

The California State University

**Construction
Claims Program
Manual
for State Funded
Streamlined
Projects**



**Capital Planning, Design and Construction
Office of the Chancellor
401 Golden Shore
Long Beach, California 90802**

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Program Introduction

The California State University Risk Management Authority's (CSURMA) Construction Claims Program (CCP) commenced July 1, 1999. The program was formed to provide a funding source to cover constructions claims for all State funded streamlined projects, commencing with the State of California's approved list of specific projects in the 1997/98 Governor's Budget. In May 2000, the CCP was transferred from CSURMA to Capital Planning, Design and Construction, Office of the Chancellor.

A Construction Claims Program Committee administers the program. This committee is the successor to the former California State University Construction Claims/Augmentation Reserve Board. The committee consists of five standing members, two Executive Deans, two Vice Presidents and the Assistant Vice Chancellor of Capital Planning, Design and Construction. There are also four alternates, which consists of two Executive Deans and two Vice Presidents. The chair of the committee is the Assistant Vice Chancellor of Capital Planning, Design and Construction. Appointments to the committee are for an open term. Members may terminate appointment upon notice to the committee chair, or upon separation from the CSU.

This manual has been designed to provide complete information on how the CCP operates. It includes a sample Participation Agreement that is required from each campus that has delegated authority to manage capital outlay projects. Also included in the manual is a sample Memorandum of Coverage that is required for each State funded streamlined project. Terms and conditions for construction claims liability coverage, and policies and procedures for submitting a claim to the CCP Committee are also included in the manual. Any questions about how the program operates should be directed to the CCP administrator in Capital Planning, Design, and Construction at the Chancellor's Office.

**California State University
State Funded Streamlined Projects
Construction Claims Program
Participation Agreement**

We, campus, are participants in the Construction Claims Program for State funded streamlined projects, hereinafter referred to as “CCP,” as evidenced by the authorized signature on this document.

We understand that provided the following requirements are met, coverage through the CCP shall begin for covered projects with construction commencing on or after July 1, 1998.

1. We will pay any applicable participation fees, deposits and co-payments; and
2. We have executed this CCP Participation Agreement.

RESPONSIBILITIES OF PROGRAM PARTICIPANTS:

It is understood that as a Program Participant we are obliged to do the following:

1. Take action, e.g. provide statistical and claims experience data and other information, as is necessary, to carry out the CCP as required by the policies and procedures established by the CCP Committee;
2. Fully cooperate with the CCP Committee by providing information regarding construction claims, participate in the claims review process and settlement of claims; and
3. Actively pursue construction claims control.

RESPONSIBILITY FOR PROGRAM COSTS:

It is understood that CCP Participants are responsible for their share of all CCP costs. A Program Participant’s share of the program costs shall be 1% of the construction contract(s) award amount for state capital outlay projects and, the co-payment percentage as determined by the CCP Committee.

We acknowledge and agree that this Participation Agreement shall automatically conform to any amendments made to the CCP, which affect the conditions of participation in the CCP.

PARTICIPANT: President or designee: name and title

Signature: _____

**California State University
State Funded Streamlined Projects
Construction Claims Program
Memorandum of Coverage**

This endorsement executes coverage of the State funded streamlined project listed below. Please read it carefully. Once completed, submit it to the Office of the Chancellor, Capital Planning, Design and Construction, Attn: Construction Claims Administrator.

Campus: *name and address* _____

Limit of Liability: \$2,000,000 per project

Co-Payment Percentage: 5% to 25% maximum per project as
determined under the adopted policies and
procedures.

Project No.: _____ Project Name _____

Contract Value: _____

Premium Due: _____
(Contract Value @ 1% rate per CCPC Policy & Procedure)

It is agreed that this Memorandum of Coverage, together with the terms of any endorsements that may be added hereto, constitutes the entire coverage agreement.

Signature: _____ Date: _____
(Campus Vice President)

Name and Title:

Do not complete information below; for CPDC use only:

I acknowledge receipt of this Memorandum of Coverage on _____, and that distribution of copies was made as indicated below.

Signature: _____ Date: _____
(Construction Claims Administrator, CPDC)

Distribution: Vice President for Business & Administration, Executive Dean, CPDC Facility Planner

California State University

Construction Claims Liability Coverage

Terms and Conditions

Throughout this document, words and phrases that appear in **boldface** type have special meanings. They are defined in Section I – **Definitions**.

SECTION I – Definitions

Contractor means all contractors and subcontractors performing work on a **Covered Project**.

Construction Claims Program Committee means the five standing members of the committee made up of two Executive Deans, two Vice Presidents and chaired by the Assistant Vice Chancellor of Capital Planning, Design and Construction. The committee also has four alternate members made up of two Executive Deans and two Vice Presidents.

