

 U.S. Department of Transportation Federal Highway Administration		<h2 style="color: blue;">Standard Operating Procedure (SOP)</h2>	
<h3>Indiana Division</h3>		Issued: <u>9/29/2011</u> Updated: _____ (date) (date)	
Subject:	<h3>Construction Contract Change Orders and Claims</h3>	Approved: _____ (signature)	
		<u>Robert F. Tally, Division Administrator</u> (name and title)	

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II. REFERENCES

- 23 CFR 1.9 – Limitation on Federal Participation
- 23 CFR 1.27 – Maintenance
- 23 CFR 635.109 – Standardized Changed Condition Clauses
- 23 CFR 635.120 – Changes and Extra Work
- 23 CFR 635.121 – Contract Time and Contract Time Extensions
- 23 CFR 635.124 – Participation in Contract Claim Awards and Settlements
http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?sid=7dffbd77b54992b3cb1597915a9c0159&c=ecfr&tpl=/ecfrbrowse/Title23/23tab_02.tpl
- 23 CFR 635 Subpart A Non-Regulatory Supplement
<http://staffnet/pgc/results.cfm?id=2737>

Contract Administration Core Curriculum Participant’s Manual and Reference Guide 2006
 CACC III.B.5 Change Orders

CACC III.B.6 Claims
<http://www.fhwa.dot.gov/programadmin/contracts/index.htm>

Federal Highway Administration (FHWA) Area Engineer Manual 2010
http://one.dot.gov/fhwa/CPMDSS/Workforce%20Management%20Documents%20Library/FINAL%202010%20AE%20Manual%206-21-10%20_FINAL.pdf

FHWA Order M1100.1A FHWA Delegations and Organization Manual
<http://www.fhwa.dot.gov/legsregs/directives/orders/m11001a.htm>

FHWA Indiana Division Delegation of Authority
[L:\Program\Internal Operations\Division Office Responsibilities\Delegation of Authority\Delegation of Authority \(5-16-2006\).doc](L:\Program\Internal Operations\Division Office Responsibilities\Delegation of Authority\Delegation of Authority (5-16-2006).doc)

[Indiana Department of Transportation and FHWA Indiana Division Stewardship and Oversight Agreement, 2/2/07](#)

INDOT Standards (<http://www.in.gov/dot/div/contracts/standards/>)
INDOT Standard Specifications
INDOT General Instructions to Field Engineers (GIFE)

III. PURPOSE/OBJECTIVE

The primary purpose of this Standard Operating Procedure (SOP) is to define the policies, procedures, and guidance for the review, approval and determination of Federal participation of Contract Change Orders and contract claims for Full Oversight projects, in accordance with 23 CFR 635.120 and 23 CFR 635.124 respectively

IV. DEFINITIONS

Change Order (CO): This is a document issued during the construction phase of a project to change contract requirements. It can result in a change in costs, change in time allowed to construct the project, or both.

Claim: Is a request for compensation, for a time extension, or for any other remedy arising from a dispute, disagreement, or controversy concerning respective rights and obligations under the contract. In simple terms, it is a continued demand for payment by the Contractor if payment has been previously denied under INDOT's normal procedures for CO approval.

Contract: Is a written agreement between the INDOT and the Contractor setting forth the obligations of the parties for the performance of and payment for the prescribed work. The contract includes the plans, specifications, estimates, and special provisions approved by the FHWA Division Office Transportation Engineer (TE), as part of project authorization.

Contract Modification: It is any formal change to the construction contract. Changes may be unilateral, non-substantive, administrative type changes; formal agreements between INDOT and the contractor; or changes directed by INDOT without the contractor's consent. These changes modify the plans, specifications, estimates, and special provisions approved by the TE.

Dispute Resolution Board (DRB): This is a method of resolving disputes and claims between owners and contractors to avoid litigation. Typically the DRB would consist of a panel of three experienced, respected, and impartial reviewers.

Division Administrator Approval (per 23 CFR 635.120): This approval level for COs has been delegated to the TE.

