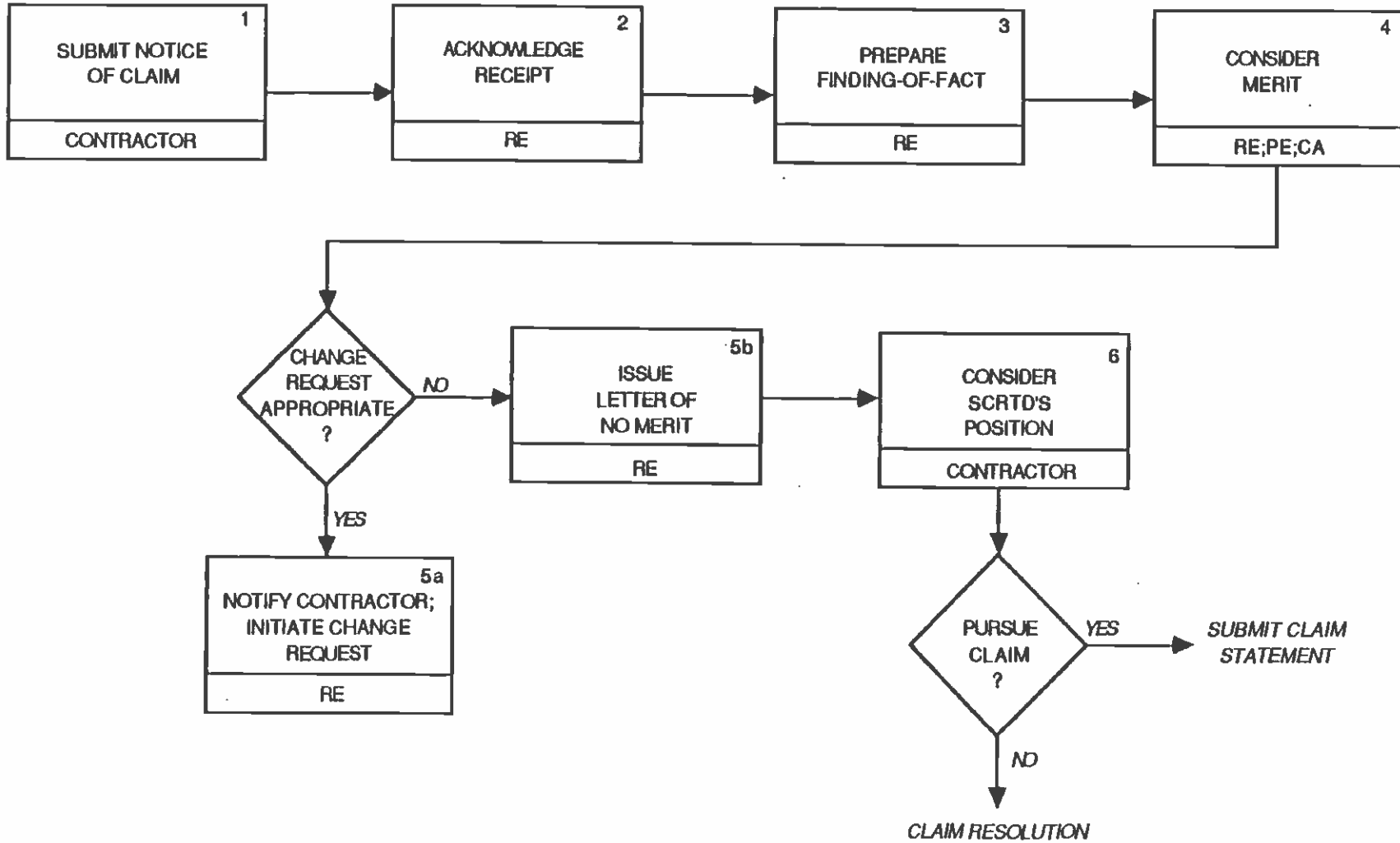


EXHIBIT 4
Evaluation of Notice of Claim



The Notice of Claim need not specify the extent of delay or quantify the dollar amount subject to claim. The notice must, however, advise the SCRTD as to:

- The specific basis for claim and the contract change(s) subject to claim
- The scope of impact subject to claim
- The urgency of any SCRTD reply necessary to avoid a delay or otherwise mitigate the impact.

The Notice of Claim should be submitted in writing to the Resident Engineer responsible for the contract. In an unusual situation, a verbal Notice of Claim may be provided and supported in writing as soon as possible.

(2) Acknowledge Receipt

Upon receipt of a Notice of Claim from a contractor, the Resident Engineer acknowledges receipt and advises the contractor to submit a statement of claim in accordance with the contract CLAIMS article. The receipt of the Notice of Claim is documented in the CM Consultant's Claims Log⁴ by the Resident Engineer. The Resident Engineer advises the Project Engineer and Contract Administrator that a Notice of Claim has been received.

