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Section 5 Control of Work

3-501 General

Section 5, “Control of Work,” of the *Standard Specifications*, details how contract work will be controlled. The proper performance of the contractor and resident engineer ensure control.

Ensure the contractor provides quality control over the work. During the manufacture of products and the execution of the project, the contractor performs the actions necessary to ensure that the work has the required attributes.

Caltrans provides quality assurance. The resident engineer and authorized representatives sample, test, and inspect the work to determine if the characteristics conform to the contract requirements within the tolerances specified. When tolerances are not specified, use judgment to determine if any deviation is allowed consistent with the trades involved.

Standard Specifications Section 5-1.01, “General,” requires the contractor to provide safe and unrestricted access to the work for inspection by Caltrans. The resident engineer must take full advantage of this access.

The Department of Industrial Relations, Division of Occupational Safety and Health (Cal/OSHA) establishes standards for safe access to work, and Caltrans enforces them under Section 7-1.02K(6), “Occupational Safety and Health Standards,” of the *Standard Specifications*.

The cost of providing access for inspection of bid item work is included in the bid item price. If the contractor is required to construct facilities specifically to provide access for inspection of extra work, the cost may be included on change order bills. These costs, however, are limited to only the increased cost of providing inspection for the extra work, and may not include the access costs which fall under the original item work.

Never operate the contractor’s equipment or allow any Caltrans representatives to operate the contractor’s equipment. During quality assurance inspections, only the contractor’s own equipment operators must operate the equipment.

3-502 Engineer’s Authority

The term “engineer” refers to the resident engineer and authorized representatives. The engineer is responsible for contract administration and is authorized to make the final decision on questions regarding the contract. The engineer must act in accordance with Caltrans policies and procedures and, in the absence of written policy or procedures, must exercise judgment within their ability and span of control as established by the district.

Section 5 Control of Work

3-501 General

3-502 Engineer’s Authority

The engineer will focus on the details and methods of performing the work only if one or more of the following conditions exist:

- The details and methods of performing the work are specified.
- The essential attribute or end result cannot be measured.
- Public safety or convenience is involved.

Otherwise, the details and methods must be left to the contractor's discretion.

Resident engineers must report their assignments to all interested parties by submitting Form CEM-0101, "Resident Engineer's Report of Assignment." Submit this form as early as possible.

The resident engineer is the lead for contact and correspondence with the contractor.

3-503 Protests

3-503 Protests

Section 5-1.06, "Protests," of the *Standard Specifications* allows the contractor to protest an engineer's decision by submitting a request for information. Protests by the contractor of weekly statements of working days, change orders, or failure to issue a change order must be done through a request for information.

3-504 Partnering

3-504 Partnering

Partnering allows all parties and stakeholders to establish and maintain cooperative communication channels and mutually resolve conflicts at the lowest responsible level. Become familiar with and follow Section 5-1.09, "Partnering," of the *Standard Specifications* and the Caltrans publication, *Field Guide to Partnering on Caltrans Construction Projects*. This publication is available at the partnering website:

<http://www.dot.ca.gov/hq/construc/partnering.html>

For additional guidance, contact the partnering coordinator in either the district or the Division of Construction. The names and contract numbers for these coordinators are available on the partnering website.

Supplemental funds to cover the anticipated partnering costs are included in projects with an engineer's estimate of more than \$1 million. To pay for Caltrans' share of the partnering costs, execute a change order using the change order code AUZZ.

Use of a partnering facilitator is recommended on all projects. Use of a partnering facilitator is required, however, on all projects above \$10 million and greater than 100 working days. On projects where Section 8-1.04C, "Delayed Start," is included as an amendment to the *Standard Specifications*, early selection and use of a partnering facilitator is required. A list of partnering facilitators is available on the Caltrans partnering website.

When selecting a partnering facilitator:

- Consider the extent of a candidate's experience as a partnering facilitator on other Caltrans projects.
- Check with other resident engineers or the partnering coordinator in either the district or in the Division of Construction for information regarding potential facilitators.
- Interview several facilitators. Do not assume all facilitators are the same. Search for the right facilitator for the job.

- Confirm the full scope and cost of the facilitator’s work. Not all facilitators perform the same amount of work and the cost differences for a 1-day session can range from approximately \$5,000 to \$15,000. The cost for each session should include all of the costs of the facility, full payment for the facilitator, materials used during the session, and all pre- and post-session work. The facilitator should make an effort to get to know the parties, facilitate the sessions so as to foster a team dynamic, provide meeting notes, and follow up on any action items discussed at the meeting.
- Ensure the facilitator’s services include administering monthly project surveys. The facilitator is allowed to charge for this survey.

3-505 Order of Work

If the plans or special provisions do not contain a specified sequence of operations, contractors may select their own schedules, provided the planned order of work meets any dates specified for completion and openings of portions of the work to traffic.

Occasionally, the contractor may submit a proposed modification of the specified order of work that will be more satisfactory for the work’s operation. If, in the resident engineer’s opinion, Caltrans will benefit as much or more by adopting this proposal as it would under the specified plan, the contractor’s plan may be implemented with a change order requested by the contractor. Caltrans must receive a monetary adjustment if the contractor has any reduced costs from the change. Also, a contractor may benefit if a change is proposed and accepted under a change order for a value engineering change proposal. Refer to Section 3-405, “Value Engineering,” of this manual and Section 4-1.07, “Value Engineering,” of the *Standard Specifications*.

The resident engineer must recheck the specified plan of operations during the work’s progress. Changes in circumstances may necessitate altering the planned sequence and schedule. Stage construction is often a part of the contract on major projects, and revised progress schedules may be required as the stages of work develop.

3-506 Assignment

Upon receipt of a verbal or written contractor request to assign contract work, contract payments, or both, provide the contractor with the appropriate contractor action request forms.

The contractor submits Form CEM-1203, “Contractor Action Request—Assignment of Contract Performance,” when the action requested is to assign the contract performance to another contractor to complete the remainder of the contract work.

The contractor submits Form CEM-1202, “Contractor Action Request—Change of Name/Address—Assignment of Contract Monies,” for the following other types of action requests:

- Contractor has a new legal mailing address for correspondence or payments.
- Contractor has changed its legal business name.
- Contractor is assigning construction payments to another entity (surety, bonding company, or escrow company, among others). If payments are assigned to another entity and the remaining contract work is assigned to a new prime contractor, the contractor must submit Forms CEM-1202 and CEM-1203 to cover both actions.

3-505 Order of Work

3-506 Assignment

When the contractor submits the completed notarized forms, review the information provided for completeness and ensure that only the applicable sections are filled out:

- To change the contractor's address from that shown on the contract, only Sections 1, 3, and 5 are required.
- To change the contractor's legal business name from that shown on the contract, only Sections 1, 2, and 5 are required.
- To assign contract payment to another contractor, only Sections 1, 4, and 5 are required.

Adhere to the approval procedures shown on page 2 of Form CEM-1202 and CEM-1203.

3-507 Subcontractor

3-507 Subcontracting

Contractors can use subcontractors on their projects provided the subcontractor and the prime contractor comply with Section 5-1.13, "Subcontracting," of the *Standard Specifications*, and with state and federal laws and regulations. The contractor is required to submit Form CEM-1201, "Subcontracting Request," before subcontracted work starts.

When projects use subcontractors, the resident engineer must focus primarily on:

- Always knowing which subcontractors are working on the project and on which specific items they are working.
- Ensuring that listed subcontractors are not improperly removed or replaced.
- Ensuring that the prime contractor achieves the subcontracting level pledged when the contract was awarded to meet requirements of the Disadvantaged Business Enterprise (DBE), Disabled Veteran Business Enterprise (DVBE), and small business programs.
- Ensuring adherence to the provisions of the Public Contract Code.

For more information on these subcontracting requirements, refer to Section 8-3, "Disadvantaged Business and Disabled Veteran Business Enterprises," of this manual.

3-507A Amount of Work Subcontracted

Section 5-1.13, "Subcontracting," of the *Standard Specifications*, requires that the prime contractor perform at least 30 percent of work using the contractor's own organization unless a different percentage is specified in the special provisions. This requirement does not apply if the work is for a building-construction, non-federal-aid contract.

The percentage of work subcontracted is calculated for first-tier subcontractors only. A contractor's organization includes only workers employed and paid directly by the prime contractor and only equipment owned or rented by the prime contractor, with or without operators.

Discuss unusual subcontracting situations with the construction engineer. If the situation indicates that additional information is necessary but only available through an inspection of the contractor's records, request a copy of the subcontract agreement from the prime contractor. If a review of the subcontract agreement does not help resolve the situation, discuss the possibility of an audit with Division of Construction's field coordinator.

3-507B Calculating the Amount of Work Subcontracted

The contractor must submit Form CEM-1201, “Subcontracting Request,” stating what percentage and dollar amount of an item will be subcontracted. The resident engineer must verify the amount. Any rational method of estimating the amount will be acceptable; for example:

- The percentage of an area, volume, or length.
- The portion applicable to material cost.
- The portion of labor and equipment cost.

When an entire item is subcontracted, use the prime contractor’s item bid price as the dollar amount for the form. When a portion of an item is subcontracted, apply the percentage of the bid item subcontracted to the prime contractor’s item bid price as the dollar amount for the form.

To ensure that the contractor is not requesting approval for a subcontractor other than those listed in the bid documents, the resident engineer must check the DBE, DVBE, and small business commitment listings and the list of subcontractors. If a discrepancy is noted, advise the contractor and ask for an explanation. The resident engineer must not approve the subcontracting request until the contractor provides an acceptable explanation.

3-507C The Subletting and Subcontracting Fair Practices Act

3-507C (1) Subcontracting in the Bidding Process

Sections 4100 through 4114 of the Public Contract Code are called the “Subletting and Subcontracting Fair Practices Act” (Act) and apply to Caltrans construction projects. The Act is designed to prevent prime contractors from “bid shopping” for subcontractors after bids are opened and the low bidder is known.

The Act requires that subcontracted work in excess of one-half of one percent (0.005) of the contractor’s total bid amount or \$10,000 (whichever is greater), must be listed in the prime contractor’s bid proposal. When a prime contractor fails to list a subcontractor in its bid, the law requires that the prime contractor must perform the work with its own forces. The prime contractor may not add an unlisted subcontractor by requesting a substitution. Exceptions to this requirement are discussed in Public Contract Code 4107 (c) and Public Contract Code 4109.

For building projects such as a maintenance station or other off-highway project, all subcontracted work in excess of one-half of 1 percent (0.005) of the contractor’s total bid amount must be listed.

Ensure that the listed subcontractor performs the work or that the contractor complies with the substitution procedures in the Act.

3-507C (2) Substitution Process

To replace a subcontractor listed in the bid documents, the prime contractor must submit a written request based on the reasons identified in Public Contract Code Section 4107.

When the prime contractor requests a substitution, proceed as follows:

1. Send the request to the district construction office for review.

2. The district construction office must send a written notice to the listed subcontractor by certified mail, overnight mail, or fax, informing the listed subcontractor of the prime contractor's request to substitute and the reasons for the request. The notice must provide the subcontractor 5 business days to submit a written objection to the substitution.
3. If the listed subcontractor does not file a timely written objection, the resident engineer must approve the substitution. The resident engineer must approve the new subcontractor following the guidelines under Section 3-507D, "Procedure for Approval or Acknowledgment of Subcontractors," of this manual. If the removed subcontractor's firm was a listed DBE, DVBE, or small business, refer to Section 8-3, "Disadvantaged Business and Disabled Veteran Business Enterprises," of this manual for additional steps required in the process.
4. If the listed subcontractor submits timely written objections to the substitution, the district must conduct a hearing. Send written notice of the hearing to the prime contractor and the subcontractor a minimum of 5 business days before the hearing is conducted. The written notice should include a request that any substantiating documents be provided before the hearing.