Effective Date (23 CFR 635.120): The date in which only costs incurred after that date can be considered for Federal participation. It must be a date prior to commencing the work covered by the CO. For consistency, the Division has decided that the effective date for major COs shall be the date of the FHWA prior approval. Field approved COs are

effective the date of the construction inspection. The effective date of a minor CO is the date INDOT approves the CO. Subsequent documentation supports the eligibility determination. If work covered by the CO starts or is completed prior to the effective date, the CO is ineligible for federal-aid participation.

Force Account CO: A special type of change order used when agreement cannot be reached between INDOT and the contractor, when the extent of new work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. In such cases, INDOT directs the contractor to perform the work and makes payment based on the contractor's actual labor, equipment, and material expenses plus markups for overhead and profit. Normally, prior to directing the contractor to perform the work, INDOT performs suitable cost analysis to verify contractor's proposed costs.

Formal Approval – A written and signed document issued after FHWA has reviewed the complete CO material and determines that the change is eligible for Federal reimbursement. Normally the formal approval is given at same time as the prior approval. However, in the case of an emergency or unusual condition, prior approval may be given in advance verbally and ratified later with the formal approval.

Major Change: Major change or major extra work is generally defined by 23 CFR 635.102 as a “change which will significantly affect the cost of the project to the Federal government or alter the termini, character or scope of work”. Under the 23 CFR 635.120 provision, any “Major Change” requires formal FHWA approval prior to the effective date of the change, meaning that work may not proceed until formal approval has been granted. Any change order to be executed under this category, requires FHWA prior approval. FHWA and INDOT have identified the changes shown in Appendix A as Major changes.

Minor Change: This standard operating procedure defines this as a “non-major change”. Federal policy defines a “non-major change” as all changes that do not fall under the definition of a “major change”. They do not require FHWA prior approval, however, they do require formal approval. Such approval may be given after the work is performed.

Prior Approval: A written and signed document issued for major COs. It is a required FHWA approval before commencing the work authorized by the CO. Normally the prior approval is given at same time as the formal approval. However, in the case of an emergency or unusual condition, prior approval may be given in advance verbally and ratified later with the formal approval.

Participating: If the proposed change is eligible for Federal-aid participation, then full participation is granted without exception.

Participating in-part: There may be instances where only portions of the CO work would be eligible. One such example is a CO to provide for extension and clean-out of a culvert pipe. Extension of the pipe would normally be eligible for Federal-aid participation, but not the clean-out (maintenance). It is the responsibility of the TE to clearly distinguish the eligible costs from non-eligible costs of the CO.

Non-Participating: This is when the proposed change is not eligible for Federal-aid participation. See Appendix B for “List of frequent federal non-participating items”

Site Manager: This is a comprehensive client/server based construction management tool developed by AASHTO. This system provides for data entry, tracking, reporting, and analysis of contract data from contract award through contract completion. It can be used by all levels of construction and materials personnel such as field inspectors, technicians, project managers, lab personnel, producer/suppliers, and contractors.

Verbal Prior Approval: In the case when a major change needs to be implemented immediately due to an emergency or unusual condition, then the prior approval may be provided by FHWA in advance verbally to allow the work to commence and ratified later with the formal approval. However, this verbal prior approval does not guarantee Federal reimbursement. It is normally provided via phone from the TE to the PS/PS, although it may also be given through discussion with the PE/PS during a construction inspection.

V. SCOPE

Primarily, this SOP is intended to ensure that proposed contract changes and potential claims on Federal-aid projects are properly reviewed and documented. Specifically, this SOP outlines the procedures to be used by the FHWA Indiana Division Office for those Federal-aid full oversight projects. In implementing this SOP, the FHWA Indiana Division Office (Division) will ensure that:

- The work to be performed is eligible for Federal-aid participation,
- Quality materials and acceptable construction practices are utilized,
- The work in question is reasonable in consideration of project budget and schedule,
- The work in question can be accomplished in accordance with the approved NEPA document for the project,
- All changes/extra work are processed in accordance with 23 CFR 635.120, and
- All claims are processed in accordance with 23 CFR 635.124.

FHWA approves all COs on Full Oversight projects; and under the authority granted by FHWA per the existing FHWA/INDOT Stewardship and Oversight Agreement, approves all COs on State Oversight projects on behalf of the FHWA. In reviewing and approving contract changes on State Oversight projects, INDOT shall use procedures approved by the Division. INDOT procedures used to approve CO's on State-oversight projects must be responsive to the provisions of 23 CFR 635.120 and 23 CFR 635.124, respectively. The Division will evaluate INDOT's procedures through process review techniques as identified through annual risk based assessments.