(3) Prepare Finding-of-Fact Statement

The Resident Engineer reviews the Notice of Claim and may request from the contractor any additional information which may be necessary to understand the basis for claim. The Resident Engineer then prepares a Finding-of-Fact Statement, which includes:

- A claim synopsis

4 The SE&A Consultant maintains the Claims Log for Contract A650, Passenger Vehicles. To avoid repeated notation of this exception in the following pages, only the role of the CM Consultant is explicitly defined. Nevertheless, the SE&A Consultant's responsibilities for administration of claims submitted by the passenger vehicle contractor are identical to the CM Consultant's responsibilities for administration of claims submitted by all other contractors.

- A factual statement of events and contractual issues pertaining to the basis for claim
- A recommendation for disposition of the claim.

(4) Consider Merit

The cognizant Resident Engineer, Project Engineer, and Contract Administrator review the Notice of Claim and the Finding-of-Fact Statement to determine if the contractor has set forth a proper basis for claim. Where indicated, this determination is based on additional review and advice from other SCRTD technical experts and Legal Counsel.

(5a) Notify Contractor and Initiate Change Request

If the Resident Engineer, Project Engineer, and Contract Administrator conclude that the claim has merit and the contractor may be entitled to a Change Order, the Resident Engineer notifies the contractor of this determination and prepares a contract Change Request for CCB concurrence, and the process of evaluating and negotiating a Change Order settlement to the claim is begun (see Appendix A). The Resident Engineer records this disposition in the CM Consultant's Claims Log.

(5b) Issue Letter of No Merit

If the claim is deemed to have no merit, a Letter of No Merit is issued by the Resident Engineer to the contractor and is noted in the CM Consultant's Claims Log. This letter advises the contractor of the determination and the rationale for that determination. The letter also advises the contractor that the matter will be considered closed unless the contractor submits or has submitted a Claim Statement and demands a Contracting Officer's decision pursuant to the CLAIMS and DISPUTES articles of the contract.

(6) Consider SCRTD's Position

The contractor evaluates the SCRTD position in the Letter of No Merit and elects whether to submit a Claim Statement and demand a Contracting Officer's decision. If the contractor elects to proceed with the claim, the Claim Statement is evaluated in accordance with the procedures outlined in the following section.

6.2 Evaluation of a Formal Claim Submittal

This phase of the contract claims management process is initiated by a contractor submittal of a Claim Statement and demand for a decision on the claim by the SCRTD's Contracting Officer. The process begins with an acknowledgment and evaluation of the contractor's claim, leading to a decision on the claim by the Contracting Officer. The steps in this process are illustrated in Exhibit 5 and described below.

(1) Submit Claim Statement

If the contractor disagrees with the conclusions provided in the Letter of No Merit and wishes to pursue the matter further, the contractor must submit a formal claim statement to the Resident Engineer and demand a review and decision on the claim by the Contracting Officer. Generally, the complete Claim Statement must be submitted within 30 days after contractor identification of the basis for claim. Where appropriate, an extension of time is granted by the SCRTD Contract Administrator via the Resident Engineer.

The Claim Statement must be as complete as possible and must clearly identify:

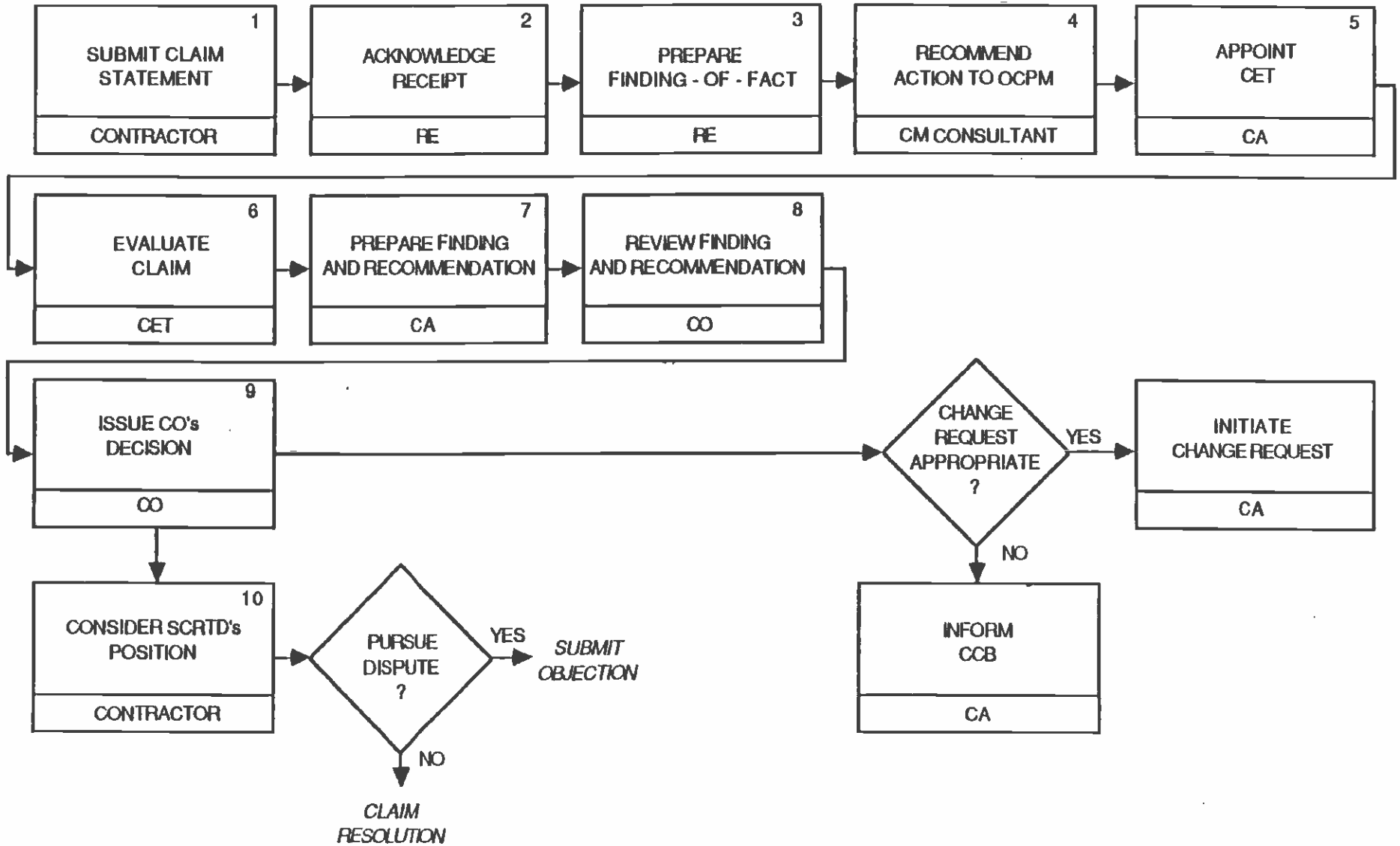
- The SCRTD action, failure to act, or responsible condition which is the basis for claim
- A direct relationship between the alleged SCRTD-responsible problem and any alleged adverse impact on the contractor
- The specific basis for any estimate or quantification of SCRTD-responsible delay or added cost, with a Certificate of Current Cost or Pricing Data to support any contract cost estimate.

Any opinion, conclusion, or judgmental assertion that is not supported by factual documentation is unacceptable. The contractor must provide any additional information which may be necessary to evaluate the basis for claim. Subsequently, and if the claim has a proper basis, the contractor may be requested to provide additional support for the claim quantification.

(Because of the 30-day requirement for submittal of Claim Statements, it is possible that a Claim Statement may have been received prior to the issue of a Letter of

Exhibit 5
 Evaluation of Formal Claim Submittal

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No Merit by the Resident Engineer. Nevertheless, if the contractor demands the Contracting Officer's decision, the Claim Statement must be processed and evaluated as described below.)

(2) Acknowledge Receipt

Upon receipt of a Claim Statement from a contractor, the Resident Engineer acknowledges receipt. The Resident Engineer's acknowledgment should advise the contractor of the process and time frame required for evaluation of the claim and decision by the SCRTD Contracting Officer. The Resident Engineer records submittal of the Claim Statement in the CM Consultant's Claims Log.

(3) Prepare Finding-of-Fact Statement

The Resident Engineer reviews the Claim Statement to ascertain whether it contains the requisite information. The Resident Engineer then prepares a Finding-of-Fact Statement which includes:

- A claim synopsis
- A factual statement of events and contractual issues pertaining to the basis for claim
- An assessment of the basis for claim quantification
- A recommendation for disposition of the claim.

(4) Recommend Action to OCPM Contract Administration

The CM Consultant's Construction Manager⁵ selects one or more technical staff to review the contractor's Claim Statement and the Resident Engineer's Finding-of-Fact Statement. Based on the results of this review, the Construction Manager determines the recommended action to be taken on the claim. The Construction Manager forwards the Claim Statement, Finding-of-Fact Statement, and his recommendation to the SCRTD's Contract Administrator. Copies are provided to the Project Engineer and Resident Engineer. The Claim Statement and associated documents must be transmitted to the Contract Administrator as rapidly as possible; in general, this should be no later than 5 days after receipt by the CM Consultant.