3-507C (3) Hearing Process for Substitutions

The intent of the substitution hearing is to give both parties the opportunity to explain to the hearing officer why a substitution should or should not occur. Substitution hearings are conducted informally. Normally, the hearing officer is the district construction deputy director.

3-507C (3a) Before the Substitution Hearing

- Obtain from both parties documents to substantiate the reasons for substitution.
- Review all information submitted by both parties and provide copies to the hearing officer. If the hearing officer believes legal or other assistance may be required during the substitution or hearing process, the district must contact the construction field coordinator, who will arrange for such assistance as appropriate.
- The hearing officer must develop a line of questioning to ensure that sufficient evidence exists on which to base a decision about the request.

3-507C (3b) During the Substitution Hearing

- Taping or video recording may be used to assist in taking notes but is not required.
- The hearing officer should allow each party sufficient time to present its position and offer a counter argument on the substitution request. List additional supporting information presented by either party in the hearing notes.

3-507C (3c) After the Substitution Hearing

- The hearing officer will issue written findings and a decision on the substitution request. As soon as possible after the hearing, send a copy of the decision to the prime contractor and the objecting subcontractor by certified mail with a return receipt.
- Send the Division of Construction's labor compliance manager a copy of the final decision.

- Require the contractor to submit a Form CEM-1201, “Subcontracting Request,” for the new subcontractor.

3-507C (4) Violations of the Subletting and Subcontracting Fair Practices Act

The following presents typical examples of some of the more common violations of the Act by a prime contractor:

- Subcontracting additional work to a listed subcontractor where the work was not originally listed as subcontracted work, and is in excess of the threshold requirements.
- Using a subcontractor not listed at bid time whose dollar value of work is in excess of the threshold.
- Substituting subcontractors without Caltrans’ consent.
- Performing work that the bid documents designated a subcontractor to perform.

If these or any other violations occur, proceed as follows:

- Discuss the apparent violations with the construction engineer and the district labor compliance officer.
- If the construction engineer and district labor compliance officer agree that an apparent violation has occurred, send the prime contractor a certified letter including the following:

You are in apparent violation of the Subletting and Subcontracting Fair Practices Act, Sections 4100 through 4114 of the Public Contract Code, for work being performed on item(s) ____ of Caltrans Contract No. _____. You will be assessed a penalty of \$ ____ as provided in Section 4111 of the Public Contract Code.

If you wish to dispute this apparent violation or the assessed penalty, you must request a hearing with Caltrans. You will be given 5 days’ notice of the time and place of the scheduled hearing in accordance with Section 4110 of the Public Contract Code.

If you do not request a hearing, the penalty will be assessed as a permanent deduction on the next progress pay estimate.

- Send copies of the letter to the subcontractor and to the district labor compliance officer.
- If a contractor requests a hearing, schedule it using the same procedure described in Section 3-507C (3), “Hearing Process for Substitutions,” of this manual.

Occasionally, the contractor will list subcontractors that the Act does not require to be listed. In this case, changes require only an updated subcontracting request to identify the new subcontractor. For the process, refer to Section 3-507D, “Procedure for Approval or Acknowledgment of Subcontractors,” of this manual. If the subcontractor is a DBE, DVBE, or small business, refer to Section 8-3, “Disadvantaged Business and Disabled Veteran Business Enterprises,” of this manual for additional requirements.

3-507C (5) Hearing Process for Substitution Violations

Section 4110 of Public Contract Code requires Caltrans to conduct a hearing for violations of the Subletting and Subcontracting Fair Practices Act. The intent of the violation hearing is to determine whether a penalty should be assessed against the

prime contractor for the violations. Each party is entitled to present its arguments on the alleged violations. The hearing should follow the process outlined below.

3-507C (5a) Before the Violation Hearing

- Retain a neutral decision-maker to be the hearing officer. To keep the process as short as possible, this person would preferably be a Caltrans employee at senior transportation engineer level or above who is completely out of the chain of command for the project at issue.
- Hire a certified court reporter to transcribe the proceedings. Contact the Division of Construction labor compliance program manager for assistance with this process.
- If necessary, subpoena third parties (the subcontractor, supplier, or others). Contact the Division of Construction labor compliance program manager for assistance with this process.

3-507C (5b) During the Violation Hearing

- The resident engineer and district labor compliance officer testify under oath to the facts that led Caltrans to conclude an issue or apparent violation existed. They should be prepared to provide copies of all documents or other evidence relied on to reach that conclusion (correspondence, diaries, payroll records, and so forth). Caltrans should provide the original documents. Conclusions drawn from the documents can be summarized verbally as testimony.
- The hearing officer will conduct direct and cross examination of witnesses under oath.
- The hearing officer will accept any documents provided by each party and have the court reporter place them into the record as part of the certified transcript. The hearing officer will verbally verify that documents were received by noting what they are and assigning them an exhibit number.
- The hearing officer will ensure that the only issue addressed at the hearing is the violation of the Act (for example, not a DVBE violation or labor compliance issue). For violations of DBE, DVBE, or small business requirements, refer to Section 8-3, “Disadvantaged Business and Disabled Veteran Business Enterprises,” of this manual.

3-507C (5c) After the Violation Hearing

- The hearing officer must evaluate the evidence provided at the hearing and render a decision on the violation within 10 days of the hearing.
- If the prime contractor is found to be in violation of the Act, the contractor must be assessed a penalty, taken as an administrative deduction, ranging from 0 to 10 percent of the subcontract amount. The hearing officer will determine the penalty amount, which will vary depending on the circumstances involved. The hearing officer’s finding is the final Caltrans administrative decision on the application and enforcement of the Act.
- Send the decision to the contractor and, if applicable, the subcontractor. Send a copy to the Division of Construction, which may refer the violation to the Contractors State License Board according to Section 4111 of the Subletting and Subcontracting Fair Practices Act.
- Deduct the penalty amount from the next estimate.

3-507D Procedure for Approval or Acknowledgment of Subcontractors

The resident engineer has the responsibility of approving subcontractors on federally funded projects and acknowledging subcontractors on state-financed projects. In general, approving or acknowledging subcontractors is necessary for only first-tier subcontractors. The contractor must submit Form CEM-1201, “Subcontracting Request,” to request subcontracting of contract work. When the contract is awarded, the contractor receives a blank Form CEM-1201, “Subcontracting Request.” Provide additional blank forms to the contractor when necessary. The last page of the form contains instructions for completing the form.

Upon receipt of Form CEM-1201, and before approving the contractor’s request, do the following:

- Check the contractor’s portion of the form to confirm that the listed subcontractors and work percentages match the bid documents.
- Verify that subcontractors are not on the Department of Industrial Relation’s (DIR) debarred contractors list available at:

<http://www.dir.ca.gov/dlse/debar.html>

- Complete lines 1 through 9.
- Verify that subcontractors comply with the DBE, DVBE, and small business goals submitted by the contractor before contract award. Ensure that no conflict exists between DBE, DVBE, and small business requirements and the listing requirements of the Act.
- If the contractor’s request meets all the requirements, sign, date, and distribute the form as indicated on the form.

Process the requests in the order of the request number since lines 2 and 6 contain running balances based on the percentage of work required. Follow the form’s instructions to complete the rest of the form.

3-508 Representative

As required by Section 5-1.16 [5-1.06], “Representative,” of the *Standard Specifications*, contractors, including those in a joint venture, must name in writing one authorized representative and provide the representative’s contact information. Resident engineers must insist that contractors meet this requirement promptly. If the contractor’s representatives from a joint venture disagree with each other, the resident engineer can contractually refuse to deal with more than one representative.

3-509 Character of Workers

Caltrans policy calls for a work environment with zero tolerance for violence, threats, harassment, and intimidation. This policy also applies to any subcontractor or employee of a contractor in their dealings with Caltrans personnel. Caltrans may discharge a worker from the project for engaging in any of these actions. Refer to Section 5-1.17 [5-1.12], “Character of Workers,” of the *Standard Specifications* for more information.

If possible, notify the worker’s supervisor and discuss the decision to remove a worker before or as soon as possible after issuing the directive. The contractor may request reinstatement of the worker. If so, the resident engineer conducts a meeting with the construction engineer, the contractor’s authorized representative, and—at the

3-508 Representative

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contractor’s discretion—the affected worker, to discuss the reason for removing the worker and the contractor’s request for reinstatement.

None of these procedures affect the engineer’s authority to direct the removal of a worker from the project.

3-510 Coordination with Other Entities

Section 5-1.20, “Coordination with Other Entities,” of the *Standard Specifications* requires the contractor to coordinate with other contractors or entities at or near the job site and materials sources to avoid delays.

3-510A Permits, Licenses, Agreements, and Certifications

The contractor is to possess all required permits, licenses, agreements, and certifications (PLAC) before starting the work covered by them. Ensure that the contractor maintains a copy of the required PLAC at the job site.

Unless the necessary PLAC needed to enable the contractor to use a possible local material source or disposal site are included in the *Information Handout*, the contractor must obtain them at no cost to Caltrans even if the agreement made between Caltrans and the property owner is included in the *Information Handout*.

3-510B Contractor-Property Owner Agreement

If the contractor is proposing to use a non-commercial material source or disposal site, ensure the contractor has met the requirements of Sections 5-1.20A, “General,” 5-1.20B [7-1.13], “Permits, Licenses, Agreements, and Certifications,” and 6-2.04 [6-2], “Local Materials,” of the *Standard Specifications*.

Arrange a joint meeting with the contractor and agencies that have jurisdiction over the use of the site to discuss the work and the required documentation to be submitted. This documentation may include permits, environmental studies, grading plans, Stormwater Pollution Prevention Plan (SWPPP), and other items.

Provide the contractor with a copy of the appropriate sample agreement. The contractor may use one of the sample agreements below or provide an equivalent agreement:

- Example 3-5.1, “Agreement Between a Contractor Working on State Facilities and a Real Property Owner for Acquiring Construction-Related Material from Property Owner’s Property”
- Example 3-5.2, “Agreement Between a Contractor Working on State Facilities and a Real Property Owner for Disposing Construction-Related Material on Property Owner’s Property”

After the contractor and property owner enter into an agreement and obtain all required documentation, the contractor must submit these for approval. After review and verification of the adequacy of the contractor’s submittals, provide written approval to the contractor to use the site. Refer to Examples 3-5.3 and 3-5.4 for approval letter samples.

In those cases when Caltrans has made prior arrangements by designating a disposal or borrow site and entering into an agreement with a private property owner for disposal, removal, or excavation of material, the designated sites may be made available for contractors use as discussed in Section 7-103L, “Disposal, Staging, and Borrow Sites,” of this manual. In accordance with Section 5-1.20B, “Permits, Licenses, Agreements, and Certifications,” of the *Standard Specifications*, the contractor must comply with

the provisions of the Caltrans-owner agreement if the contractor uses the site or the contractor may make a new agreement with the property owner.

When the contractor makes a new agreement with the property owner which revises the terms of the Caltrans-owner agreements, the new agreement supersedes the Caltrans-owner agreement. Review the new agreement to ensure that Caltrans is relieved of its obligations under the terms of the original agreement.

Under some agreements, Caltrans will directly pay the owner of the material or disposal site. Payment must be made to the owner and royalties deducted from payments to the contractor. In the case of county-consummated agreements, royalties usually are deducted in a similar way.