VI. PROCEDURES

The following procedures outline the process for submitting, evaluating, and approving changes in plans, specifications, estimates, materials, site conditions; and potential claims. These procedures outline the formal processes to be followed, but the TE shall consult with specialists from various functional units in the Division as applicable, and use informed engineering judgment to evaluate each particular case on its own merit.

Change Orders

A. General

There are two types of COs – Major and Minor. See Definitions for more information. FHWA must approve all COs on full-oversight projects. FHWA must give prior approval (before work starts) for major COs. The section below entitled “Processing Change Orders” describes what must occur on all COs, regardless of the type of CO (major or minor). The three sections that follow describe additional information for processing major COs, minor COs, and COs process on State-oversight project.

B. Processing Change Orders

When reviewing a CO, it is necessary to evaluate the requested change with respect to:

1. Federal-aid eligibility
2. Impact to Scope of Work
3. Basis of Payment
4. Adjustments to Contract Time

Further information on each of these four points can be found in the Section III.B.5 of the Contract Administration Core Curriculum Manual and Reference Guide 2006.

Eligibility Conditions – While determining if a CO should be approved, at least one of the following general eligibility conditions should be fulfilled:

- A better product at less cost

- A better product in less time
- An equal product at less cost and/or contract time
- A better design for the actual field conditions
- Modifications due to unforeseen site conditions

Eight required items – FHWA considers the following eight items in order for one to determine Federal eligibility of a change order (must include all applicable supporting documentations):

1. Limits of the proposed change,
2. Reason(s) for the proposed change,
3. Who initiated/recommended the change, and the person's involvement on the project,
4. Clear and detailed description of the work to be done,
5. Necessity for the work (if work is not done, what will be the consequence),
6. Bid items involved,
7. Half-size drawings as necessary,
8. Full explanation, including price justification, for new bid items.

If all information listed above is forwarded to the TE as for major change orders or reviewed in the field for minor change orders, it may normally be sufficient to fulfill the "adequate documentation" requirements of the regulations. However, more documentation may be needed. The TE should work with the PE/PS to acquire the required items. The level of detail required for the review should be commensurate with the magnitude of the proposed change order.

All applicable supporting documentations must be attached to the request. Inadequate supporting documentation is a good reason for determining a CO to be non-participating.

Design changes – Where a design change is proposed or recommended, the name of the designer or other functional unit expert should be included in the request, including their justification for the proposal or recommendation.

Force Account method of payment – When approving CO work, the TE must also review and approve the basis of payment used or to be used. INDOT should be encouraged to settle the method of payment (bid item, agreed price, etc.) with the contractor (instead of using force account procedures). Force account procedures are appropriate only when agreement cannot be reached with the contractor, when the extent of new work is unknown or is of such character that a price cannot be determined to a reasonable degree of accuracy. The PE/PS is required to perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order. The method and degree of analysis can vary by project, but the analysis must substantiate the final compensation determination and is subject to the approval of FHWA. The cost analysis verification must be documented and filed as part of the project records by the PE/PS. Before the force account CO is approved by the TE, the TE must verify that PE/PS has accurately performed the required cost analysis, and documented these costs.

Time Adjustments – When evaluating the work covered by the change order, time adjustment is a factor that must be considered. When the work affects an activity on the critical path of the contractor's operations and merits an adjustment, the contract time should be adjusted concurrent with approval of the CO. However, in those situations that warrant a deferred time determination, a supplemental CO must be prepared as soon as the CO work is completed. Its effect on the controlling item of work must be used as a basis for FHWA approval.

Change orders requiring permits, environmental clearances and Public Interest Findings – FHWA approval of the required public interest finding for certain proprietary materials (23 CFR 635.411a), mandatory borrow/disposal sites (23 CFR 635.407a), or certain State furnished materials (23 CFR 635.411c), etc. must be completed prior to final approval of major COs that implement proprietary materials, mandatory borrow/disposal, State furnished materials, etc. Prior approval for these COs may be given only if the necessary permits, environmental clearances, and public interest findings are appropriately documented for the Division.

