

## SFCPSC Partnering Enhancement Proposal (PEP)

### Success Factor 2.0: Performance Measures

#### Issue 2.2.1 Partnering Effectiveness – Litigated and Arbitrated Claims Benchmarking

##### Barrier

The six City and County of San Francisco Departments delivering construction projects (SF Departments) have not defined the outcomes we want from the Partnering Program. To determine how effectively each SF Department is resolving project-level issues, the first performance measure we decided to create is a benchmark related to construction claims.

##### Problem Statement and Current Practice

Currently, the San Francisco Departments are not measuring either the number, type, or size of litigated claims or lawsuits that are eventually resolved through arbitration. Each SF Department works with different individual attorneys from the City Attorney's Office.

- How can we measure the number, size and type of claims resolved by the SF City Attorney's Office through direct negotiation, mediation, arbitration or litigation each year?
- How can we establish an historical baseline (benchmark) for each of the City Departments trends in construction claims?

##### Proposal:

##### Program-Level Performance Measures for Claims and Arbitrations

We agree that construction claims resolved by the City Attorney's office through direct negotiation, mediation, arbitration or litigation are an indicator that project teams are not resolving all potential issues through the Partnering process. Currently each individual Department and the City Attorney's office are not reporting the number of construction claims resolved through arbitration and litigation.

It is the recommendation of the SFCPSC Performance Measures subcommittee that we develop a performance measure for the number of construction claims, arbitrations and settlements, the size of construction claims, when they occur, and when they are settled for each SF Department. This performance measure will ultimately be collected and added to the SF Partnering Program dashboard.

##### PEP 2.2.1.1

##### Claims Performance Measure Benchmark Survey

To achieve this performance measure, we will develop a formal request and survey and submit it to the City Attorney's office on behalf of each SF Department to create an accounting of the number, the size, and the timing of the claims settlement. We will also identify how the claim was resolved be it through direct negotiation, mediation, arbitration or litigation. We will gather data from 2007 - 2016.

Each SF Department will identify an individual who is tasked with collecting this benchmarking data and who will update the claims resolution data for the SF Partnering Program annually in Fiscal Quarter 1 (by September 1<sup>st</sup>). Ultimately, this performance measure will feed into the SF Partnering Program dashboard.

### **Claims Benchmark Survey Parameters**

The claims benchmarking survey will include the following parameters.

#### **Survey Criteria and Definitions**

- A claim will be defined as a “Government Claim,” which is a litigated construction dispute (claim) between the City and County of San Francisco Department (Owner) and the General contractor or Design/Builder (Contractor) delivering a construction project. A claim is a legally defined construction industry term for a dispute that is not resolved at the time of project completion.
- Owner Definition: The SF Department that is the “Awarding entity” (owner) at the time of project start (Notice to Proceed or NTP).
- Claims between the Contractor and the Owner will be included in this data set. All claims will be rounded to the nearest \$10,000 dollars.
- Subcontractor “pass-through” claims (through the Contractor) WILL be included in this data set.
- Claims between the General Contractor and Subcontractor WILL NOT be counted in this data set.
- Claims between the General Contractor and the Designer WILL NOT be counted in this data set.
- Claims between the SF Departments and the Designer or Architect WILL NOT be counted in this data set.
- Historical data:
  - We will seek claims data over the past ten years (2007 – 2016)

#### **Claims Benchmarking Survey Details**

- San Francisco Department
- Number of construction claims per year for all project types
- Project detail for projects involving claims
  - Project Awarding Entity (Owner)
  - Project ID Number
  - Project Name
  - Contractor
  - Designer
  - Project NTP Date
  - Project Completion Date
  - Date claim was filed (or project completion date if unknown)
  - Date claim was resolved
  - Project Delivery Method
  - Construction Type for project (infrastructure, building, municipal, etc.)
  - Dollar value of claim made by contractor (to the nearest \$10,000)
  - Dollar value of claim resolved (settlement outcome in \$USD) – to the nearest \$10,000
  - Dollar value of the “construction budget” for the project involving a claim or claims – to the nearest \$10,000
  - Methodology for resolving the claim: Direct Negotiation, Mediation, Non-Binding Arbitration, Binding Arbitration, or Judgement

### **San Francisco Departments Detail**

Number of projects and budget for projects will be counted on a “cash flow” basis per fiscal year. Each year will be reported from July – June 30<sup>th</sup>.