5 The SE&A Consultant's Project Director for Contract A650, Passenger Vehicles.

(5) Appoint Claim Evaluation Team

The Contract Administrator reviews the Claim Statement and associated documents to assess the scope, complexity, and contractual merit of the claim. On the basis of this assessment, the Contract Administrator outlines the technical evaluation requirements and, if required, designates the members of a Claim Evaluation Team (CET). If a CET is necessary, its members may include the Contract Administrator, Resident Engineer, Project Engineer, an attorney from the Legal Department, and cost and schedule analysts from Program Control. All CET appointments are cleared by the Assistant Director-OCPM.

If a CET is established, the Contract Administrator transmits the Claim Statement and associated documents, and a list of the designated CET members, to the SCRTD's Change Control Center (CCC). The CCC logs in the claim documents and distributes copies to the CET members, informing them of the date by which their evaluations are due.

(6) Evaluate Claim

The Contract Administrator is responsible for direction and coordination of the initial claim evaluation process. Where claim entitlement and/or compensation is relatively clear, a CET is not necessary. If a CET is established, its members conduct their evaluations on the basis of claim documentation and independent research. All evaluations are fully documented and returned to the CCC, which records their receipt and forwards them to the Contract Administrator. The Contract Administrator reviews the CET evaluations, meeting with CET members as necessary to clarify or reconcile open questions.

(7) Prepare Finding and Recommendation

Based on prior evaluations, the Contract Administrator develops a position on the factual, technical, and contractual merit of the claim. The Contract Administrator prepares a finding and recommendation, outlining:

- The claim statement/related elements
- The claim issues/factors bearing on SCRTD liability and contractor entitlement
- Findings on the factual, technical, and contractual issues bearing on SCRTD liability and contractor entitlement

- Assessment of the contractor's quantification of claim and any major inherent problem⁶
- Recommended position on contractor entitlement--conclusions supported by rationale as to whether or not the contractor is entitled to a claim remedy under the contract.

The finding and recommendation and any supporting material are then reviewed by the Assistant Director-OCPM and forwarded to the SCRTD Contracting Officer.

(8) Review Finding and Recommendation

The Contracting Officer reviews the finding and recommended position on the claim. This review is supported by the Contract Administrator and other participants, as required. Upon his review, and after any comments or revisions are incorporated, the Contracting Officer approves the finding and recommendation as a basis for disposition of the claim.

(9) Issue Contracting Officer's Decision

The Contract Administrator prepares a draft of the Contracting Officer's decision, clearly stating the extent to which the claim is accepted or rejected and setting forth the rationale for this determination. The draft is sent to the Contracting Officer for review.

The Contracting Officer reviews the draft decision. Upon any necessary revision, the Contracting Officer prepares his decision and forwards it to Legal Counsel for a final review as to form. Upon this final review, the decision is signed and issued to the contractor. As part of the Contracting Officer's decision, the contractor is advised that the decision is final unless an objection is received pursuant to the DISPUTES article of the contract General Conditions.

⁶ Notwithstanding a valid contractual basis, some claims (e.g., delay claims) may be defective for lack of a clear cause-and-effect relationship or a proper estimating rationale that supports the quantification of impact subject to claim. Such a problem goes to the merits of a claim; however, in this area a contractor normally is given an opportunity to offer further proof.

If the Contracting Officer determines that the contractor's claim has merit, in whole or in part, the contractor is notified of the determination (by the Contracting Officer's decision), and the Contract Administrator prepares a contract Change Request. The Change Request is submitted to the CCB for concurrence, and the process of evaluating and negotiating a Change Order settlement to the claim is begun (see Appendix A).

If the Contracting Officer determines that the claim has no merit, this decision is reported to the CCB and the contractor is notified (by the Contracting Officer's decision).

A copy of the Contracting Officer's decision is forwarded to the CM Consultant, and the Claims Log is updated by the Resident Engineer. An information copy is provided to the AGM-TSD, TSD Director of Construction Management or Systems Design and Analysis, and Legal Counsel.

(10) Consider SCRTD'S Position

The contractor evaluates the decision of the Contracting Officer and determines, in the case of an adverse decision, whether to pursue the matter as a dispute. The contractor may accept or fail to object to the decision of the Contracting Officer, in which case the claim is resolved. Otherwise, the contractor files an objection to the decision, necessitating a re-evaluation of the claim.

6.3 Evaluation of Claim In Dispute

If the contractor objects to the Contracting Officer's decision, the matter is in dispute with the SCRTD. The claim is then subject to further evaluation as illustrated in Exhibit 6 and described below.