DBE goals and COs – DBE contract goal applies to CO as well as to the original contract. See Appendix F – "Supplemental information regarding DBE Program as it relates to change orders" for more information.

Errors and Omissions – Engineering errors and omissions will occur on occasion during highway design and/or construction. Each such engineering error should be considered on its own merits to determine whether any corrective design or work is eligible for Federal-aid participation. Federal-aid participation in errors that may reasonably be expected to occasionally occur (despite the exercise of normal diligence) may be justified, as long as carelessness, negligence, incompetence, or under-staffing were not contributing factors. For consultant design errors and omissions, FHWA's policy is that the responsible consultant should pay for the cost of the new design, but is generally not held responsible for additional construction costs resulting from such errors, as long as the errors are not a result of gross negligence or carelessness.

Adequate environmental clearance – Contemplated changes should be evaluated by the TE in coordination with the applicable Division environmental specialist to identify any effects on environmental mitigation commitments, permit conditions, or agreements with resource agencies, and to determine whether new social, environmental or economic issues have been introduced that need to be addressed under applicable Federal, State, or local law. Environmental clearance on any project is valid only for the work described in the authorized PS&E submitted. Substantial changes could require amended or additional environmental clearance. COs that modify project limits must be cleared through the environmental process before the change order can be approved and work started.

Non-participation – The reason for non-participation (in whole or in part) should be explained on the CO or noted by the TE when approving the CO. For major COs, it is noted on the CO by the TE. For minor COs, it is noted in the inspection report. If rejection of the proposed major change is due to incomplete and/or unsatisfactory supporting documentations, the TE is encouraged to give the PE/PS the opportunity to provide additional supporting documentation, for consideration in determining federal-aid participation. If the TE is unable to secure additional documentation from the PE/PS that may enable FHWA to participate in full or in-part, the TE will indicate such in the CO final approval, and state that the rejection is final.

C. Processing Major Change Orders

When a major CO is required on a full oversight project, early communication between the INDOT Project Engineer/Project Supervisor (PE/PS) and the TE is essential to assure that the changes being proposed are in conformance with the standards and prior approval requirements of FHWA. The PE/PS is responsible for notifying and forwarding all applicable information to the TE for evaluation and approval.

Prior approval required – For all major COs, the TE's review and approval of the CO must occur prior to the work commencing.

The following describe the general CO approval process (see flowchart in Section VIII):

- 1) **Receive FHWA Form 1365 with eight required items and supporting documents attached** – When a major change is warranted, the PE/PS notifies the responsible TE assigned to the INDOT District via electronic mail and transmits in PDF form the completed FHWA Form 1365 (Appendix C) to receive formal prior approval. The information submitted must at least include the above “eight required items”.
- 2) **TE reviews major CO** –
 - a) The TE reviews the FHWA Form 1365 that was completed down through the “Method of Payment” box and submitted by the PE/PS in accordance with 23 CFR 635.120.
 - b) Any major CO that has been executed and work performed or started without the required formal FHWA prior approval, is in violation of the 23 CFR 635.120 provisions. Consequently, it is ineligible for federal-aid participation.
 - c) If the request addresses the “eight required items” in sufficient detail and to the satisfaction of the TE, then the CO will be approved.
 - d) Specific performance criteria regarding review and approval times are in the FHWA and INDOT Stewardship and Oversight Agreement. TEs are encouraged to limit the duration their review and approval of a major change order request to 5 working days.

- 3) **TE signs major CO** – If complete and satisfactory supporting documentation is attached to the request and no additional supporting documentation is necessary, the TE will then electronically:
 - a) Sign the form.
 - b) Note the approval effective date of the major CO. The approval effective date of the major CO will be the date the TE acknowledges that the “eight required items” have been addressed.
 - c) Identify and explain the type of FHWA approval (“Fully Participating” or “Participating-in-Part” or “Non-Participating”). For a list of frequent Non-Participating items, see Appendix D.

- 4) **Return and file major CO** – At the conclusion of the FHWA approval action, the signed PDF of the CO is:
 - a) Retained in the Division's post award project file for the project.
 - b) Enter applicable CO data into the Division Project Tracking Database.
 - c) Sent to the PE/PS by electronic mail as soon as practical, to allow the work to commence or to inform the PE/PS of our rejection of the proposed major change.
 - d) Furnished to the Division Office Construction Program Manager for information and tracking of trends, if determined to be non-participating.