- Number of construction projects per year for all project types from 2007 – 2016.
  - Number buildings
  - Number infrastructure
  - Number mechanical
  - Number of other construction project types
  - Total number of construction projects
- Total construction budget per year from 2007 – 2016.
  - Total construction budget for buildings
  - Total construction budget for infrastructure projects
  - Total construction budget for mechanical buildings
  - Total construction budget for other projects
  - Total construction budget for all construction projects

### **SF Department Representatives Collecting Data:**

- SF Public Works: Edgar Lopez
- SFO: Julia Katz and Felicia Bragg
- SFPUC: Kathy How and Alan Johanson
- SFMTA: Siew-Chin Yeong
- SF Port: Tim Leong
- SF Recreation & Parks: Cara Ruppert and Dawn Kamalanathan

### **Resources Required and Implementation Plan**

SF Department Representatives will work internally with their staff and with the City Attorney to develop and respond to the survey. A Microsoft Excel Worksheet with tabs for each SF Department will be developed.

Survey responses will be shared with Partnering Steering Committee Coordinator (Mindy Linetzky) and Facilitator (Rob Reaugh).

The Claims Benchmarking Survey will be updated on an annual basis by September 1<sup>st</sup> (within Fiscal Year Quarter 1). Ultimately, the survey will serve as a benchmark for the SF Partnering Program dashboard.

### **Performance Measurement**

The measurement of success will be the development of a completed benchmarking study that provides the baseline statistics for the SF Partnering Program dashboard.

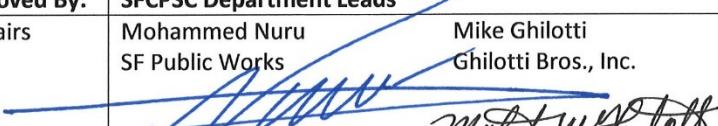
Addendum 1:

Sample Cover Letter (pg. 5)

Addendum 2:

SFCPSC Performance Measures Claims Litigation Benchmarking Survey (see Excel document) (pg. 6-7)

Partnering Enhancement Proposal 2.2.1 – Litigated and Arbitrated Claims Benchmarking  
 Performance Measures Meeting #3 Attachment 2

Success Factor 2.0: Performance Measures		
Issue 2.2.1 Partnering Effectiveness – Litigated and Arbitrated Claims Benchmarking		
Concept Approved By:	SFCPSC Department Leads	Date
SFCPSC Co-Chairs	Mohammed Nuru SF Public Works  Mike Ghilotti Ghilotti Bros., Inc. 	2/8/17
SFCPSC Department Leads	Kathy How San Francisco Public Utilities Commission 	2/8/17
	Elaine Forbes Port of San Francisco 	2/8/17
	Ivar Satero San Francisco International Airport 	2/8/17
	Ed Reiskin San Francisco Municipal Transportation Agency 	2/8/17
	Phil Ginsburg San Francisco Recreation and Park Department 	2/8/17

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Addendum 1

12/8/2016

Edgar Lopez  
San Francisco City Architect and Deputy Director  
San Francisco Public Works  
30 Van Ness Ave.  
San Francisco, CA 94102

Dear Steve Jones, Esq.,

On behalf of the San Francisco Collaborative Partnering Steering Committee (SFCPSC) Performance Measures subcommittee, I am writing to request that you participate in our new Claims Litigation Benchmarking Survey (attached). The Performance Measures subcommittee has been tasked by the SFCPSC with developing a series of performance measurements that serve as indicators of the efficacy of the Construction Partnering Program.

We believe that establishing benchmarks for our current level of construction claims (so called “government claims”) is a key first step to understanding how effective our construction project teams currently are at resolving construction issues. We would also like to gather data on our historical claims for at least five years (2012 - 2016) and beyond if possible.