Before contract acceptance, Section 5-1.20B(4), “Contractor-Property Owner Agreement,” of the *Standard Specifications* requires the contractor to submit a document signed by the owner of the site indicating that the contractor has satisfactorily complied with the provisions of the agreement. If the owner is not satisfied, determine what additional work is necessary before recommending acceptance of the contract and advise the contractor accordingly. Do not delay recommending acceptance of the contract if you determine that the contractor has complied with the terms of the agreement.

An agreement between the contractor and a property owner regarding staging, disposal, removal, or borrow of material outside of the right-of-way is not required if the site is a commercial facility.

For the disposal of waste material in a commercial landfill or treatment facility, verify the permit status of the landfill or treatment facility by accessing the California Water Resources Control Board or Department of Toxic Substances Control websites:

http://www.waterboards.ca.gov/water_issues/programs/#permit

<http://www.dtsc.ca.gov/HazardousWaste/>

Alternatively, contact the facility to obtain a copy of the facility’s permit.

Example 3-5.1. (1 of 2)

AGREEMENT BETWEEN A CONTRACTOR WORKING ON STATE FACILITIES AND A REAL PROPERTY OWNER FOR ACQUIRING CONSTRUCTION-RELATED MATERIAL FROM PROPERTY OWNER'S PROPERTY

Contract No.: _____

County/Route/Mile post: _____

The contractor, _____, ("Contractor") has entered into Contract No. _____ ("Contract"), with the State of California, Department of Transportation ("Department"), for work that is described as follows:

_____ ("Project").

The owner, _____, ("Owner") of the real property ("Property") located at _____

(for example, address, location, county and parcel number(s), project station(s), offsets, and other property location information) agrees to allow the Contractor to remove from the Owner's Property approximately _____ cubic yards of _____ (such as soil, aggregate, asphalt grindings, or other material) ("Material") for use on the Project.

Owner agrees that the Contractor has assumed ownership of the Material once it is removed from the Property.

Contractor and Owner agree to abide by the requirements of Section 5-1.20, "Coordination with Other Entities," of the *Standard Specifications*. The *Standard Specifications* are available at:

<http://www.dot.ca.gov/hq/esc/oe/standards.php>

Contractor and Owner agree to obtain and furnish to the Department's engineer, all necessary permits, licenses, agreements, and clearances prior to removing Material from the Property.

By submission of this agreement to the Department's engineer, Contractor and Owner are acknowledging that they have been informed, or otherwise apprised, of all restrictions, laws and permit requirements associated with the transporting and removal of the Material from the Property and have agreed to abide by the same. These laws include but are not limited to:

- Local Ordinances—Grading permits for the grading, filling, excavation, storage, or disposal of soil or earthen material.
- California Fish and Game Code (Section 1602), "Lake or Stream Bed Alteration Agreement"—A permit required prior to the removal or placement of material in a location where it can pass into waters of the state, directly or indirectly, through causes such as erosion or maintenance.

Example 3-5.1. Agreement Between a Contractor Working on State Facilities and a Real Property Owner for Acquiring Construction-Related Material From Property Owner’s Property (2 of 2)

- California Fish and Game Code (Section 5650)—A prohibition against the deposition of petroleum products (including asphalt), or any material deleterious to fish, plants, or birds where it can pass into the waters of the state.
- Federal Clean Water Act (Sections 301 and 402), “General Permit for Discharges of Storm Water Associated with Construction Activity”—A permit is required prior to soil disturbance of an area of one acre or more.
- Federal Clean Water Act (Section 404), “Permit for Discharge of Dredged or Fill Material”—A permit from the United States Army Corps of Engineers may be required for the discharge of fill material into waters of the United States including wetlands.
- State Contract Act, aggregate sources must comply with the Surface Mining and Reclamation Act of 1975 (SMARA).

Owner and Contractor agree that the Material will be excavated, removed, and transported, and the Property left in a manner that will not cause injury or harm to any person or property. If an injury or harm does occur to any person or property or should any environmental impacts or litigation arise as a result of the excavation, removal, transportation, deposition, or the final form in which the Property is left, the Contractor agrees to indemnify, defend, protect, and hold harmless the Department in any action in law or equity in accordance with Section 7-1.05, “Indemnification,” of the Standard Specifications.

Pursuant to Section 5-1.20B(4), “Contractor-Property Owner Agreement,” of the *Standard Specifications*, Owner acknowledges Contractor will submit this agreement to the Department as evidence that the Owner has authorized the use of the Property as a Material source for the Project. Owner acknowledges that the Contractor is not authorized to make any representations or agreements on behalf of the Department. Contractor and Owner agree that the Department is released from any and all obligations to Owner made by Contractor under this agreement and the Department is released from any and all obligations to Owner under any prior agreement made between the Department and Owner.

Owner and Contractor acknowledge that they have had the opportunity to receive independent legal advice with respect to the meaning, implications, and advisability of entering into and executing this agreement.

Date: _____

(Signature of Property Owner)

Date: _____

(Signature of Contractor’s Authorized Representative)

Example 3-5.2. (1 of 2)

AGREEMENT BETWEEN A CONTRACTOR WORKING ON STATE FACILITIES AND A REAL PROPERTY OWNER FOR DISPOSING CONSTRUCTION-RELATED MATERIAL ON PROPERTY OWNER'S PROPERTY

Contract No.: _____

County/Route/Mile post: _____

The contractor, _____, ("Contractor") has entered into Contract No. _____ ("Contract"), with the State of California, Department of Transportation ("Department"), for work that is described as follows:

_____ ("Project").

The owner, _____, ("Owner") of the real property ("Property") located at _____

(for example, address, location, county and parcel number(s), project station(s), offsets, and other property location information) agrees to allow the Contractor to dispose on the Owner's Property approximately _____ cubic yards of _____ (such as soil, aggregate, asphalt grindings, or other material) ("Material") generated from the Project.

Owner agrees that the Contractor has assumed ownership from the Department of the Material that is being deposited on the Property.

Contractor and Owner agree to abide by the requirements of Section 5-1.20, "Coordination with Other Entities," of the *Standard Specifications*. The *Standard Specifications* are available at:

<http://www.dot.ca.gov/hq/esc/oe/standards.php>

Contractor and Owner agree to obtain and furnish to the Department's engineer, all necessary permits, licenses, agreements, and clearances prior to placing Material on the Property.

By submission of this agreement to the Department's engineer, Contractor and Owner are acknowledging that they have been informed, or otherwise apprised, of all restrictions, laws and permit requirements associated with the transporting and placement of the Material on the Property and have agreed to abide by the same. These laws include but are not limited to:

- Local Ordinances—Grading permits for the grading, filling, excavation, storage, or disposal of soil or earthen material.
- California Fish and Game Code (Section 1602), "Lake or Stream Bed Alteration Agreement"—A permit required prior to the removal or placement of material in a location where it can pass into waters of the state, directly or indirectly, through causes such as erosion or maintenance.

Example 3-5.2. Agreement Between a Contractor Working on State Facilities and a Real Property Owner for Disposing Construction-Related Material on Property Owner’s Property (2 of 2)

- California Fish and Game Code (Section 5650)—A prohibition against the deposition of petroleum products (including asphalt), or any material deleterious to fish, plants, or birds where it can pass into the waters of the state.
- Federal Clean Water Act (Sections 301 and 402), “General Permit for Discharges of Storm Water Associated with Construction Activity”—A permit is required prior to soil disturbance of an area of one acre or more.
- Federal Clean Water Act (Section 404), “Permit for Discharge of Dredged or Fill Material”—A permit from the United States Army Corps of Engineers may be required for the discharge of fill material into waters of the United States including wetlands.

Owner and Contractor agree that the Material will be transported, deposited, and left in a manner that will not cause injury or harm to any person or property. If an injury or harm does occur to any person or property or should any environmental impacts or litigation arise as a result of the excavation, removal, transportation, deposition, or the final form in which the Property is left, the Contractor, agrees to indemnify, defend, protect, and hold harmless the Department in any action in law or equity in accordance with Section 7-1.05, “Indemnification,” of the *Standard Specifications* regardless of the manner or form of the action.

Pursuant to Section 5-1.20B(4), “Contractor-Property Owner Agreement,” of the *Standard Specifications*, Owner acknowledges Contractor will submit this agreement to the Department as evidence that the Owner has authorized the placement of the Material on the Property. Owner acknowledges that the Contractor is not authorized to make any representations or agreements on behalf of the Department. Contractor and Owner agree that the Department is released from any and all obligations to Owner made by Contractor under this agreement and the Department is released for any and all obligations to Owner under any prior agreement made between the Department and Owner.

Owner and Contractor acknowledge that they have had the opportunity to receive independent legal advice with respect to the meaning, implications, and advisability of entering into and executing this agreement.

Date: _____

(Signature of Property Owner)

Date: _____

(Signature of Contractor’s Authorized Representative per Std Spec 5-1.16)

Example 3-5.3. Sample Approval to Acquire Material From Property Owner's Property Letter

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF CONSTRUCTION

[Resident Engineer's Address]
[City, CA Postal Zip Code]
[PHONE (Area Code) xxx-xxxx]
[FAX (Area Code) xxx-xxxx]
TTY 711
www.dot.ca.gov



*Serious drought
Help save water!*

Date: *[Month dd, yyyy]*

[Contractor's Name]
[Address]
[City, State ZIP]

Subject: Approval to Acquire Material From *[property owner's name and address]*

Dear *[contractor name]*:

In accordance with the provisions of Sections 5-1.20, "Coordination With Other Entities" and 6-2.04, "Local Materials," of the *Standard Specifications*, you are authorized to remove *[insert number]* cubic yards of *[type of material]* ("Material") from *[property owner name]*'s property located at *[property address]*. According to the submitted agreement, *[contractor name]* and *[property owner]* have represented all necessary permits, licenses, and clearances were obtained and submitted before the removal of the Material and have released the Department of Transportation (Department) from any obligations resulting from its removal.

The Department does not warrant or guarantee that the Material is of any particular type or is suitable for any particular purpose.

The agreement also includes *[contractor]*'s and *[property owner]*'s promise to hold the Department harmless from all claims for injury to persons or damage to property resulting from the disposal. The contractor shall comply with all parts of the contract including Section 7-1.06, "Insurance," and 7-1.05, "Indemnification," of the *Standard Specifications*. *[Contractor name]* shall defend, indemnify, and save harmless the state from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity arising out or in connection with *[contractor name]*'s performance of this contract including acquiring material from *[property owner name]*'s property.

Sincerely,

[Name of resident engineer]

c:

bc:

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*



Example 3-5.4. Sample Approval for Disposal of Material Outside the Highway Right-of-Way Letter

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY

EDMUND G. BROWN Jr., Governor

DEPARTMENT OF TRANSPORTATION
DIVISION OF CONSTRUCTION

[Resident Engineer's Address]
[City, CA Postal Zip Code]
[PHONE (Area Code) xxx-xxxx]
[FAX (Area Code) xxx-xxxx]
TTY 711
www.dot.ca.gov



*Serious drought
Help save water!*

Date: *[Month dd, yyyy]*

[Contractor's Name]
[Address]
[City, State ZIP]

Subject: Approval for Disposal of Material Outside the Highway Right-of-Way

Dear *[contractor name]*:

In accordance with the provisions of Sections 5-1.20, "Coordination With Other Entities," of the Standard Specifications, you are authorized to dispose of *[insert number]* cubic yards of *[type of material]* ("Material") to *[property owner name]*'s property. According to the submitted agreement, *[contractor name]* and *[property owner]* have represented all necessary permits, licenses, and clearances were obtained and submitted before the disposal of the Material and have released the Department of Transportation (Department) from any obligations from its disposal.