Construction Claims Program Fee means the 1% of construction contract award that campus is required to pay in order to participate in the Construction Claims Program. This fee is separate from the **Co-Payment** required if a claim must be ultimately paid.

Co-Payment means the amount to be paid by the program participant; it is equal to the **Co-payment Percentage** multiplied by the **Ultimate Net Loss**. For example, if the **Co-Payment Percentage** is 5% and the ultimate net loss is \$200,000, then the program participant is responsible for paying a \$10,000 **Co-payment**.

Co-payment Percentage means the percentage of **Ultimate Net Loss**, which the **Program Participant** has to pay. The **Co-Payment Percentage** per project will be a minimum of 5% to a maximum of 25% in accordance with the established policies and procedures of the CCP.

Covered Claims means any and all claims, suits or demands filed by all contractors upon completion of a project, which are not otherwise excluded from coverage and for which no other **Project Funds** are available.

Covered Individuals means persons who are past or presently appointed officials or employees of the **Program Participant**, whether or not compensated while acting for, or on behalf of the **Program Participant**, including service on outside boards at the direction of the **Program Participant**. **Covered Individuals** do not include employees of non-program participant organizations, including, but not limited to: auxiliary organizations, alumni associations and volunteer university support groups unless such non-program participant organizations are specifically covered by endorsement to this document. **Covered Individuals** do not include design professional who are not employees of the **Program Participant**. **Covered Individuals** do not include owner agents.

Covered Party is defined in Section IV of this document.

Covered Project means those State funded streamlined major capital outlay construction projects which are initiated during the coverage period and which are specifically listed by endorsement to this document.

Date of Acceptance means the date the **Program Participant** assumes the responsibility for the **Covered Project** as the term “acceptance” is defined in written agreements with the contractor.

Program Participant means the campus that has signed the Memorandum of Coverage.

Occurrence means any and all covered claims by all contractors working on a **Covered Project**. All covered claims arising from a covered project shall be treated as a single occurrence.

Project Funds means all monies appropriated for the construction of a **Covered Project**.

Property Damages means:

1. Physical injury to or destruction of tangible property which occurs during the coverage period, including the loss of use thereof at any time resulting there from; and
2. Loss of use of tangible property, which has not been physically injured or destroyed, provided such loss of use is caused by an **Occurrence** during the coverage period.

Ultimate Net Loss means the amount of paid claims and liability for damages for which the **Program Participant** is responsible on a per **Occurrence** basis, and which the **Program Participant** actually pays in cash, after making proper deduction for all recoveries and salvages collectible, except that payments shall not constitute **Ultimate Net Loss** to the extent other funds are available from **Project Funds** for the **Covered Project**. The **Ultimate Net Loss** includes defense attorney fees and costs of the **Program Participant** in defense of the **Covered Claim** expenses, but does not include any salaries of the **Program Participant’s** regular employees. **Ultimate Net Loss** shall not include any of the above-described expenses incurred for damages against a **Program Participant** or defense expense for damages or expenses incurred because of liability excluded by this document.

Value Added Claim means claims arising from unfunded owner requested elective extras not part of the base bid (4.4). A 4.4 change proposal is a proposal originated by the university.

SECTION II – Coverages

Subject to the **Co-payment** percentage, CCP agrees:

To pay on behalf of the **Program Participant** those sums for **Ultimate Net Loss** which the **Program Participant** shall become obligated to pay as damages, by reason of liability imposed by law, or liability for **Covered Claims** of **Contractors** assumed by contract, because of **Covered Claims**, arising from a **Covered Project** of the **Program Participant** to which this document applies, caused by an **Occurrence**.

SECTION III – Limitations Upon CCP's Liability

Regardless of the number of (1) persons or entities covered under this document, or (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought because of injury or damage, the CCP's liability is limited as follows:

The CCP's liability for damages shall be only for the **Ultimate Net Loss** less the amount of the **Program Participant's Co-Payment** not to exceed the limit of coverage shown in the document, as the result of any one **Occurrence**.

The **Program Participant's Co-Payment Percentage** applies to each **Occurrence** without regard to exclusions, limitations or exhaustion of aggregate limits in underlying or contributing coverage, insolvency of any insurance carrier or insurance pool, or any circumstances wherein underlying or contributing coverage is uncollectible.

The CCP shall not be liable for claims filed after the expiration of any such time limitation that is identified in the project's general conditions.

For the purpose of determining the CCP limit of liability and the **Co-Payment Percentage** of the **Program Participant**, all damages arising out of the continuous repeated exposure to substantially the same general conditions shall be considered as arising out of one **Occurrence**.

SECTION IV – Covered Parties

The parties covered by the CCP:

- A. The **Program Participant** named.
- B. The following individually and collectively, when acting solely within the scope of their duties, office or employment for the named **Program Participant**: Members of the Board of Trustees, Officers and Employees of the CSU.
- C. **Covered Individuals** is defined in Section I of this document.