Verbal prior approvals – In cases of an emergency or unusual condition, prior approval can be requested via a phone call to the TE, from the PE/PS (when emergency or unusual conditions justify it) or through discussion with the PE/PS during a construction inspection. Normally, prior approval requested via phone call by the PE/PS, must be responded to verbally within one hour of the request. If the TE cannot be contacted, then the PE/PS should be directed to another TE, their TL, ADA or DA. Such approval does not guarantee Federal participation and must thereafter be ratified with formal approval as soon as practicable. The request for formal approval should describe the details of FHWA’s prior approval. An example of an unusual condition that justify FHWA verbal approval to continue work is when during excavation, a contractor encounters an underground utility that should have been relocated in advance of the scheduled work in this location. Under this circumstance, to avoid delaying the contractor from continuing work, the PE/PS should immediately notify the TE by phone, discuss the situation and receive verbal prior approval.

D. Processing Minor Change Orders

For minor changes, FHWA prior concurrence is not required. However, as with major changes, minor changes also require formal approval, but such approvals and type (i.e., participation determination) may be given retroactively at the time the TE conducts construction inspections. TEs will document minor COs reviewed in the construction inspection report by listing the COs reviewed. Those approved will include the effective date and the participation determination (“Fully Participating” or “Participating-in-Part” or “Non-Participating”). Reasons for any portion of the CO that FHWA will not participate in should be adequately explained.

E. Processing COs on State-oversight Projects

INDOT approves all change orders on State-oversight projects. FHWA monitors INDOT control documents, such as INDOT’s GIFE and Change Order Policy, to evaluate how INDOT takes Federal actions on behalf of FHWA on State-oversight projects. FHWA will at least evaluate INDOT’s methods for documenting the following Federal actions:

- ❖ Prior concurrence of major COs
- ❖ Eligibility determinations when providing final approval

FHWA also conducts construction inspections on State-oversight projects each Federal fiscal year. The number conducted equals to a percentage of number of projects anticipated to be authorized for construction in that year. FHWA will review all approved COs on a project at the time of each inspection to determine if they have adequate supporting documentation and if appropriate decisions were made regarding Federal participation.

Claims

Occasionally, a major CO is issued to cover costs of a contract claim. In general, the eligibility for and extent of Federal-aid participation in contract claim awards is determined on a case-by-case basis. However, early coordination with the TE and involvement of the TE needs to be initiated by INDOT is necessary to allow time and flexibility to work out specific details, and ensure that Federal concerns are being addressed, as well as preserving for INDOT the potential Federal-aid eligibility of the claim. For any CO that is prepared to cover the costs a claim, the TE must review all related supporting documentation to ensure that there is a legal and contractual basis for the claim. If adequate justification is not provided, the CO will be made non-participating.

In order for FHWA to participate in whole or in part in a claim, FHWA must provide prior concurrence before any form of payment (not just a CO) is made to a contractor resulting from a claim, Review Board determination, Exception to Project Record Final Estimate (PRFE), District and/or Central Office determination, or Arbitration; Supplemental COs to all of the above.

The initial contact point for the TE to be aware of potential claims on full oversight projects is at the construction inspection. The PE/PS and the project file should be consulted to determine if the contractor has filed Notices of Potential Claim. The TE should note in all inspection reports whether any notices of potential claim have been received, and the actions taken by the PE/PS to resolve them. At final acceptance, the TE should note all unresolved claims in the Final Acceptance report, FHWA Form 1446B (Appendix E).

Unresolved potential claims turn into claims that are elevated to arbitration or mediation proceeding, administrative board review, court, negotiated settlement, or other contract claim settlement proceedings. INDOT will invite the TE to claim settlement meetings, but the TE should not participate actively in the resolution process. Once an agreement is reached, INDOT will submit a major CO to the applicable TE to cover the cost of the award or settlement and request federal-aid participation. In this submittal, INDOT shall indicate the legal and contractual basis for the claim, and also include cost data and other facts that would support the award or settlement. Federal-aid participation shall be supported by INDOT audit of the actual costs incurred by the contractor, unless FHWA determines that the audit is not warranted. As long as the conditions detailed in 23 CFR 635.124(d) are met, FHWA will generally participate in the award or settlement even if the amount of the award or settlement is more than an amount INDOT can justify.