The Department does not warrant or guarantee that the Material is of any particular type or is suitable for any particular purpose.

The contractor shall comply with all parts of the contract including Sections 7-1.06, "Insurance," and 7-1.05, "Indemnification," of the *Standard Specifications*. *[Contractor name]* shall defend, indemnify, and save harmless the state from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys' fees, losses or liabilities, in law or in equity arising out or in connection with *[contractor name]*'s performance of this contract including disposing material on *[property owner name]*'s property.

Sincerely,

[Name of resident engineer]

c:

bc:

*"Provide a safe, sustainable, integrated and efficient transportation system
to enhance California's economy and livability"*

**3-511
Submittals**

3-511 Submittals

The contract may require that plans, working drawings, or samples be submitted to the engineer for authorization. Submittals are considered either “action submittals” or “informational submittals.”

Action submittals consist of written and graphic information and samples that require the engineer’s response. The engineer reviews the submittals, makes corrections, or sends the submittals back to the contractor for correction.

Informational submittals consist of written information required to be provided before the affected work can start, but they do not require a response by the engineer.

Caltrans has a procedure for authorizing plan submittals for facilities which were designed by the Office of Structure Design. Resident engineers should review this procedure if the work includes such facilities. To view this procedure, refer to Section 132, “Miscellaneous Buildings,” of *Bridge Construction Records and Procedures, Volume 2*. Pumping plants and electrical and mechanical equipment use a similar procedure. Districts must establish procedures for facilities designed by the district.

In addition, the contract may require that plans and calculations be submitted to the resident engineer for review and authorization for falsework, shoring, and bridge demolition. Refer to Sections 120, 122, and 124, respectively, of the manual *Bridge Construction Records and Procedures, Volume 2*, for guidelines for the review and approval process.

**3-512
Construction
Surveys**

3-512 Construction Surveys

Section 5-1.26, “Construction Surveys,” of the *Standard Specifications* requires Caltrans to place stakes and marks necessary to permit satisfactory completion of the work. For information on construction surveys, refer to Chapter 12, “Construction Surveys,” of the *Caltrans Surveys Manual*.

The district surveys unit will set the construction marks and stakes when the area is ready and will start setting marks and stakes within 2 business days of receiving the request for construction stakes.

**3-513
Records**

3-513 Records

Section 5-1.27, “Records,” of the *Standard Specifications* requires the contractor to retain project records for at least 3 years after final project payment or resolution of any claims, whichever is later.

These records must be available for inspection, copying, and auditing by state representatives, and must be segregated by work cost categories:

- Bid item work.
- Change order work that is not extra work.
- Extra work.
- Work performed under a potential claim record.
- Overhead.
- Subcontractors, suppliers, owner-operators, and professional services.

This section also requires the contractor to use the Caltrans internet change order billing system. Provide training within 30 days of a contractor's request, and help the contractor's representative establish an account after receiving the training.

3-514 Noncompliant and Unauthorized Work

Section 5-1.30 [5-1.09], "Noncompliant and Unauthorized Work," of the *Standard Specifications*, specifies the contractor's responsibility for rejected or unauthorized work and for the removal and replacement of material that does not meet specification requirements.

Unauthorized work includes excavation outside planned slopes and below the grading plane. Unless an approved change order authorizes such excavation, do not permit it.

Except for material that is permitted to remain in place under the specifications for "contract compliance" and "operating range," reject material represented by a test result not meeting the specified requirement.

Ensure the rejected material gets removed and replaced or remedied in some other manner if it is appropriate. When rejected material is remedied, it may remain in place only if the resident engineer gives written approval. In most cases, the approval requires a contractor-requested change order. For example, a change order would be necessary to approve a contractor's proposal to remedy out-of-specification aggregate base by adding more aggregate to material deposited previously. A change order is necessary in this situation because the remedy requires a change in specifications. However, the resident engineer's written approval is not required when the remedy is specified, such as the remedy for damaged galvanizing of pipe or guardrail.

For all material used in the work, make the payment in accordance with the specifications. As an alternative to removal and replacement, do not allow noncompliant material to remain in place without contract payment, unless the specifications, in consideration of "operating range" and "contract compliance," or an approved change order, provide for such action.

3-515 Job Site Appearance

Section 5-1.31, "Job Site Appearance," of the *Standard Specifications* requires the contractor to keep the job site neat and includes provisions for disposal of debris.

3-516 Areas for Use

Section 5-1.32, "Areas for Use," of the *Standard Specifications* allows the contractor to occupy the highway only for purposes necessary to perform the work unless arrangements are made with Caltrans for temporary storage. The contractor has no right to make use of the property or to allow others to use it when such use is not reasonably necessary to perform the required work. For example, residency trailers must not be placed within the right-of-way, although one trailer may be allowed for yard security purposes if the engineer approves temporary storage within the right-of-way.

Prohibit any use of a Caltrans right-of-way that conflicts with the above requirements.

If a contractor requests the use of the highway for temporary storage or for any unusual or complicated situations, discuss the request with the construction field coordinator.

The contractor may enter into a rental agreement to use state-owned property outside the right-of-way.

3-514 Noncompliant and Unauthorized Work

3-515 Job Site Appearance

3-516 Areas for Use

Also, usable property under bridges or viaducts or other property that cannot be sold as excess, but can be leased, is classified as non-operating right-of-way (also known as “airspace”). Each district involved with the development of such property has established an inventory. The special provisions will normally cover the use, or prohibit the use, of non-operating right-of-way by the contractor. When the use of an airspace parcel is not part of the contract and a contractor later requests such use, the contractor must negotiate a lease for the parcel. A standard form is used for the lease and calls for payment based on fair market value. No special consideration will be given because the lessee is performing Caltrans work. Also, all normal provisions requiring insurance and parcel protection will be enforced.

**3-517
Equipment**

3-517 Equipment

Section 5-1.33 [5-1.10], “Equipment,” of the *Standard Specifications*, requires each piece of equipment to have a number stamped or stenciled on it. The identifying number should further be referenced to the license plate issued for the piece of equipment. The additional reference is especially important in the case of tractor and trailer combinations where the tractor may pull different trailers on separate occasions.

Use the identifying numbers to keep records of working and idle time for both equipment and operators, including, among other items, contract items, extra work, move in and out, and plant erecting. Some items of work will require more complete records than other items. Determine which items of work need these records and how much detail will be necessary. Records of this kind are also required for costs when the quantity of certain contract items runs over 125 percent or under 75 percent of the estimated quantity.

Do not instruct the contractor’s employees in equipment operation because the contractor may interpret suggestions as the resident engineer’s direct orders. Caltrans personnel must also not adjust the contractor’s equipment or ride on equipment other than that designed for personnel transportation or as required to inspect specific features of the work.

**3-518
Property and
Facility
Preservation**

3-518 Property and Facility Preservation

Section 5-1.36 [7-1.11], “Property and Facility Preservation,” of the *Standard Specifications* makes the contractor responsible for protecting and preserving all property involved in the project, including underground facilities and other facilities which are not openly visible. The resident engineer must be diligent in determining and pointing out the existence of property Caltrans knows about, especially underground facilities and other facilities which are not openly visible. For information about locating and protecting underground utilities, refer to Section 3-518C, “Non-Highway Facilities,” of this manual.

Ensure that the contractor does everything required under the contract to protect and preserve property. The contractor may be required to install temporary safeguards to protect existing facilities. However, the contractor’s responsibility includes only what is necessary to protect against damage by construction activity.

If a facility was not sufficiently protected and it is damaged, the contractor is responsible for replacing it with material of equal or better quality.

Ensure that the contractor does not begin any excavation without first contacting the regional notification center.

3-518A Landscape

The plans and specifications may require that certain trees, shrubs, and other vegetation be preserved. Ensure that the contractor is aware of all plant life to be protected.

If any permanent protection is ordered, pay for this work as for any other ordered additional work.

3-518B Railroad Property

Ensure the contractor's operations do not interfere with railroad operations. Do not allow the contractor's operations to encroach on the railroad right-of-way unless it is specifically allowed by the contract. If work is required on or affecting the railroad right-of-way, the railroad requires a railroad flagger be present.

For any excavations on or affecting railroad property, ensure the contractor submits work plans showing the protection system to be used. The district railroad coordinator is Caltrans' liaison with the railroad and should submit the work plans to the railroad for approval. The review time for these work plans is 65 days.

3-518C Non-Highway Facilities

3-518C (1) General

In some instances, utilities will be relocated or abandoned to clear the right-of-way before construction of a highway project. A utility relocation resident engineer is assigned to coordinate and inspect utility relocation that is being done to clear the right-of-way before construction. Once the resident engineer is assigned to a project, they assume the responsibility of the utility relocation resident engineer. Make contact with all of the affected utility owners to facilitate the coordination of the work with the contractor's activities.

The district right-of-way unit, acting through the district utility coordinator, is responsible for making changes to "notice to owner" forms and right-of-way agreements. The district right-of-way unit must also make all decisions about financial liability between Caltrans and the owner for utility work. Send change orders involving utility work to the district utility coordinator for concurrence.

3-518C (2) Duties of the Utility Relocation Resident Engineer

The utility relocation resident engineer must perform the following duties:

- Review all documents for the utility relocation work, including the "notice to owner" forms, encroachment permits, special provisions, contract plans, and correspondence about utilities not shown on the plans.
- Check the location of proposed and existing utility installations for possible conflicts with the proposed construction of the highway project.
- Determine whether Caltrans or the utility will establish necessary survey control and establish lines and grades. If Caltrans is responsible for these items, ensure that necessary lines and grades are properly established so that relocation crews can efficiently pursue the work. For possible conflicts, compare all facilities with available plans. Also, spot-check survey marks at critical locations for possible conflicts. Require changes where necessary.
- If utility relocation or abandonment is to occur before the highway project starts and there is sufficient time for entries to be made before contract advertising,

submit to the district utility coordinator any changes or notices of newly discovered facilities and enter them on the contract plans or in the special provisions. Document in the resident engineer's pending file the changes or new facilities that cannot be included in the contract before advertising.

- If utility relocation or abandonment is to occur concurrent with the highway project, include utility owners and the district utility coordinator in preconstruction conferences with the contractor. On larger projects with a number of utility relocations, it is advisable to schedule a separate meeting for each owner. In these meetings, discuss:
 1. Special provision requirements.
 2. The contractor's schedule as it affects relocation work, project safety, and traffic control.
 3. Potential problems.
 4. Keep records of such meetings, and confirm any decisions made through letters to all parties.
- Before allowing any change in the planned location of a utility facility or any excavation to determine the location of underground utility facilities, ensure that such action complies with the "Policy on High and Low Risk Underground Facilities Within Highway Rights of Way" in Appendix LL of the *Project Development Procedures Manual*.
- The district utility coordinator will advise the resident engineer when utility relocation work warrants full-time inspection. Keep records of utility relocation work on Form CEM-4601, "Assistant Resident Engineer's Daily Report." When inspection is full-time, keep records for the following as complete as possible:
 1. Number of workers
 2. Equipment description
 3. Hours worked
 4. Materials salvaged
- When inspection is part-time, record all detail consistent with observed activity. At a later date, the district right-of-way unit will request these records to verify the utility owner's final bill.
- Keep the contractor advised of any utility work that will require a change in the contractor's work activities. Keep detailed records of any alleged or actual right-of-way delays related to utilities. Make recommendations to the district on any requests for time adjustments resulting from such delays. Refer to Section 3-804A (2), "Change Order Time Adjustments (Center Block)," of this manual for procedures for time extensions.
- The contractor is required to notify the resident engineer in writing of discovery of an underground facility not indicated on the plans or in the special provisions. In the absence of written notification from the contractor, document the location of the underground facility and include this documentation in a written confirmation sent to the contractor.
- Whenever the contractor has not received prior indication of an existing facility, change orders, including the repair of any damage, will be considered for approval.

