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## Policies and Procedures

No. 11

SUBJECT: Board Approval and Repealed in Part: 6/22/06

### CONSTRUCTION CLAIMS AND CONTRACTOR DEBARMENT

#### PURPOSE:

To establish a method for administering MTS construction claims and contractor debarment. This policy applies to MTS, San Diego Transit Corporation (SDTC), and San Diego Trolley, Inc. (SDTI) (collectively the "Agencies").

#### POLICY:

##### 11.1 Procedure for Contractors with Claims Against MTS on Construction Contracts

On all construction contracts estimated to cost more than \$20,000, a section shall be included in the Contract Provisions that specifies how a contractor should file a "Notice of Potential Claim" and the procedures for review and disposition thereof. The procedure for resolving claims shall be in accordance with the "Claims Resolution Process" flowchart (attached).

Written notice of the potential claim must be given to the Agencies prior to the time the contractor shall have performed the work giving rise to the potential claim, if based upon an act or failure to act of the resident engineer; or in all other cases, within 15 days of the happening of the event, thing or occurrence giving rise to the potential claim.

It is the intention of this requirement that differences between the parties arising under and by virtue of the contract be brought to the attention of the Agencies at the earliest possible time in order that such matters may be settled, if possible, or other appropriate action promptly taken. The contractor shall agree to have no right to additional compensation for any claim that may be based on any such act, failure to act, event, thing or occurrence for which no written notice of potential claim as herein required was filed. A claim must be presented and acted upon as a prerequisite to suit thereon.

If a contractor files an appropriate "Notice of Potential Claim," the administrative procedure shall be as follows:

- a. The Agencies shall respond in writing within 25 calendar days with an appropriate decision. It is expected that the Agencies shall investigate the area of claim thoroughly and shall issue a decision that is fair to all



parties. It is further expected that every effort will be made to resolve the claim at the job level.

- b. If it appears to the Agencies that the claim cannot be settled on the job, the Agencies shall, as soon as practicable, forward the details of the claim to the Chief Executive Officer and shall so notify the contractor of the action.
- c. The Chief Executive Officer shall direct staff to obtain all pertinent information, including any oral or written presentation, concerning the claim the contractor might wish to present. Staff shall provide all information to the Chief Executive Officer, including any recommendations.
- d. Within 25 calendar days of receiving details from staff (step "b" above), the Chief Executive Officer shall report a final decision in writing to the contractor. The written decision shall notify the contractor that this action completes the contractor's administrative remedies and any further dispute would have to be resolved by either a nonbinding Dispute Resolution Board if provided for in the Special Provisions and agreed to by both parties, or litigation. Dispute Resolution Board members will be selected per the contract Special Provisions.

The final recommendation of the Dispute Resolution Board shall be presented to the Chief Executive Officer for approval before going to the Board of Directors for action.

- e. Any claim disputes not resolved by the Chief Executive Officer shall be reported to the Board of Directors at the next regular meeting.

If a contract change order (CCO) proposed for the settlement of a claim causes a budget impact over \$100,000, the CCO must be approved by the Board of Directors.

- f. Federal Transit Administration review and concurrence is required for claim settlements that exceed \$1 million if federal funds are involved.
- g. A list of all outstanding claims exceeding \$100,000 which involve the use of federal funds shall be included in the federal grants quarterly report.

## 11.2 Debarment Procedures for Procurement and Construction Contracts

- a. In addition to all other remedies permitted by law, the Agencies may, upon advice of the Chief Executive Officer and General Counsel, by resolution declare a bidder or contractor ineligible to bid on procurement and construction contracts for a period not to exceed three years for any of the following grounds:
  - 1. two or more claims of computational, clerical, or other error in bid submission within a two-year period;
  - 2. unjustified failure or refusal to timely provide or properly execute contract documents;
  - 3. unsatisfactory performance of contract;

4. excessive and/or unreasonable claims while performing work for the Agencies;
  5. two or more occasions within a two-year period of failure to submit bond or insurance documents acceptable to the Agencies in the time periods required;
  6. unjustified refusal to properly perform or complete contract work or warranty performance;
  7. unjustified failure to honor or observe contractual obligations or legal requirements pertaining to the contract;
  8. conviction under a state or federal statute or municipal ordinance for fraud, bribery, theft, falsification or destruction of records, receiving stolen property or of any other similar crime;
  9. any offense or action which indicates a lack of business integrity and which could directly affect the reliability and credibility of performance of the contractor on future contracts with the Agencies; and
  10. any debarment of the contractor by another governmental agency.
- b. The Agencies may permanently debar such bidder or contractor for a conviction under federal or state antitrust statutes involving public contracts or the submission of bid proposals, for any corrupt practices involving the administration or award of a contract with the Agencies, or permanent debarment of the bidder or contractor by another governmental agency.
  - c. The bidder or contractor shall be provided notice and an opportunity to present evidence and show cause before the Board of Directors why such ineligibility shall not be declared after the the Agencies have established a factual basis for debarment.
  - d. A contractor's debarment shall be effective amongst the Agencies. Debarment prohibits the Agencies from executing contracts with the debarred contractor.
  - e. Debarment constitutes debarment of all divisions or other organizational elements of the contractor, unless the development decision is limited by its terms to specific divisions, organizational elements, or commodities. The debarment decision may be extended to include any affiliate of the contractor if the affiliate is (1) specifically named, and (2) given written notice of the proposed debarment and an opportunity to respond.
  - f. Notwithstanding the debarment of the contractor, the Board may continue contracts in existence at the time the contractor is debarred, unless the

Board of Directors directs otherwise, after receiving advice from the Chief Executive Officer or his or her designee as to the effects of termination of an existing agreement.

DDarro/JGarde

POLICY.11.CONSTRUCTION CLAIMS AND CONTRACTOR DEBARMENT

7/21/06

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Attachment: Claims Resolution Process Flowchart

CLAIMS RESOLUTION PROCESS