SECTION V – Exclusions

CCP shall not be obligated to make any payment or defend any lawsuit in connection with any claim made against the **Program Participant** as follows:

A. For injuries or damages, which do not arise out of an **Occurrence** as defined in this document;

B. For any liability for damages for either the actual or alleged use, misuse, mismanagement or loss of funds, grants, or appropriations nor for the return of such funds, grants, or appropriations where such liability arises due to fraudulent or criminal act or acts of a **Covered Individual**. The CCP shall defend a **Covered Individual** unless their alleged conduct was outside the scope of employment.

C. For any liability arising from a **Value Added Claim**.

SECTION VI – Conditions

A. **Covered Party** shall comply with adopted Policies and Procedures of the CCP. Such Policies and Procedures may impose various duties and obligations as a condition of coverage including, but not limited to, claims handling and coverage determination.

B. Notice of an **Occurrence**, Claim or Suit:

1. In the event of an **Occurrence**, written notice containing particulars sufficient to identify the **Covered Party** and also reasonable obtainable information with respect to the time, place and circumstances thereof, including the names and addresses of the **Covered Party** and of available witnesses, shall be given by or for the **Covered Party** to the Construction Claims Program Committee chair. .
2. If claim is made or suit is brought against the **Covered Party**, the **Covered Party** shall be obligated to forward to the CCP or its designated representative every demand, notice summons or other process received by it or its representatives.
3. The **Covered Party** in cooperation with the Office of General Counsel shall cooperate with the CCP and upon its request, assist in making settlements in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization which may be liable to the **Covered Party** because of all damages with respect to which coverage is afforded under this document; and the **Covered Party** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The **Covered Party** shall not, except at its own risk, voluntarily make any payment, assume any obligation or incur any expenses. In the event that the amount of **Ultimate Net Loss** becomes certain either through trial court judgment or through agreement among the **Covered Party**, the claimant and the CCP, then the **Covered Party** may pay the amount of judgment or amount agreed upon to the claimant or effect the settlement and, upon such submission of due proof thereof, the CCP shall reimburse the **Covered Party** for that part of such payment which is in excess of the dollar value of the co-payment percentage, or will, upon request of the **Covered Party**, make such payment to the claimant on behalf of the **Covered Party**.

Policies & Procedures

SECTION I - Procedures for Processing the 1% Construction Claims Program Fee

Once a State funded streamlined capital outlay project has been successfully bid, campus will be charged for project coverage within thirty (30) days of issuance of the Notice to Proceed, and the fee will be based on the awarded contract value stated therein. This is intended to insure that all projects are appropriately covered and that payment is completed efficiently and timely.

CPDC, Facilities Planning, shall maintain information for all pending capital outlay projects eligible for coverage through the program. Once a project has been successfully bid, the following actions shall occur:

- A. The campus will submit to the facility planner in CPDC a copy of the Notice to Proceed, CPDC 2-7 form at award, and the abstract of bids.
- B. The construction claims administrator shall issue the Memorandum of Coverage to the Vice President for Business and Administration for execution. A copy of the executed document shall be sent to the campus Vice President for Business and Administration, the campus Executive Dean, and the facility planner in CPDC.
- C. The construction claims administrator shall submit a request for a Plan of Financial Adjustment (PFA), using the Memorandum of Coverage for support documentation, to the accountant for the CPDC Construction Claims Program trust account.

The construction claims administrator shall maintain official records for all documents prepared under this policy and procedure.

Procedures for Submitting a Claim to the CCP Committee

It is the policy of the Construction Claims Program Committee (CCPC) that all submitted claims will be subject to a standardized process. Therefore, it is mandatory that campuses follow the specific plan that is clearly stated herein. This policy is intended to ensure that all campus claims are resolved in a fair, efficient and timely manner. When a campus becomes aware that it is likely to receive a covered claim that exceeds project funds, it shall notify the CCPC Chair so that mitigation efforts may be coordinated.

SECTION II - Conditions for Submission of a Request

Campuses may submit a request to the Construction Claims Program Chair for funding of a contractor claim under the following conditions:

- A. The project management team was successful in negotiation of the claim, at its own risk but the claim exceeds the available project funds.

- B. The pre-claim negotiations result in a preliminary resolution that required funding beyond the available project funds.
- C. The campus's construction claims review process results in a successful preliminary resolution that requires funding beyond available project funds.
- D. The recommendations of the Contractor's Claim Review Board hearing favor the contractor's claim, and the awarded amount requires funding beyond the available project funds.
- E. The contractor rejects the recommendations of the Contractor's Claim Review Board, and threatens or files an action, which is resolved in a subsequent negotiated statement.