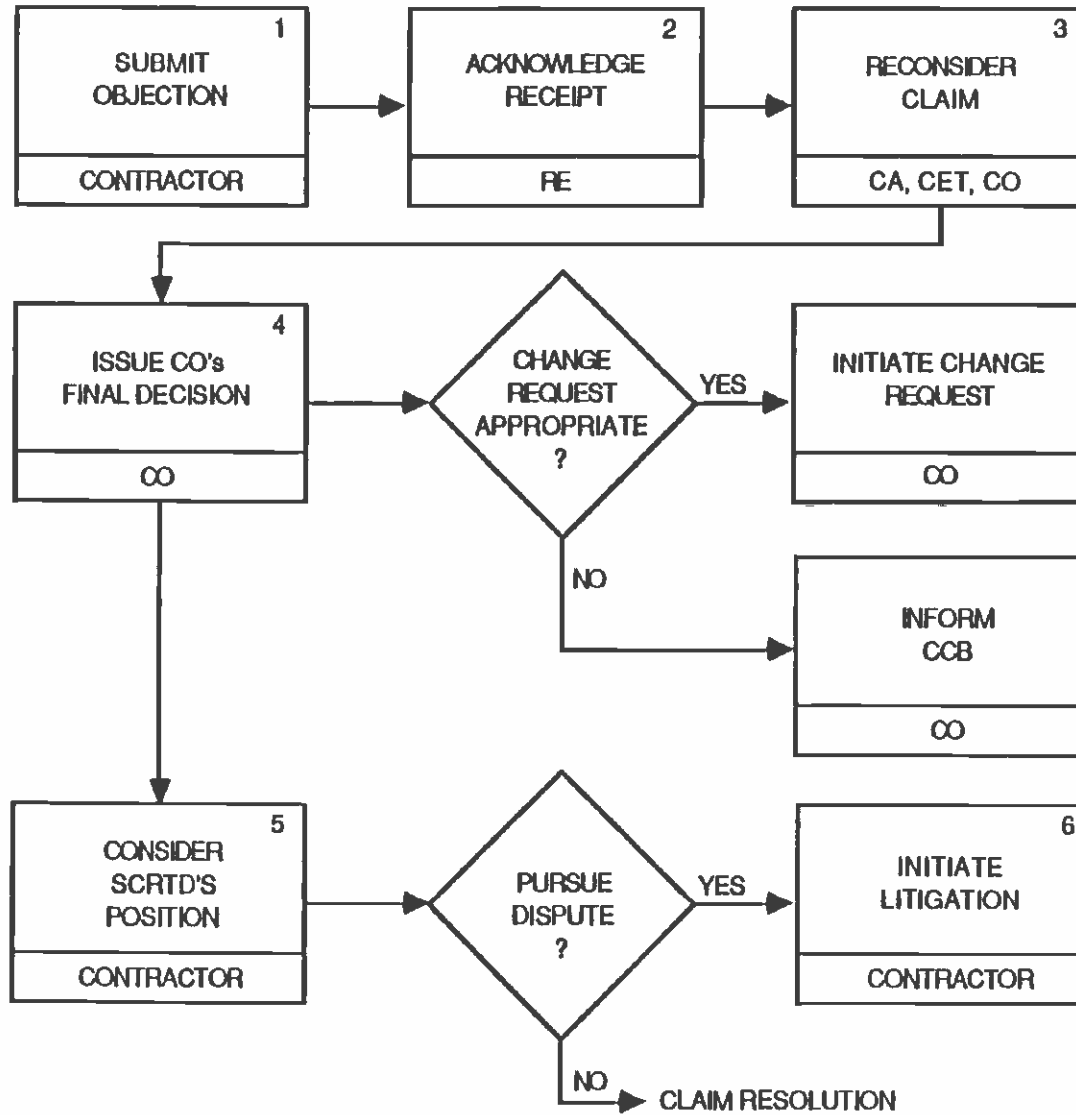
(1) Submit Objection

If the contractor objects to the Contracting Officer's decision, the contractor has 30 days to submit a written objection pursuant to the contract DISPUTES clause. The objection must outline a proper basis for any reconsideration of the claim.

(2) Acknowledge Receipt

The Resident Engineer acknowledges receipt of the contractor's objection and documents receipt in the CM

Exhibit 6
 Evaluation of Claim in Dispute



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Consultant's Claims Log. The Resident Engineer promptly forwards the contractor's objection to the Contract Administrator. Pursuant to the contract DISPUTES clause, the SCRTD must respond to the objection within 30 days.

(3) Reconsider Claim

The Contract Administrator reviews the contractor's objection and provides a recommendation to the Contracting Officer. As appropriate, the Contract Administrator may transmit the objection, via the CCC, for re-evaluation by the Claim Evaluation Team.