Payment of interest is authorized as an eligible Federal participating cost if the State has a statute that allows it and certain other conditions concerning diligence of processing the case are met. Several cost items that are ineligible for federal-aid participation are (to mention a few) – anticipated profits and opposing party attorneys' fees. If INDOT receives compensatory damages through the claims process, a credit is required for the Federal share of such recovery.

In reviewing and approving major COs for contract claims award or settlements, the TE shall ensure that the requirements of 23 CFR 635.120 and 23 CFR 635.124 respectively, are met. Since not all items of work, costs, and time may be eligible for federal-aid participation, lump sum awards or settlements shall be broken down into the various items of works and their respective costs. This allows the TE to make informed eligibility determinations. The TE shall file approved or rejected COs for claims awards or settlements in the Division's post award project file for the project, and a copy sent to the INDOT electronically or by fax. If the CO is not approved for full federal-aid participation, the TE should use the prescribed method for notifying the State of noncompliance issues (essentially, complete and transmit the FIN, Form FHWA 1367 to INDOT).

NOTE:

Construction inspections are conducted as often as possible on full-oversight projects. The TE may not be able to visit and conduct construction inspections in the time allocated in the contract for construction of these projects. The TE should endeavor to conduct at least one construction inspection of such contract prior to the final acceptance. If the TE has not done so at the time the PE/PS is preparing the “proposed final estimate”, the PE/PS will inform the

TE of this. The TE must then arrange to visit the project and conduct both the construction inspection and final acceptance of the project to include determining eligibility of all processed minor COs. The TE must coordinate with the PE/PS to ensure that a final inspection is conducted by FHWA on Full-oversight projects before the PE/PS transports the project files to the INDOT Central Office for closeout.

All Major and Minor COs are to have had written approval action taken by the TE and documented in FHWA's post award project file before the final acceptance is approved by the TE. Otherwise, it must be done at any time prior to final voucher approval. FHWA should have already provided final approval of all Major CO's before the work for those CO's was initiated. There may be some unapproved minor CO's remaining, which can be reviewed and approved during the final inspection.

The final inspection report should be conducted and the TE should request certain information for final acceptance, including the CO Summary Report. Information in addition to the final inspection report and the final acceptance report needed to process the Final Acceptance Report may be found in the Division's SOP for Project Closeout.

The TE will use information on processed COs in the Division's post award project files to verify that the CO Summary Report from INDOT reflects and accounts for FHWA's eligibility determinations (participating or participating in-part or non-participating). At the time the Final Voucher request is received from INDOT, the TE will compare the Final Acceptance costs against the Final Acceptance costs submitted by INDOT, to ensure the CO costs are accurately documented. Once the TE verifies all project expenditures to be satisfactory or unsatisfactory, the Division's Financial Manager will be advised accordingly.

VII. CONTROLS

The FHWA Delegations and Organization Manual delegates the approvals of COs and claims to the Division Administrator. The DA has further delegated the approval of these actions to the TEs.

Electronic copies of all approved FHWA Form 1365, "Record of Authorization to Proceed with Major Contract Revision" will be placed in FHWA's own post award project file and applicable data recorded in the Division Project Tracking Database. This form is used to document FHWA prior concurrence and final approval of major COs.

If the TE is unable to secure additional documentation that would enable the TE to participate in whole with a CO, then their team leader will review the CO prior to the TE indicating non-participating or participating in-part in the CO final approval. The TE will also consult with their team leader prior to denying full participation in a claim.

Controls are also monitored through the final acceptance and final voucher process. The process of closing out Federal-aid construction projects, including the preparation of final acceptance reports, is an important project control function. The TE is responsible to ensure that all CO issues are resolved and all necessary items are received before the final acceptance report is written and approved.