The Contractor's Claims Review Board hearing contractually exhausts the contractor's appeal process. However, if the claim is pursued by the contractor, a meeting shall be held to review options and the strength of the CSU position. The meeting should include the Vice President for Administration, the Executive Dean, the Assistant Vice Chancellor of CPDC chair of CCPC, the chair of the CSU Contractor's Claims Review Board, campus counsel, and others as required. If the recommended outcome is to negotiate a settlement, then the appropriate University official or counsel shall pursue it with the contractor or the contractor's counsel.

- F. The contractor files a court action and the court determines that campus has to pay the contractor's claim or the contractor and the campus agree on a settlement amount.

SECTION III - Requirements for Submitting a Request

If any of the previous conditions exist, a campus must submit a request to the Chair of the CCPC. The campus will be required to demonstrate to the CCPC that the project funds and contingency were used for the base project scope and that the claim(s) are not a result of poor judgment of the project management team in directing the contractor to perform protested work. The campus request shall include the following:

- A. Brief description of the claim including the contractor's position, the project management team's position, the amount of the claim, and the requested claim payment value.
- B. Indicate process and rationale for direction given to the contractor to perform protested work; include a copy of field instructions as appropriate when directions have been used per Contract General Conditions, Article 5.02.
- C. Identify efforts utilized to mitigate the claim.
- D. Provide a brief overview of the campus's management of the project to explain whether most disputes were successfully resolved or mitigated.
- E. Provide a copy of the project's change order log that includes the reason for each change according to approved categories

SECTION IV - Process for Determining Campus Co-payment

- A. The CCPC will convene a committee meeting as soon as possible after receipt of a campus request. The CCPC will review all required information submitted by the campus, and will then evaluate and assign costs, if any, to the following factors in

order to determine the campus's co-payment percentage. The method for determining this percentage will have a direct correlation to the percentage value of the claim compared to total construction cost with a minimum of 5% and a maximum of 25%.

1. Cost of delay claims caused by the campus, either directly by specific direction to stop work, or indirectly by not acting timely when delay was otherwise preventable.
 2. Cost of elective change orders (owner requested) which have no direct relationship to base (original) project scope.
 3. Cost of known claim that was not timely mitigated to lessen or avoid the cost impact due to specific direction given by the campus (use of Contract General Conditions, Article 5.02).
 4. Overall evaluation of how the project was managed.
 5. Financial reporting oversight.
 6. How the contingency was spent.
 7. Timely mitigation/resolution of contractor-related issues.
 8. Negligence in project management.
- B. CCPC recommendations that exceed a five percent (5%) co-payment will include a written objective and subjective assessment of campus management of the project. The CCPC may request additional information from the campus, the contractor and others as deemed appropriate.
- C. If a campus disagrees with the recommended percentage established by the committee, the campus has seven (7) days following receipt of written notification to submit a written appeal to the chair of the CCPC.
- D. The campus may request a meeting with the CCPC to personally present an appeal within two (2) weeks after submitting the written appeal.
- E. The CCPC will issue a final recommended co-payment percentage, with the concurrence of the Executive Vice Chancellor/Chief Financial Officer of the Chancellor's Office and forward it to the appropriate individuals in the Chancellor's Office and the campus.
- F. The CCPC will endeavor to provide its final recommendation within thirty (30) days of receipt of request.

SECTION V - Recommended Payment by CCPC

- A. Upon review of all information submitted, the CCPC will submit a recommendation(s) to the Executive Vice Chancellor/Chief Financial Officer at the Chancellor's Office to provide a funding allocation from the CCP account for a covered claim(s) to the campus so that the contractor may be paid as timely as possible. This will avoid late payment penalties during the co-payment analysis and determination phase.
- B. The campus will then be responsible to reimburse the Chancellor's Office CCP account for the co-payment amount, once it is determined.
- C. The CCPC will prepare an annual report on all decisions and fund balance, and present it to the Executive Vice Chancellor/Chief Financial Officer of the Chancellor's Office.

SECTION VI – Court Awards to CSU

Should the court action determine that the contractor is to pay the CSU, then the award shall be used in the following priority:

- A. Direct costs paid by the CCP.
- B. Balance to be returned to campus for expenditure for capital outlay use only.

SECTION VII – Construction Claims Program Trust Fund Balance

Once the Construction Claims Program Trust Fund balance reaches \$10 million, campuses will continue to pay the 1% program fee for each Covered Project. However, if there are no Covered Claims against the project within 30 days after the County Recorder's recordation date of the Trustee's notice of completion, the campus shall submit, to the Chair of the Construction Claims Program, a certification that no Covered Claims related to the project have been filed. After receipt of such certification, the 1% program fee for that project shall be returned to the campus. Such returned program fees shall be used for capital outlay purposes only.