Following any necessary re-evaluation of the claim, the Contracting Officer reviews all relevant claim documents to determine if the contractor's objection has merit.

(4) Issue Final Decision

The Contracting Officer prepares his final decision and forwards it to Legal Counsel for a final review as to form. Upon this final review, the decision is signed and issued to the contractor.

If the Contracting Officer determines that the contractor's objection has merit, the contractor is advised of this determination by the Contracting Officer's final decision. The Contracting Officer prepares a Change Request for CCB concurrence, and the process of evaluating and negotiating a Change Order settlement to the claim is begun (see Appendix A).

If the Contracting Officer determines that the contractor's objection is without merit, the Contracting Officer's final decision advises the contractor of the rationale for this decision. The contractor also is advised that the decision is final unless it is challenged in litigation pursuant to applicable state law. The CCB is informed of the Contracting Officer's final decision.

A copy of any final decision by the Contracting Officer is forwarded to the CM Consultant, AGM-TSD, TSD Director of Construction Management or Systems Design and Analysis, and Legal Counsel. Any final disposition of the claim, as outlined above, is noted in the claims Log by the Resident Engineer.

(5) Consider SCRTD Position

The contractor evaluates the Contracting Officer's final decision and may accept or fail to respond to the Contracting Officer's final decision, in which case the

claim is resolved. Otherwise, the contractor may seek redress in litigation.

(6) Initiate Litigation

Even if the contractor rejects the Contracting Officer's final decision, any remedy provided by that decision may be extended to the contractor through a unilateral contract modification or a bilateral Change Order agreement, executed without prejudice to the contractor's right to pursue the matter in litigation. The contractor's last recourse is to challenge the Contracting Officer's final decision in litigation against the SCRTD. If a lawsuit is filed, the Contract Administrator prepares a complete file of claim documentation, including all claim documents from the Notice of Claim through the Contracting Officer's final decision. This file is forwarded to the Legal Department for review and use in responding to litigation.

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APPENDIX A

Determination of Claim-Related Change Order Remedy

APPENDIX A
DETERMINATION OF CLAIM-RELATED CHANGE ORDER REMEDY

As outlined in this Contract Claims Management Procedure, it is appropriate to refer a contract claim for settlement by a contract Change Order whenever it can be determined that the contractor has presented a valid basis for claim and at least some rationale for quantifying impact (e.g., delay or additional cost) subject to claim. Disposition of a claim by a Change Order settlement is initiated by submittal of a Change Request for concurrence by SCRTD's Configuration Control Board (CCB), and in general follows the process specified in the SCRTD's Change Control Procedure--Construction/Installation and Procurement Contracts.

However, notwithstanding a determination that the contractor's claim has merit and that some contract remedy is due, a further analysis of the claim may be necessary to determine the proper scope of the Change Order to be executed in settlement of the claim. This appendix describes the procedure for evaluating claim impact and determining the appropriate cost and/or schedule modifications to be provided in a Change Order remedy.

The procedure has been developed to ensure a proper evaluation of Change Order remedies for major or complex claims, and not all steps in the procedure will be required in evaluating appropriate remedies for all claims.