However, Caltrans will not pay for the repair of damage caused by negligence after the contractor was notified of the existence of a utility facility.

- Whenever underground facilities are discovered and they are not shown in the plans or the special provisions, notify the district utility coordinator. Instead of relocating the underground facility, the parties involved may reach an agreement with the utility owner about satisfactory protection of the facility before the contractor begins any physical work. If the contractor must protect the utility facility, prepare a change order to cover the payment for such work. The term “protection work,” as used in contract administration, must include any work necessary to ensure the utility’s service, reliability, and ability to operate at approximately the same level as before any disturbance from construction activities. This work may include exploration to find exact locations, placement of barricades or warning devices, shoring, or even temporary bypass facilities or permanent relocation. However, this protection work will not include facility repairs for damage resulting from negligent equipment operation around properly protected facilities.
- Notify the district utility coordinator immediately when a utility facility is in conflict with the planned work. Follow up the notification in writing. Include drawings or plan sheets showing the location of the existing facility, the affected work, recommended action, and the estimated date when the conflict will begin to affect the contractor’s work activities and time of completion. The district utility coordinator must arrange relocation work necessary to resolve the conflict.
- Determine whether facilities shown on the plans or specifications are being adequately protected from damage as required by the contract. Notify the contractor in writing of any inadequacies.
- When judging the extent of compliance required by the specifications, take into account the type of facility involved. Consider such things as the consequences of a potential accident. When consequences involve life and limb, do not permit work in such areas unless the contractor has made physical checks of the facility location. When working around hazardous facilities, do not assume takeoffs from plans are accurate whether the plans were prepared by Caltrans or the utility owner.

3-519 Maintenance and Protection

3-519A General

Section 5-1.37 [6-1.03, 7-1.02, 7-1.08, 7-1.16], “Maintenance and Protection,” of the *Standard Specifications* requires the contractor to maintain and protect the work until Caltrans has granted maintenance and protection relief or has accepted the contract. This section also requires the contractor to prevent construction equipment that exceeds legal maximum weight limits from operating on completed or existing treated base, pavement, or structures.

If the highway in question is a state highway, Caltrans’ maintenance forces will maintain the part of the existing highway outside of the limits necessary to construct the bid item work. If the highway in question (or highway part) is under the control of a local authority, either the local authority or Caltrans maintenance forces will maintain the part of the existing highway outside the limits necessary to construct the bid item

3-519 Maintenance and Protection

work in accordance with the maintenance agreement between Caltrans and the local authority.

The maintenance area supervisor or area superintendent and the resident engineer must have a clear understanding of which portions of the highway Caltrans' maintenance forces will continue to maintain during the project's construction. The following guidelines should be used when discussing roadway maintenance:

- If new work is required on an existing highway, the owner (Caltrans or the local authority) will continue to maintain the highway or portions of it until the contractor takes possession by erecting signs or begins bid item work. The owner will resume maintaining the highway or portions of it when the contractor is relieved from maintenance responsibility under Section 5-1.38, "Maintenance and Protection Relief," of the *Standard Specifications*.
- Often, on widening or improvement projects, existing highway facilities will be located outside the areas of work where no alterations, modifications, or replacements are planned. In these cases, except for repair of damage because of the contractor's operations, the owner will maintain the highway facility. If the new work consists of widening the existing highway's pavement or roadbed and the contractor's operations are restricted to a portion of the width of the roadway, the owner will continue maintaining the balance of the width.
- If damage caused by the public occurs to an existing facility within the construction limits and the work required to repair the damage is similar to the work being done by the contractor, the contractor may do the repairs.
- In case of emergency conditions within construction limits, the maintenance area supervisor and the resident engineer should determine how to address the condition quickly and safely.
- Pay as extra work any work done by the contractor to maintain and repair damage to existing facilities (except for damage the contractor caused).

3-519B Load Limits

Except for special conditions described in Section 5-1.37, "Maintenance and Protection," of the *Standard Specifications*, all equipment hauling material over roads or streets open to public traffic to, from, or within the project must comply with weight limitations required by the Vehicle Code Division 15. If the contractor wishes to move equipment which exceeds the size or weight limits, the contractor must provide necessary protective measures and repair any damage resulting from those overloads.

Refer to the *Bridge Construction Records and Procedures* manual when the contractor requests moving or placing overloads on structures.

To enforce weight limitations for overloads hauled over public roads and streets, follow the procedure outlined below:

- The assistant resident engineer receiving a weight slip indicating an overload may accept a load that is not more than 200 pounds over the legal gross weight. However, advise the contractor immediately that if the violation continues, Caltrans will refuse to accept such loads and will notify the California Highway Patrol.

- When a weight slip indicates that a load is more than 200 pounds over the legal gross weight, reject the load and notify the California Highway Patrol that overloads are being hauled.
- Prohibit rejected material from being used in the work unless the load is reduced and is again weighed to ensure the legal gross vehicle weight.
- Record the identification of rejected weight slips in the daily report.

3-519C Damage by Public Traffic

Only in some cases will Caltrans pay to repair damage to completed permanent facilities caused by public traffic. Completed permanent facilities are any features constructed by the contractor that will become a permanent part of the project. Unless specifically provided for, Caltrans will not pay for damage to temporary facilities such as falsework and forms.

The facility need not be 100 percent complete for the contractor to be compensated, but it must be functional. Caltrans must not pay for damage from public traffic to facilities that are not considered functional yet. For example, guardrail posts or guide marker posts or a bridge still supported by falsework would not be considered functional. However, for a concrete barrier that only requires a specified light abrasive blast finish, Caltrans may pay for damage caused by public traffic because the barrier is functional.

Following are guidelines for determining payment for damage by public traffic:

- Whenever the resident engineer orders the pavement or deck of a structure opened to public traffic, the contractor is relieved of responsibility for damage to the completed permanent facilities caused by public traffic. The contractor will be relieved of responsibility whether the opening to public traffic occurs before the scheduled opening time, occurs as the natural sequence of events, or occurs as the result of a contract specification. The contractor will be relieved of responsibility for damage to completed permanent facilities caused by public traffic whether traffic is placed on new alignment not previously used by traffic or traffic is placed on new resurfacing opened after daily closures. Compensation for damage caused by public traffic is appropriate if the completed surfacing consists of an asphalt concrete base or leveling course.
- If the contractor requests an opening ahead of the normal schedule, the following applies:
 1. When the opening does not conform to the specified or shown order of work, it must be covered by a change order approved by headquarters, in accordance with Section 5-3, "Change Orders," of this manual. If Caltrans will not compensate the contractor for damage to completed permanent facilities, the change order must state this fact.
 2. When the opening does not conform to the specified or shown order of work, the resident engineer will normally base approval or disapproval of the change order on an evaluation of the benefit to public traffic. If the benefit is substantial, it is appropriate to approve the change order and compensation in accordance with Sections 5-1.38, "Maintenance and Protection Relief," 5-1.39, "Damage Repair and Restoration," and 7-1.03, "Public Convenience," of the *Standard Specifications*. If measurable benefits accrue to the contractor, ensure the change order provides a credit to Caltrans.

3. If the benefits to public traffic are borderline or negligible, it is appropriate to approve the change order under the condition that the contractor be responsible for damage caused by public traffic. The contractor must acknowledge the condition in writing. Again, if measurable benefits accrue to the contractor, include a credit to Caltrans in the change order.
 4. If good reason exists for doing so, the resident engineer can refuse to approve a proposed opening.
- Except as provided for in Section 5-1.38, “Maintenance and Protection Relief,” of the *Standard Specifications*, Caltrans will not relieve the contractor from responsibility for damage to completed permanent facilities if the contractor never does the following:
 1. Moves public traffic from the existing traveled way.
 2. Places public traffic on new pavement.

When the contract temporarily routes public traffic closer to the facilities than the traffic will be after completion of the work, the contractor will be relieved of responsibility for damage to the completed permanent facilities caused by public traffic. For example, Caltrans will relieve the contractor of responsibility if damage occurs to a completed guardrail at the edge of the shoulder when the plans or special provisions require public traffic to be temporarily placed on the shoulder to facilitate construction.

3-520 Maintenance and Protection Relief

3-520 Maintenance and Protection Relief

The contractor may be relieved from maintaining and protecting certain completed portions or sections of the work under conditions specified in Section 5-1.38 [7-1.15], “Maintenance and Protection Relief,” of the *Standard Specifications*.

Caltrans policy recommends relief for only those portions of the work specifically mentioned in the specifications unless a request for relief fully justifies exceptions.

For completed roadways, the specified length of 0.3 miles is the minimum practical length of completed main roadway on which to recommend relief from maintenance and protection. However, shorter units of completed work, such as on-ramps, off-ramps, frontage roads, or approaches to under-crossings and overcrossings, may also be eligible for maintenance and protection relief.

Do not recommend relief from maintenance and protection on a 0.3-mile section with exceptions within that length unless you provide a valid reason to support the recommendation. Exceptions must be defined in terms of longitudinal sections of highway or certain specified areas. For example, it is unacceptable to recommend maintenance and protection relief for a total project except for the inlet ditch to the right of stations 20+00 to 25+00. It is acceptable to recommend relief for the total project except for stations 15+00 to 27+00 (the section of highway that could be affected by the uncompleted ditch to the right of stations 20+00 to 25+00).

Completed bridges or other major structures may also receive maintenance and protection relief. For purposes of relief from maintenance and protection, the following describes what constitutes a “bridge or other major structure”:

- Section 1.07 [I], “Definitions,” of the *Standard Specifications* says a structure will be considered a bridge if the plans or other portions of the contract so identify it.

- Other structures to be considered of major importance are culverts in excess of 6.5 feet in diameter or of approximate equivalent area.
- A facility not meeting the above criteria will be considered of major importance only if its final cost exceeds 5 percent of the original total bid for all of the bid items (including mobilization).
- Projects with noncontiguous locations may be accepted location by location, provided the work at each requested location is complete. Noncontiguous areas of work outside the right-of-way on major projects may also be accepted if the procedures outlined in Section 3-523C, “Work for Other Agencies or Owners,” of this manual have been followed.

Maintenance and protection relief excuses the contractor from responsibility for repair of damage from causes other than those resulting from the contractor’s own operations or from the contractor’s negligence. Before recommending a request for maintenance and protection relief, determine that the requested work will not be damaged as a result of incomplete adjoining work. For example, a roadway section may be complete while an upstream culvert remains incomplete. Water flowing past the uncompleted culvert may damage a portion of the requested roadway section.

Before recommending maintenance and protection relief, analyze each situation critically to determine if it qualifies in all respects. Indiscriminate recommendations for relief from maintenance and protection must not jeopardize the project’s proper completion. Once the contractor is relieved from maintaining and protecting a portion of the work, the contractor cannot be required to do more work on it except by agreement or to remedy defective work or materials.

If the engineer has any doubts about the requested area’s eligibility, deny the contractor’s request for relief from maintenance and protection. Inform the contractor in writing so no doubt exists as to the status of the contractor’s request and the nature of uncompleted work. Section 5-1.38, “Maintenance and Protection Relief,” of the *Standard Specifications* states that the portion of work must have been completed under the contract and to the engineer’s satisfaction before it becomes eligible for maintenance and protection relief.