The first step is establishing benchmarks by identifying how many construction claims we have for each Department and to include details about each claim. We would like to know when the claim was filed, when it was resolved, how it was resolved, the dollar value of the initial claim and the dollar value of the final settlement or judgement. Our goal is to develop a simple survey that can be easily updated so our department can maintain a performance measure related to claims administration moving forward. Please feel free to contact me or Mindy Linetzky ([mindy.linetzky@sfdpw.org](mailto:mindy.linetzky@sfdpw.org)) if you have questions or concerns. Please respond to the survey by no later than January 20, 2017.

On behalf of the SFCPSC, we deeply appreciate your time and effort to support the City and County of San Francisco to become the “Owner of Choice” for the construction teams performing our projects.

Sincerely,

Edgar Lopez  
San Francisco Public Works

Addendum 2

<b>SFCPSC Performance Measures Subcommittee</b>	
Claims and Litigation Benchmarking Survey - Issue 2.2.1 Partnering Effectiveness – Litigated and Arbitrated Claims Benchmarking	
<b>Survey Criteria and Definitions</b>	<p><b>Claim:</b>  A claim will be defined as a “Government Claim”, which is a litigated construction dispute (claim) between the San Francisco Department (Owner) and the General contractor or Design/Builder (Contractor) delivering a construction project. A claim is a legally defined construction industry term for a dispute that is not resolved at the time of project completion.</p> <p><b>Owner:</b>  The Owner will be defined as the San Francisco Department that is the “Awarding entity” (owner) at the time of project start or Notice to Proceed (NTP).</p>
<b>Details:</b>	<p>Claims between the Contractor and the Owner <b>WILL</b> be included in this data set. All claims will be rounded to the nearest \$10,000 USD.</p> <p>Subcontractor “pass-through” claims (through the Contractor) <b>WILL</b> be included in this data set to the nearest \$10,000 USD.</p> <p>Claims between the General Contractor and Subcontractor <b>WILL NOT</b> be counted in this data set.</p> <p>Claims between the General Contractor and the Designer <b>WILL NOT</b> be counted in this data set.</p> <p>Claims between the SF Departments and the Designer or Architect <b>WILL NOT</b> be counted in this data set.</p> <p><b>Historical</b></p> <ul style="list-style-type: none"> <li>o We will seek claims data over the past 5 years (2011 - 2016)</li> <li>o We will determine if it is possible to collect data over the past 10 years (2007 - 2016)</li> </ul>

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Claims Benchmarking Survey Details								
San Francisco Department:								
Total Number of construction claims per year for all project types								SF Public Works
Project detail for projects involving claims								
o Project Awarding Entity (Owner)	Project 1 [Sample]	Project 2	Project 3	Project 4				
o Project ID Number	SF Public Works							
o Project Name	11085-05-11							
o Contractor	Filbert and Franklin							
o Designer	Joe Contractor							
o Project NTP Date	SF Public Works							
o Project Completion Date	11/18/2013							
o Date claim was filed (or project completion date if unknown)	12/15/2015							
o Date claim was resolved	12/16/2015							
o Project Delivery Method	7/30/2016							
o Construction Type for projects with claims (infrastructure, building, municipal, etc.)	Design-Bid-Build							
o Dollar value of claim made by contractor (to the nearest \$10,000)	Infrastructure							
o Dollar value of final settlement (to the nearest \$10,000)	\$2,300,540							
o Dollar Value of the “Construction Budget” for each project involving a Claim or Claims – to the nearest \$10,000	\$1,560,000							
o Methodology for resolving the Claim: Direct Negotiation, Mediation, Non-Binding Arbitration, Binding Arbitration, or Judgement	\$10,800,000							
Arbitration								
SF Department Detail								
2016 (Sample)								
50	2015	2014	2013	2012	2011	2010	2009	2008
240								
5								
0								
295								
<b>Total construction projects per year</b>								
o Total Construction Budget for buildings projects								
o Total Construction Budget for infrastructure projects								
o Total Construction Budget for mechanical projects								
o Total Construction Budget for other projects								
<b>Total construction budget per year</b>	\$ 145,000,000.00	0	0	0	0	0	0	0