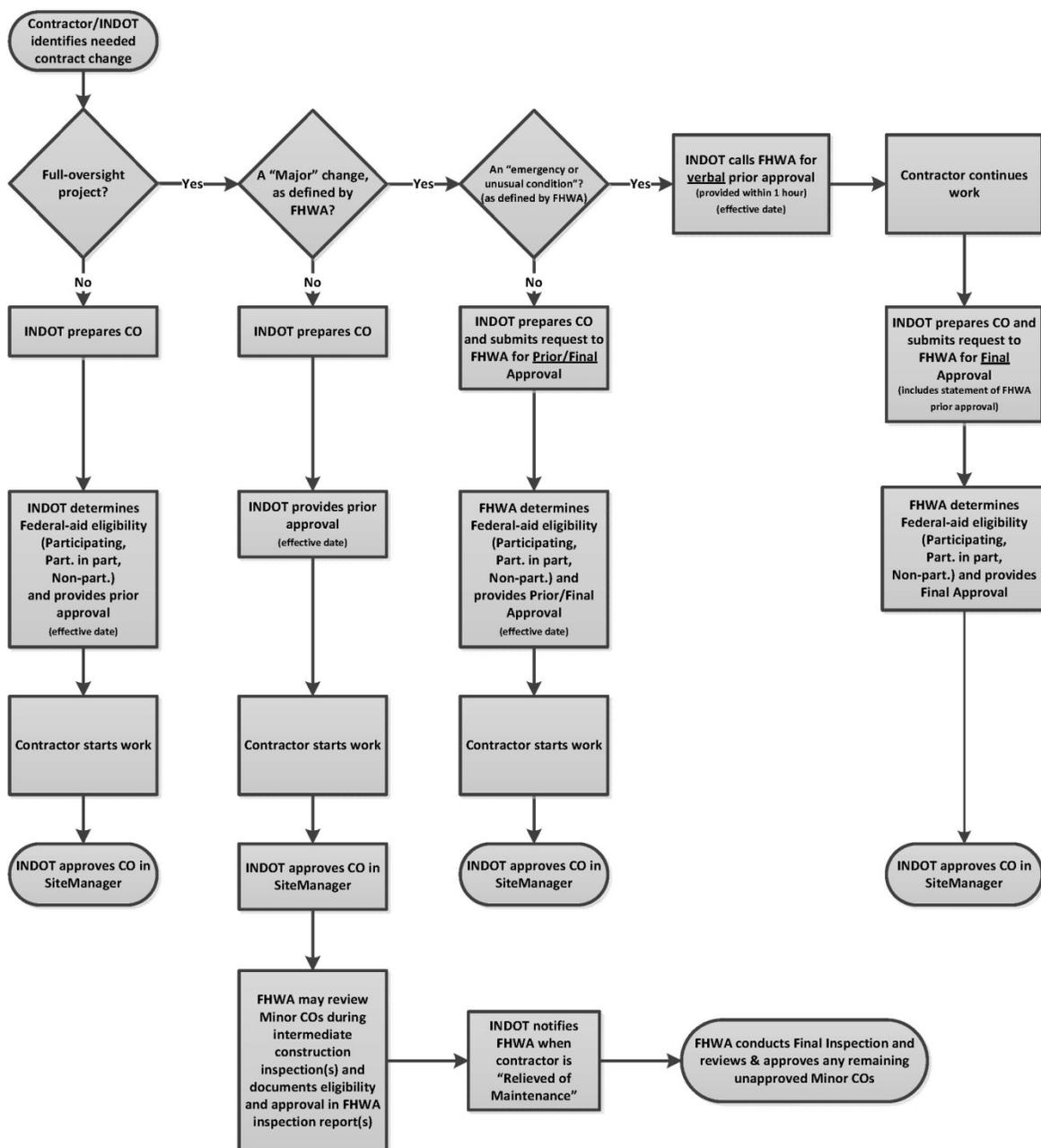
A copy of all COs determined to be non-participating shall be furnished to the Division Office Construction Program Manager for information and tracking of trends.

The TE will use information on processed COs in the Division's post award files to verify that the CO Summary Report from INDOT reflects and accounts for FHWA's eligibility determinations (participating or participating in-part or non-participating).