For landscape projects, the contract usually includes a special provision to allow granting relief from maintenance and protection for items not directly connected with plant establishment work or highway planting and irrigation systems. The special provisions could grant relief from maintenance and protection for typical items of work such as asphalt concrete placed as island paving or sidewalks and seal coats placed on islands, curbs, and fences. In many cases, these items would not have a direct bearing on the success or failure of plant establishment, and it is unreasonable to require the contractor to maintain them.

However, to be consistent with the policy for non-landscape contracts, this type of relief from maintenance and responsibility will be granted for an entire group of items, not item by item. An item that protects the planting or is involved in plant establishment should not be submitted for maintenance and protection relief. This category typically includes planter boxes, sprinkler systems, header boards, or mesh.

Safety roadside rest areas will not be accepted item by item but may be recommended as completed units.

Maintenance and protection relief denotes recognition of completed work. Therefore, the resident engineer must conduct a maintenance review of areas that will be granted maintenance and protection relief. Also, recommendations for this action on work for other public agencies or owners require the concurrence of these agencies and owners. Before recommending relief from maintenance and protection on such portions of the work, complete the procedures outlined in Section 3-523C, “Work for Other Agencies or Owners,” of this manual. In the communication recommending relief, include a statement that the agency authorities concur or, in the absence of such concurrence, include justification for relief.

For requests for relief from maintenance and protection, use Form CEM-0501, “Relief from Maintenance.”

**3-521
Requests for
Information and
Potential Claim
Records**

3-521 Requests for Information and Potential Claim Records

3-521A General

During the course of the project, and up to receiving the proposed final estimate, the contractor must submit a contract dispute or protest in the form of a request for information. If the request for information leads to a dispute, the contractor must follow the three-part potential claim process specified in the contract. The three parts of the potential claim process are the initial potential claim record, the supplemental potential claim record, and the full and final potential claim record.

Ensure that on all claims-related documents, the date and time of receipt and the name of the person who received it are noted.

Ensure that the request for information and potential claim documents are complete and timely. If the information is incomplete, notify the contractor of the deficiencies and request that the contractor resubmit the document with the complete information. If the contractor failed to submit the request for information or potential claim record within the specified time, notify the contractor that the submittal was not timely and state that this failure to comply with the procedure provided for in the contract is a waiver of the potential claim, a waiver of the right to a corresponding claim for the disputed work, and a bar to arbitration.

Some sample dispute response clauses are located in Section 3-521E, “Sample Dispute Response Clauses,” of this manual.

3-521B Requests for Information

The contractor may submit a request for information at any time to clarify contract provisions, notify the resident engineer of a change in condition, or file a protest. The request for information must be in writing and delivered to the resident engineer (in person, by mail, or by email) by the contractor.

Using a request for information, the contractor may protest an approved change order not executed by the contractor, compensation for work specified in the change order, adjustment of contract time, weekly statement of working days, progress payment, delays, liquidated damages, or any decision by the resident engineer.

Note that not all requests for information will result in a potential claim.

Upon receipt of a request for information used as a protest, however, the resident engineer starts a section in Category 62, “Disputes,” of the project records. Additional

information, including related documents and correspondence will be included in this section.

The resident engineer references the contractor's request for information and must respond in writing within the time specified in the contract. A response should include acknowledgement that the request for information was received and may include the information requested, an invitation for further discussion, a request for clarification, or the anticipated date for a complete response.

3-521C Potential Claim Records

The contractor submits a written potential claim record when the contractor believes additional compensation is due in accordance with Section 5-1.43 [9-1.04], "Potential Claims and Dispute Resolution," of the *Standard Specifications*. Follow the potential claim record process when protested issues and disputes are not resolved.

The contractor provides a unique identification number for each potential claim submitted. For supplemental potential claim records and full and final potential claim records, the contractor must certify each form with reference to the False Claims Act, Government Code Section 12650–12655.

If a supplemental potential claim record or a full and final potential claim record is received without this certification or is otherwise incomplete or incorrectly filled out, notify the contractor in writing that it was not submitted in accordance with Section 5-1.43, "Potential Claims and Dispute Resolution," of the *Standard Specifications* and that the contractor is allowed 15 days to correct the deficiencies or withdraw the potential claim. If the corrected record is not provided in the required time, notify the contractor in writing that Caltrans will not consider the potential claim. Discuss this latter notification with the construction engineer.

If the nature, circumstances, or basis of the claim differs from the prior potential claim record, reject the record and return it with a letter indicating which component has changed.

3-521C (1) Form CEM-6201D, Initial Potential Claim Record

The initial potential claim record provides a notification to Caltrans of a disputed issue. This record provides the nature and circumstances of the dispute and gives the parties the opportunity to mitigate the associated costs with the goal of an early resolution.

When the contractor's initial potential claim record is not timely, Caltrans may be disadvantaged by limiting available corrective actions. The timeliness of the original initial potential claim record is one of the many considerations in evaluating a contractor's protest, especially when quantifying the contractor's damages and compensation requests.

3-521C (1a) Resident Engineer's Response to the Initial Potential Claim Record

The resident engineer's response to the initial potential claim record acknowledges the dispute, directs the contractor on how to proceed with the disputed issue, and informs the contractor of the contractual time requirements to submit the supplemental and full and final potential claim record.

The resident engineer must determine if the contractor's dispute has merit. If the dispute does have merit, the resident engineer must take appropriate action within the scope of the contract and within the resident engineer's authority to resolve the dispute. If the resident engineer cannot resolve the dispute or lacks the authority to act, the

resident engineer should discuss the issue with the construction engineer and the structure construction engineer, if appropriate.

3-521C (2) Form CEM-6201E, Supplemental Potential Claim Record

The supplemental potential claim record provides justification for additional compensation and adjustments with references to the appropriate provisions of the contract. The record must also include the estimated costs and impacts to the schedule. The contractor must update the cost estimate or the impact to the schedule as soon as a change is recognized.

Upon receipt of Form CEM-6201E, “Supplemental Potential Claim Record,” analyze the contractor’s potential claim. This may involve discussing the potential claim with peers, subject matter experts, and district management.

Potential claims involving differing site conditions that lack merit must also include an internal review by a management review committee as referenced in Section 3-404, “Differing Site Conditions,” of this manual.

3-521C (2a) Resident Engineer’s Response to the Supplemental Potential Claim Record

Ensure the supplemental potential claim record is timely and is submitted on Form CEM-6201E, “Supplemental Potential Claim Record.”

Once you receive a complete potential claim record submittal, evaluate it and provide a detailed response letter to the contractor within the time specified in the contract. The response letter must include the following sections:

- **Background**—Explain the circumstances that led to the dispute. Include only information such as events, dates, discussions, meetings, memos, and letters.
- **Contractor’s Position**—Base the position on the information provided in the contractor’s supplemental potential claim record. Use direct quotes from the information provided by the contractor without attempting to interpret or clarify them.
- **Resident Engineer’s Position**—State the merits of the potential claim clearly and concisely. Fully document the contract requirements such as permits, plans, specifications, and other requirements supporting the findings.

When the potential claim has no merit, remind the contractor of the option to further pursue the potential claim as specified in the contract. Inform the contractor of the contractual time requirements for the alternative dispute resolution procedures and for submitting the full and final potential claim record.

When properly prepared, the response letter serves as the basis for the preliminary construction claim findings.

Follow the guidelines in Section 3-521D, “Documentation Guidelines for Disputes,” later in this section.

3-521C (3) Form CEM-6201F, Full and Final Potential Claim Record

Upon receipt of Form CEM-6201F, “Full and Final Potential Claim Record,” evaluate it and respond within the time specified in the contract. Do not respond to the contractor if the full and final potential claim record is submitted after contract

acceptance. Review and consider the information before processing the proposed final estimate.

3-521C (3a) Resident Engineer's Response to the Full and Final Potential Claim Record

The requirements and format for the resident engineer's response to the full and final potential claim record are the same as outlined in Section 3-521C (2a), "Resident Engineer's Response to the Supplemental Potential Claim Record." Refer also to Section 3-521D, "Documentation Guidelines for Disputes," later in this section.

3-521D Documentation Guidelines for Disputes

The following are guidelines for keeping records and responding to requests for information and potential claim records:

- Ensure that reports and documents are factual and accurate. Use specific statements in daily reports. An entry such as, "Told the contractor that . . ." is not satisfactory, whereas "I told Foreman Smith that..." is satisfactory. A general conclusion about the effect of a conversation is not helpful; a statement of the conversation is better.
- Answer letters containing questionable or erroneous statements made by the contractor in writing by refuting or correcting the contractor's statement.
- Do not hesitate to put orders and decisions in writing. Confirm any important statement about the unacceptability of the work in writing. Before ordering the contractor to proceed with extra or additional work, obtain approval. If the contractor verbally informs you of a dispute, advise the contractor to comply with the applicable requirements of the *Standard Specifications*. Include this verbal discussion in the resident engineer's daily report.
- Identify the issue and try to come to agreement with the contractor on a brief description of the dispute. Identify areas of agreement and disagreement within the issue. This will help to minimize the peripheral items clouding the core of the dispute.
- The engineer's response to the contractor's supplemental potential claim record will serve as the basis for the Caltrans position paper in alternative dispute resolution proceedings.
- Focus on costs specific to the dispute, but do not discuss any funding availability, such as project contingency balance, with the contractor.
- If a dispute arises during the work's progress, keep accurate records of the operations to eliminate subsequent arguments related to work costs. During the progress of the disputed work, make regular tentative agreements for the labor, equipment, or material quantities involved.
- Take preconstruction and project progress photographs. Photographs and videos are valuable in confirming job conditions at a particular point in time. Dated pictures of areas where work is not underway may be as important as pictures of construction operations or completed work.
- Record the full names of all the contractor's personnel involved in any dispute. These individuals may need to be located later. Information such as full names and addresses of the contractor's personnel are contained in the certified payrolls.

- Record equipment information such as description, model number, contractor's equipment number, size, and capacity to help calculate and confirm costs associated with disputes.

Category 62, "Disputes," of the project records must contain copies of all documents related to every dispute on the project including progress schedules. This information provides the basis for preparing the preliminary construction claim findings. Follow the procedures outlined in Section 5-102, "Organization of Project Documents," of this manual to provide a good basis for documenting claims.

3-521E Sample Dispute Response Clauses

Use the following sample clauses in responses to requests for information and potential claim records. Edit the clauses to fit the specific situation.

3-521E (1) Request for Information for Notification of a Possible Differing Site Condition

3-521E (1a) General

"I have received your request for information dated [*insert date*] providing notification of a possible differing site condition encountered at [*give location*]. It is my understanding that you believe the material encountered differs materially from that shown on the plans or is considered to be of an unusual nature..."

3-521E (1b) If No Merit

"I have investigated the material and the contract documents [*specify which documents*], and have found that the material does not vary from that shown on the contract documents. Therefore, no additional cost or extension of contract time is warranted to complete the work.

"If you still believe a differing site condition exists, follow the procedures and processes described in Sections 5-1.42, 'Requests for Information,' and 5-1.43, 'Potential Claims and Dispute Resolution,' of the *Standard Specifications*."

3-521E (1c) If Merit

"I have investigated the material and the contract documents [*specify which documents*], and have found that the material does vary from that shown on the contract documents. Therefore, additional cost or extension of contract time may be warranted to complete the work.

"Please furnish me with the additional costs that may result from the increased work as a result of this differing site condition."

3-521E (2) Requests for Information to Protest a Time Adjustment Determination in a Change Order

Use the following clauses in your response to a protest of time determination in a change order:

3-521E (2a) General

"I have received your request for information dated [*insert date*] to protest the time adjustment under change order no. [*x*]. I understand that you are protesting the determination of [*y*] working days time extension for this change and you believe you are entitled to [*z*] working days time extension."