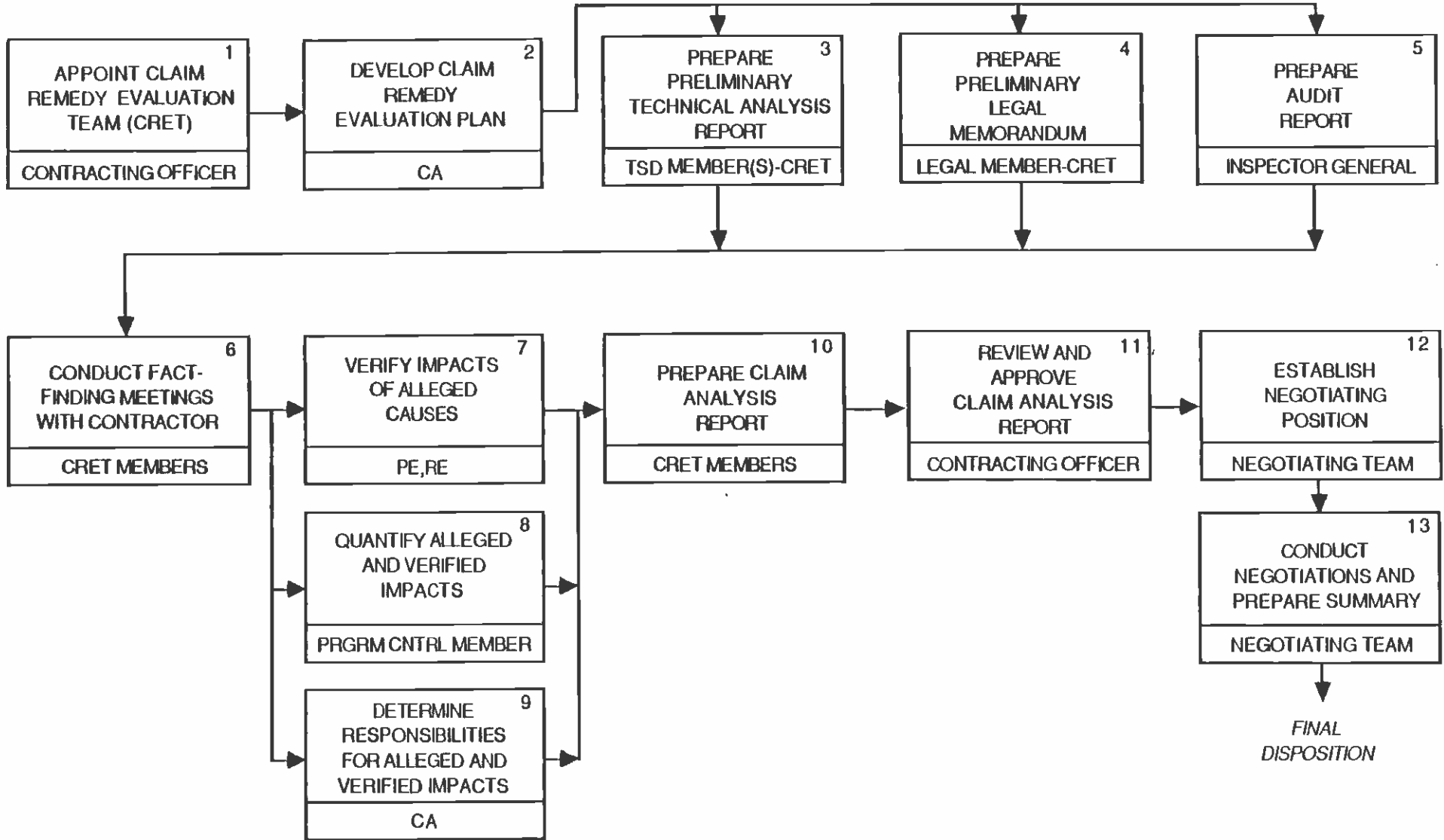
The steps in the procedure are illustrated in Exhibit A-1 and described below.

(1) Appoint Claim Remedy Evaluation Team (CRET)

Following submittal of a claim-related Change Request, the Contract Administrator outlines requirements and recommends analysis by a Claim Remedy Evaluation Team. CRET members may include the Contract Administrator, Resident Engineer, Project Engineer, Legal Counsel, Program Control staff and, as required, an auditor from the Inspector General's Office and other technical specialists or consultants. Members of the CRET are appointed by the Contracting Officer.

Exhibit A-1
 Determination of Claim-Related Change Order Remedy

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(2) Develop Claim Remedy Evaluation Plan

At the initial CRET meeting, the Change Request and claim documents are reviewed, a plan of action is established, responsibilities of each CRET member are defined, and a schedule is set for completing the evaluation of the claim. All plans and commitments are documented by the Contract Administrator, who is responsible for preparation of a Claim Evaluation Plan.

The Claim Evaluation Plan may include the following:

- A brief summary of each claim item and how the claim item can be classified (e.g., delay, defective specifications, disruption)
- An outline of the elements of proof required to determine if the contractor is entitled to a remedy for each claim item
- A list of the data necessary to support the analysis, with an assessment of the extent to which the contractor has presented the data
- A claim processing schedule showing the estimated completion date for each major activity assigned to members of the CRET
- An outline of the data filing system proposed for use during claim analysis and evaluation. The system must meet the needs of claim-related Change Order evaluation and negotiation, and also the needs of possible future litigation.

(3) Prepare Preliminary Technical Analysis Report

Several members of the CRET may be assigned responsibility for evaluating different technical and contractual aspects of the claim, such as the technical questions inherent in the claim or related to a remedy, the linkage between the basis for claim and the impact subject to claim, the scope of impact for which the SCRTD (as opposed to the contractor) is responsible, and the analysis or quantification of schedule delay or costs subject to claim. These evaluations are conducted on the basis of claim documentation and independent research.

If the claim is composed of different claim elements, it must be broken down into its separate components for technical analysis. The SCRTD's time and effort in evaluating the claim can be minimized if the contractor initially structures the claim so that the desired breakdown can be made.

Types of costs typically claimed by contractors are outlined in Exhibit A-2. To the extent practical, the contractor must substantiate these costs. Any contractor estimate of costs subject to claim must be supported by a Certificate of Current Cost or Pricing Data. Requirements for additional data are coordinated by the Contract Administrator where necessary.