3-521E (2b) If No Merit

“My review of change order no. [x], anticipated work, and the progress schedule indicates that the work required by the change order does not impact the controlling operation [if a CPM review was performed substitute “critical path” for “controlling operation”]. Therefore, you are not entitled to an extension of contract time.

“If you still believe that a time extension is warranted, please provide documentation to support your position, either in narrative form or an analysis showing the impact of this work on the completion date of the project. Continue to follow the procedures and processes described in Sections 5-1.42, ‘Requests for Information,’ and 5-1.43, ‘Potential Claims and Dispute Resolution,’ of the *Standard Specifications*.”

3-521E (2c) If Merit

“My review of change order no. [x], anticipated work, and the progress schedule indicates that the work required by the change order impacts the controlling operation [if a CPM review was performed, substitute “critical path” for “controlling operation”]. I have determined a time extension of [y] days associated with the work.

“The change order will be revised to reflect this adjustment of contract time. Please review and sign the revised change order if you agree with the change.”

3-521E (3) *Requests for Information to Protest a Weekly Statement of Working Days*

Use the following clauses in your response to a request for information to protest the determination of contract time in a weekly statement of working days:

3-521E (3a) General

“I have received your request for information dated [insert date], to protest the weekly statement of working days no. [x]. It is my understanding that you are protesting the charging of [specify day or days protested] as a working day because [specify the contractor’s reasons for protesting the days in question].”

3-521E (3b) If No Merit

“Our records indicate that you were working on the controlling operation for the entire day. If you believe that you did meet the requirements of Section 8-1.06, ‘Time of Completion,’ of the *Standard Specifications*, please submit documentation in support of your protest. In the absence of such documentation, the weekly statement of working days no. [x] will remain unchanged.

“If you decide to pursue this as a potential claim, follow the procedures and processes described in Sections 5-1.42, ‘Requests for Information,’ and 5-1.43, ‘Potential Claims and Dispute Resolution,’ of the *Standard Specifications*.”

3-521E (3c) If Merit

“I have reviewed the project records and have determined that [insert date] should be revised to indicate a non-working day. Attached is the revised weekly statement of working days no. [x].”

3-521E (4) *Potential Claim Record*

Use the detailed format and response guidelines in Section 3-521C, “Potential Claim Records,” of this manual in conjunction with the following clauses to respond to a potential claim record. Also, refer to Section 3-521C (1a), “Resident Engineer’s

Response to the Initial Potential Claim Record,” 3-521C (2a), “Resident Engineer’s Response to the Supplemental Potential Claim Record,” and 3-521C (3a), “Resident Engineer’s Response to the Full and Final Potential Claim Record,” of this manual.

3-521E (4a) General

“I have received your [*state initial, supplemental, or full and final*] potential claim record dated [*insert date*], regarding [*state the issue*]. It is my understanding that this potential claim is the result of a dispute over [*state the dispute and give background of the dispute*].

“I understand your position to be [*quote the contractor’s position as described in the potential claim record*].”

3-521E (4b) If No Merit

“I have reviewed your [*state initial, supplemental, or full and final*] potential claim and based on the information you provided I find that it has no merit. [*Explain why in detail.*]

“If you decide to pursue this as a potential claim, follow the procedures and processes described in Sections 5-1.42, ‘Requests for Information,’ and 5-1.43, ‘Potential Claims and Dispute Resolution,’ of the *Standard Specifications*.”

3-521E (4c) If Merit

“I have reviewed your [*state initial, supplemental, or full and final*] potential claim and based on the information you provided I find that it has merit. [*Explain why.*] Please provide me with the cost associated with your notice of potential claim for review and determination of compensation.”

3-521E (4d) Request Additional Information

“I have reviewed your [*state initial, supplemental, or full and final*] potential claim record [*or request for information*]; however, I am unable to make a determination based on the information you provided. Please provide me with the following information so I can make a determination regarding your potential claim.”

3-522 Alternative Dispute Resolution Processes

3-522 Alternative Dispute Resolution Processes

Alternative dispute resolution helps resolve disputes and potential claims, mitigate damages, and maintain project schedules.

The alternative dispute resolution processes are partnering, dispute resolution ladders (DRL), dispute resolution advisors (DRA), and dispute resolution boards (DRB). Their use is based on the size and duration of the contract. Refer to the special provisions and Sections 5-1.09, “Partnering,” and 5-1.43, “Potential Claims and Dispute Resolution,” of the *Standard Specifications* to determine which alternative dispute resolution process is appropriate for the contract.

In order for the alternative dispute resolution processes to be most effective, they must be set up and used in accordance with the applicable provisions. Set up partnering, the DRL, the DRA, or the DRB as quickly as possible within the time specified to avoid putting timely referral and resolution of a dispute in jeopardy.

3-522A Partnering

As one of the alternative dispute resolution processes, partnering is used to develop trust and collaboration between the resident engineer and the contractor’s

representative, the two key members of the project team. Using partnering best practices makes it more likely that the project team will jointly resolve project issues before they become disputes.

If a partnering facilitator has been selected for the project and the project team is no longer having a productive dialogue regarding a dispute, discuss with the contractor the use of facilitated dispute resolution as a way to reestablish productive dialogue and better define the dispute. Schedule facilitated dispute resolution after exhausting the DRL and before referring the dispute to the DRB. Refer to Sections 5-1.09, “Partnering,” and 5-1.43E(3)(e), “DRB Traditional Dispute Meeting,” of the *Standard Specifications*; Section 3-504, “Partnering,” of this manual; and Chapter 7, “Resolving Disputes,” of the *Field Guide to Partnering on Caltrans Construction Projects* for further direction and guidance.

3-522B Dispute Resolution Ladder

Projects with bids less than \$3 million may use the partnering dispute resolution ladder (DRL). The optional DRL process will be included in the special provisions or can be added with a no cost change order.

The DRL is an optional part of the alternative dispute resolution process. If used, the DRL runs concurrently with requests for information and potential claim records. It is not a substitute for any other contract requirement or administrative claims procedure or provision.

3-522B (1) Dispute Resolution Ladder—Establishment

At the preconstruction conference, kickoff partnering workshop, or any time before contract acceptance, the resident engineer offers the contractor the option of using a DRL as an alternative dispute resolution process. When accepted by the contractor, the resident engineer should document the DRL by filling out Form CEM-6208, “Dispute Resolution Ladder Establishment,” which lists the names, titles, and contact information for Caltrans and contractor personnel. Caltrans’ dispute resolution ladder, in ascending order, is as follows:

- Field Level—Inspector
- Level 1—Resident Engineer
- Level 2—Construction Engineer
- Level 3—Construction Manager, Office Chief, or Deputy District Director of Construction, as designated by the Deputy District Director of Construction.

The resident engineer and the contractor’s representative may use Form CEM-6209, “Elevation of a Dispute,” to define the dispute before elevating it.

The resident engineer does not pay the contractor’s costs for participating in the DRL process.

3-522B (2) Dispute Resolution Ladder—Operation

A dispute can be advanced up the ladder when an agreement between the parties on a defined level cannot be reached within the time specified. A dispute can be elevated sooner if both representatives on the defined level agree and the representatives at the next higher level concur.

3-522C Dispute Resolution Advisor and Dispute Resolution Board

A DRA and a DRB are used on projects with at least 100 working days. A DRA is an experienced neutral party that Caltrans and its contractor use to help resolve disputes on contracts with a total bid of \$3 million to \$10 million. A DRB is a three-member board made up of knowledgeable neutral parties that Caltrans and the contractor use to resolve disputes on contracts with a total bid of more than \$10 million.

Use of a DRA or DRB allows knowledgeable and experienced board members, not directly involved with the contract, the opportunity to review and analyze a dispute and provide their recommendations. Although these recommendations are not binding, they are valuable in trying to resolve disputes before they become claims. These recommendations become important if the dispute is carried over to arbitration.

Disputes must be referred to the DRA or DRB and a dispute meeting held within the timelines specified. Generally, it is not in Caltrans' best interest to wait to have a dispute heard. Rarely do potential claims get smaller as time passes. Furthermore, memories fade with time, and project personnel often move on and become unavailable for a DRA or DRB dispute meeting. Adhering to the timelines is key to resolving disputes as quickly and as fairly as possible.

If a contractor is not adhering to the specified timelines or indicates that they wish to defer having the dispute meeting for some stated reason, remind the contractor of the contractual requirements regarding the timelines for referring the dispute to the DRA or DRB and for having a dispute meeting.

The Division of Construction's alternative dispute resolution (ADR) engineer maintains the DRA and DRB websites and a list of prequalified DRA and DRB member candidates.

3-522C(1) Establishment

When contractually required, the parties establish and use the DRA or DRB as part of the administrative dispute resolution and claims process. Early establishment of the DRA and DRB is important for resolving disputes as they occur. Delayed DRA or DRB formation may affect the ability of the DRA or DRB to accurately analyze disputes without a baseline reference.

Use the following procedure to select the best DRA or DRB candidates from the prequalified lists. Links to the lists can be found under "Dispute Resolution" at the Division of Construction's internet website.

1. Review the list of names and associated summaries of experience to find the most qualified candidates for the particular project.
2. Select a candidate with the knowledge and work history that best match the type of project.
3. Select a candidate with dispute resolution experience in the areas with the largest potential for dispute.
4. Contact the Division of Construction field coordinator and ADR engineer for guidance and additional information about the prospective candidates.
5. Contact the candidates, provide them with the project information, and determine their desire and availability to serve. If a candidate is willing and available to serve, request a disclosure statement with an updated résumé.

The Division of Construction field coordinator must approve the DRA or the DRB candidate nominated by Caltrans and the third DRB candidate. The division field coordinator must also approve DRA or DRB candidates not on the Caltrans prequalified list.

Nominating a DRA or DRB candidate not on the prequalified list requires that the candidate have a minimum of 10 years of experience in or directly related to public works, heavy-highway construction projects with, or on behalf of, federal, state (particularly Caltrans), or local government agencies. The experience must be any combination of the following:

1. Supervisor, manager, or executive in public-works heavy-highway construction contracts with emphasis in resolving disputes arising out of those contracts.
2. Attorney representing parties in litigating or arbitrating public-works, heavy-highway construction contract claims.
3. Judge or arbitrator adjudicating or otherwise resolving public-works, heavy-highway construction contract claims.

Require the candidate to submit a candidate application and send the application to the ADR engineer who processes it. A link to the application can be found at the Division of Construction website. If the candidate is approved, the ADR engineer adds the candidate to the prequalified list with the candidate's permission.

Submit the names, disclosure statements, and résumés of the DRA or DRB candidates to the contractor at the preconstruction conference, and ask the contractor to do the same. Jointly with the contractor, review the disclosure statements and résumés of the potential DRA or DRB candidates for proper qualifications and possible conflicts of interest. Jointly select the most qualified candidates as the DRA or DRB members in accordance with the specifications.

Upon selection of the DRA or DRB member, promptly notify the DRA or DRB member in writing, with a courtesy copy to the contractor. Notify the candidates not selected that they are no longer under consideration for the project.

For the DRA, complete Form CEM-6206, "Dispute Resolution Advisor Establishment Report," and send it to the ADR engineer. For the DRB, require the first two approved DRB members to nominate the third member and provide the appropriate documentation for the third member's approval. Once there is approval of all three members, complete Form CEM 6202, "Dispute Resolution Board (DRB) Establishment Report," and send it to the ADR engineer.

Sign the DRA or DRB agreement as soon as you have established the DRA or DRB. Links to the *Dispute Resolution Advisor Agreement* and the *Dispute Resolution Board Agreement* are on the Division of Construction internet website.

3-522C (2) DRA or DRB Member Replacement

With 15 days' notice, a DRA or DRB member may be replaced, or the member may voluntarily resign. Caltrans or the contractor may terminate the service of a DRA or DRB member who fails to comply fully with all required employment and financial disclosure conditions of the DRA or DRB membership.

If Caltrans wants to replace the DRA or Caltrans-nominated DRB member, the resident engineer discusses the proposal with district management. If district management concurs, the district submits its recommendation to the Division of

Construction's field coordinator for approval before sending a letter to notify the DRA or DRB member.

When the need arises, a replacement DRA or DRB member is nominated and approved using the appropriate contractual selection process. In the case of a DRB, if the previous member was the chairperson, the new board must agree on a new chairperson. In the case of an impasse, the two original DRB members will select the chairperson by blind draw. Caltrans, the contractor, and the DRA or DRB members sign a revised DRA or DRB agreement. The replacement process begins immediately upon receiving a notice of termination and is completed within 15 days.

3-522C (3) Operation

Alternative dispute resolution is for the benefit of both parties to the contract, so either party may refer a dispute to the DRA or DRB.

As a complement to the DRA or DRB agreement, the DRA or DRB chairperson may produce operating procedures with details for conducting DRA or DRB meetings. Work with the DRA or DRB and the contractor to reach an equitable agreement on the meeting process for the individual project circumstances. Ensure that the operating procedures comply with all the contract requirements and the DRA or DRB agreement before approving them.

For projects with federal funding, notify the Federal Highway Administration (FHWA) representative when an issue is referred to the DRA or DRB. Coordinate with the FHWA representative on full-oversight projects to ensure their participation in any related change order. Give the FHWA representative the date of DRA or DRB dispute meetings, information regarding the dispute, and the DRA's or DRB's recommendation.

3-522C (3a) Informal Dispute Meetings

The informal meeting is meant for small, uncomplicated disputes. The informal meeting is optional and is meant to reduce the duration and effort needed to hear a dispute. All parties must agree that the informal process is appropriate for resolving the dispute. The informal dispute process parallels the traditional process.

Typically, very little documentation is provided at an informal dispute meeting. The parties generally just tell their story to the DRA or DRB members and await the recommendation which should come the same day as the meeting. Use of the informal process must not delay the hearing of a dispute using the traditional process.

3-522C (3b) Traditional Dispute Meetings

The traditional dispute meeting must be used for more complex issues or those issues that were not resolved informally. It is mandatory if the contractor wishes to pursue the dispute.

The contractual time period for submitting the position paper and having a dispute meeting is located in the specifications and agreements. Remind the contractor of the contractual time period for referring disputes to the DRA or DRB when responding to the supplemental potential claim record.

When a dispute is referred to a DRA or DRB, prepare the position paper for submittal to the contractor and the DRA or DRB in advance of the oral presentation at the meeting. Present an effective position paper to the DRA or DRB since the recommendation may be introduced in arbitration proceedings. Remember, the purpose

of the position paper is to persuade the DRA or DRB that your position is the one that complies with the contract.

Use the following format for the position paper:

- Table of Contents.
- Description of the dispute—A summary paragraph defining both the nature of the dispute, as agreed upon with the contractor, and the clearly defined basis for denying compensation.
- Background or chronology of the dispute—The history of the issue in a narrative format including the facts, presented in a non-judgmental manner. This section must include a description of any partial or attempted resolutions.
- Contractor’s stated position—As stated in the contractor’s potential claim records, other written materials, or oral communications. Quoted segments are most effective when supplemented by exhibits. Present this section in a non-judgmental manner and do not elaborate on the contractor’s previously stated position.
- Caltrans’ position—State the logical flow of information and the relevant contractual requirements that resulted in the determination of no merit. All supporting information must be referenced within this section and included in the exhibit section.
- Summary—A concluding paragraph stating why contractually and factually there is no merit to the contractor’s dispute. The summary must be a strong absolute statement of Caltrans’ position requesting the DRA or DRB find in Caltrans’ favor. Avoid subjective language such as feelings or beliefs within this section.
- Exhibits—A number of exhibits for illustrating and clarifying the contractual and technical requirements. Number and tab exhibits. When compiling the written position paper, provide complete information related to the dispute including those exhibits used within the oral presentation at the DRA or DRB dispute meeting. Failure to provide certain exhibits will likely result in the DRA or DRB disallowing related items within the oral presentation. Distribute written position papers in accordance with the contract.

Submit a draft written position paper to the construction engineer and peers for review and comment in advance of the formal exchange with the contractor and the DRA or DRB. These internal reviews provide an opportunity to improve the position paper, and benefit Caltrans by informing management of dispute issues.

The oral presentation given during the dispute meeting is important to effectively put forward Caltrans’ position to the DRA or DRB. Begin preparing for the presentation well in advance of the dispute meeting. Hold a mock presentation at least a week in advance of the dispute meeting to allow incorporation of comments from attendees. Attendees at the mock presentation should include the resident engineer, construction engineer, structure representative, bridge engineer, and construction field personnel. Other attendees may include technical experts, district construction claims engineer, construction manager, Division of Construction field coordinator, and others with dispute resolution board experience, depending on the size and complexity of the issue under consideration.

The objective of the mock presentation is to further examine the contractor’s position, review the basis of Caltrans’ determination of no merit, and to rehearse Caltrans’

presentation including potential rebuttal statements. During the mock presentation, it is advisable that an experienced participant, not directly involved in the contract provides constructive criticism of Caltrans' position and the rebuttal of the contractor's position.

Typically, either the resident engineer or structure representative gives the presentation to the DRA or DRB depending on the dispute issue. Other Caltrans personnel associated with the project may provide additional evidence depending on the dispute and the circumstances involved. Use of experts not associated with the contract is discouraged unless the dispute issue is complex and requires a technical specialist. The contractor can also request to use a technical specialist. All parties must agree to the use of a technical specialist in advance.

The dispute meeting will follow the procedure outlined in the DRA or DRB agreement and any operating procedures agreed to by all of the parties involved.

3-522C (3c) Dispute Resolution Board Progress Meetings

For DRBs, in addition to the specific dispute meetings, there are mandatory initial and follow up progress meetings. The DRB progress meetings give members the opportunity to gain knowledge of the progress of work. Hold the first meeting at the start of the project. Each progress meeting must include a site visit allowing the DRB members to view construction operations, construction work completed, and areas where construction work must begin before the next meeting. A representative from both the contractor and Caltrans must attend all progress meetings. The minimum frequency of the progress meetings is stated in the DRB agreement; however, the frequency of meetings may require adjustment if the work is proceeding quickly. In addition, if the contract is suspended for a significant period, reconsider the frequency of the progress meetings.

The agenda of a typical progress meeting is contained within the DRB agreement. At a minimum, the agenda should include a discussion of the following:

- Status of change orders
- Status of the work in terms of expended time and dollars
- Summary of potential claims

Promptly prepare and circulate progress meeting minutes to the parties for revision and approval.

3-522C (4) DRA or DRB Recommendations and Responses

Upon receiving a DRA's or DRB's recommendation regarding a dispute, provide a copy to the Division of Construction's field coordinator and ADR engineer.

Begin preparing Caltrans' response once the DRA or DRB issues its recommendation to the parties.

Although the recommendation is nonbinding, the parties must respond to the DRA or DRB and the other party within the time specified so it is clear if the dispute is resolved or remains unresolved. Accept or reject a DRA or DRB recommendation in accordance with the following:

1. Acceptance of a DRA or DRB recommendation that finds in favor of Caltrans is delegated to the district.
2. Acceptance of a DRA or DRB recommendation in the contractor's favor or rejecting a DRA or DRB recommendation will require approval from the

Division of Construction's field coordinator. The deputy district director of construction and the field coordinator will review and discuss the reasoning for the proposed response before sending it to the DRA or DRB and the contractor.

Complete Form CEM-6207, "Dispute Resolution Advisor—Dispute Meeting Report," or Form CEM-6204, "Dispute Resolution Board Dispute Meeting Report," to notify the Division of Construction's ADR engineer of the dispute meeting and each party's acceptance or rejection of the recommendation.

A request for clarification of the DRB recommendation will only be considered if made within the time specified in the contract. Any request for clarification of a DRA or DRB recommendation needs to be discussed with the Division of Construction's field coordinator before its submittal. Requests for clarification are warranted when the recommendation fails to thoroughly explain the rationale for the recommendation, when the DRA or DRB has not stated Caltrans' position accurately, or when the contractual provisions have been disregarded.

A request for reconsideration of an issue may be made, and will only be considered, if new evidence concerning the dispute is provided and the request is made within the time specified. Reconsideration requests must be discussed with the Division of Construction's field coordinator before submittal.

3-523 Final Inspection and Contract Acceptance

3-523A General

As a project's completion approaches, schedule appropriate reviews with maintenance, traffic, and safety personnel. Before the final inspection, give the contractor a written list of items needing attention.

To resolve any potential problems on interstate projects, request that a field engineer from the FHWA review the project before the day of final inspection. The objective is to prevent last-minute delays in contract acceptance.

In accordance with Section 5-1.46 [5-1.13, 7-1.17], "Final Inspection and Contract Acceptance," of the *Standard Specifications*, the resident engineer must do a final inspection of the contract work.

Maintain a record of the final inspection in the resident engineer's daily report. The record should include a statement similar to the following:

"I made a final inspection of the project today and determined that all contract work has been completed."

Or

"[Name] made the final inspection today and agreed that all contract work has been completed."

Time the final inspection so that the recommendation for contract acceptance will not be delayed pending the inspection.

3-523B Contract Acceptance

On the day project work is completed in accordance with the requirements of the *Standard Specifications*, special provisions, plans, and approved change orders, notify the district construction office recommending district acceptance of the contract. Refer

3-523 Final Inspection and Contract Acceptance

to Section 5-1.46, “Final Inspection and Contract Acceptance,” of the *Standard Specifications*.

For recommendations of acceptance, use Form CEM-6301, “Contract Acceptance.” Follow the same procedure for accepting emergency contracts.

3-523C Work for Other Agencies or Owners

As a courtesy, when any work performed under the contract is for other agencies or owners, ask for the concurrence of these entities in the acceptability of the work. Include the concurrence of others such as local agencies, other state agencies, utility companies, and school districts.

Also, ask for concurrence from another party or agency if it finances a state highway project or a portion of the project. The district must arrange a joint field inspection with the owner or agency. In writing and in advance (usually 30 days), notify the owner or agency when the facility will be ready for final inspection. Time the inspection so that concurrence for acceptance is available at the time of recommending the acceptance of the contract or relief from maintenance and protection to the director. However, do not withhold recommendations for acceptance or relief merely because an outside agency will not concur.

The letter notifying the owner or agency of readiness for inspection should include:

- A reference to the cooperative agreement or other agreement.
- A statement that the inspection is to determine whether work is in compliance with plans, the agreement, or both.
- The date of the inspection.
- A request that, when an inspection reveals no deficiencies, the agency’s authorized representative responsible for performing the inspection will confirm in writing that the agency agrees to accept the work.
- A statement that failure by the agency to inspect or confirm acceptance in writing will be deemed acceptance of the work as constructed.

If the size or complexity of the work warrants such an action, the resident engineer and an agency representative should make a preliminary joint inspection to correct minor deficiencies before the final inspection described above.

Write a record of the preliminary and final joint field inspections. Note what actions were necessary to complete the work to the agency representative’s satisfaction. Record if the agency representative is satisfied with the completeness of the work but declines to concur in writing.