(4) Prepare Preliminary Legal Memorandum

Legal/contractual entitlement issues are referred to the Legal Department attorney assigned to assist the CRET. Counsel advises the CRET on these issues and any other paramount question of fact which bears upon the contractor's entitlement to a remedy under the contract. This advice may be documented in a legal memorandum.

(5) Prepare Audit Report

A cost verification audit is required for a claim exceeding \$100,000 in value. An investigative audit or cost analysis may be necessary to evaluate certain factual issues or aspects of the claim quantification. These initiatives will be carried out and documented by a representative of the Inspector General assigned to assist the CRET.

(6) Conduct Fact-Finding Meetings With Contractor

In addition to routine requests for additional documentation or information, fact-finding meetings may be useful to resolve factual issues bearing on the merits of the claim. If so, meetings with the contractor are scheduled by the Contract Administrator via the Resident Engineer and are conducted by the appropriate members of the CRET.

(7) Verify Impacts of Alleged Causes

Based on their preliminary analyses and any additional fact-finding initiatives, the cognizant Resident Engineer and Project Engineer assess and verify from a technical and factual standpoint the true scope of any cost or schedule impact for which the SCRTD is responsible.

EXHIBIT A-2
Typical Costs Subject to Claim

| <u>Element</u> | <u>Alleged Impact</u> |
|-----------------------------|--|
| Direct Costs | Costs of net added manhours, material, and other miscellaneous requirements to accomplish formal or constructive changes Plus usually one or more of the following: |
| Incidental Disruption Costs | Costs of net added manhours, material, and other miscellaneous requirements that are expended in performing other contract work as a direct result of the change work |
| Costs of Delay | Costs associated with delay of the change-related work, or work in sequence to the change-related work, or completion of the overall project or major segment of the project, involving elements such as the following: <ul style="list-style-type: none">• Time-related services• Equipment rentals or depreciation• Storage of materials and equipment• Shift of work to a later time period• Labor or material escalation• Unabsorbed or extended project or corporate overhead• Insurance costs• Interest costs |
| Cumulative Disruption | Costs of net added manhours, material, and other miscellaneous requirements that are expended to offset inefficiencies experienced as a result of the cumulative effect of numerous formal or constructive changes. Cumulative disruption costs include the synergistic effects of two or more changes as they affect each other or as they affect unchanged work. |

(8) Quantify Alleged and Verified Impacts

Following all preliminary analyses and based on the foregoing technical/factual evaluation, the Program Control member of the CRET defines the SCRTD's position on the cost and schedule impact for which the SCRTD is responsible. This position addresses the dollar value of direct labor and material requirements, the extent of any contract schedule delay, and the dollar value of any cost of delay.

(9) Determine Responsibilities for Alleged and Verified Impacts

Based on all available analyses, including the advice of Legal Counsel, the Contract Administrator defines contractual responsibility for all cost and schedule impact subject to claim, and the contractor's entitlement to a remedy under the contract.

(10) Prepare Claim Analysis Report

CRET members are each responsible for documenting their analyses, incorporating or referencing the necessary back-up files of supporting documentation. These materials are then assembled by the Contract Administrator as a basis for a Claim Analysis Report. The report is prepared by the Contract Administrator and reviewed with CRET members.

(11) Review and Approve Claim Analysis Report

Following completion of the Claim Analysis Report, the Contract Administrator forwards a review copy to the Contracting Officer and information copies to the AGM-TSD, TSD Director of Construction Management or Systems Design and Analysis, and Legal Counsel. The Contracting Officer is responsible for review and approval of the report, as it provides a basis for subsequent negotiation of the Change Order settlement to the claim.

(12) Establish Negotiating Position

The Contracting Officer designates the SCRTD personnel who will conduct negotiations with the contractor. The negotiating team develops an initial position, subject to review and approval by the Contracting Officer. The Contract Administrator, as chairperson of the negotiating team, determines a time and place for negotiation.

(13) Conduct Negotiations and Prepare Summary

The SCRTD negotiating team meets with the contractor to explore settlement of the claim. At the conclusion of negotiations, a summary record is prepared by the Contract Administrator to document agreements or the reasons precluding agreement. The record is signed by the contractor and the Contract Administrator. Copies of the record are forwarded to the Contracting Officer and AGM-TSD.

If agreement is reached, a bilateral Change Order is prepared and issued, as outlined in the SCRTD's Change Control Procedure. If the claim is not settled through negotiation, the Contract Administrator prepares a statement of the SCRTD position and the Contract Administrator's recommendation for disposition of the claim. This statement is forwarded to the Contracting Officer for review and action. Information and review copies are forwarded to the AGM-TSD, TSD Director of Construction Management or Systems Design and Analysis, and Legal Counsel.

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