At the time the Final Voucher request is received from INDOT, the TE will compare the final acceptance costs against the Final Voucher costs submitted by INDOT, to ensure the CO costs are accurately documented

VIII. FLOWCHART

Approval of change orders on
 FHWA-funded projects



IX. APPENDICES

Major Contract Changes which require FHWA Prior Approval

FHWA and INDOT have agreed that the following are major changes that warrant FHWA prior approval:

1. Any change order that costs \$50,000 or greater.
2. Any change order that result in a contract time extension of 10 or more days.
3. Changes to, or requiring of, mandatory disposal or borrow sites – (Public Interest Finding (PIF) and/or NEPA clearance may be needed).
4. Any revision due to a Cost Reduction Incentive Proposal (CRIP).
5. Any form of payment to a contractor resulting from a claim, Review Board determination, District and/or Central Office determination, or Arbitration.
6. Any change order action that would result in a waiver to the "Buy America" requirements.
7. Any change to the following:
 - Method of payment – (Force Account)
 - Proprietary material for which specific or blanket approval has not been previously given
8. Alterations to the intent or scope of the Contract or character of the work, including revision of the project limits.
9. Revisions to geometric design of the mainline roadway, ramps, frontage roads or Crossroads.
10. Revisions to structural section of the pavement, including, but not limited to subgrade, subbase, performance graded binder grade, pavement type, pavement depth, individual pavement courses and aggregate designations, type or quality of materials to be furnished, such as changing the individual aggregate base to a asphalt concrete material.
11. Additions, deletions, changes or relocations to bridges or structures that affect the functional scope and intent of the approved design.
12. Deviations from planned access control, including drives or pedestrian access features
13. Revisions to the specifications, special provisions or other contract requirements, including approved provisions for maintaining traffic.
14. Revisions that result in new environmental impacts, changes in previously permitted activities or reductions in environmental mitigation measures provided for in the Contract.
15. When the change is due to consultant/SDOT design error or omission that is as a result of carelessness, negligence, incompetence, or under-staffing.

NOTE: For the purpose of processing COs to meet the FHWA policy, 23 CFR 635.120/121/124, all other changes that do not fall under the above category are processed as minor changes, and do not require FHWA prior approval. However, they require FHWA formal approval.

List of Frequent Federal Non-Participating Items

- Work outside the highway right-of-way without permits, etc.
- Work outside the limits of the project (unless necessary to implement project; traffic control, etc.) Work performed outside the NEPA limits of the project may jeopardize federal funding for the project.
- Adjustment of private facilities (signs, fences, lawn sprinklers, etc., unless covered as a part of a right-of-way agreement or permit.)
- Storm and sanitary sewer work and other drainage or utility work that is not a result or purpose of the road or bridge work. Example: replacing sewer leads that were not in conflict with the construction activity proposed.
- Excessively expensive treatments that do not appear to be in the public interest. This could include expediting the project for a questionable purpose, or proposing the use of very extravagant roadway treatments or street side appurtenances.
- Significant hauling or transportation charges of salvaged items to INDOT's or agency garages or storage sites for future use on non-federal projects. Hauling for less than 5 miles from the project site has been used by some STD construction engineers as a reasonable distance to haul material.
- Non-conforming work such as substandard details, designs determined undesirable or discontinued because of poor performance. Example: A588 guardrail, salt susceptible roadside plantings, etc.
- Payment for items that are the responsibility of others. Such as relocation of utilities located within the right-of-way, relocation of public facilities outside their corporate limits, accident damage that is the responsibility of others (driver, owner, insurance company, etc.)
- Payment for work done by an unapproved subcontractor.
- Local agency force account work that is not approved as cost effective.
- Payment for betterments that are not currently part of the project. Example: payment for excess sizing of sanitary sewer adjustment for future development. The additional cost over replacement-in-kind should be borne by the owner of the facility being adjusted.
- Payment for items that should typically be considered maintenance work by the owner agency. Examples: graffiti removal, snow plowing, trash removal, mowing roadsides, etc.
- Payment for rework.
- Specifying use of proprietary items, (i.e., specific brand name or single manufacturer items such as Eagle controllers, 3M sign sheeting, Caterpillar diesel, Hewlett Packard computer) unless:
 - Suitable number of other proprietary items or generic items are allowed.
 - INDOT certifies (via PIF) proprietary item is essential for synchronization with existing highway facilities or that no equally suitable alternate exists.
 - Proprietary item is used for experimental purposes.
 - FHWA finds it is in the public interest to use a proprietary item.

FORM FHWA-1365, “RECORD OF APPROVAL FOR CONTRACT CHANGE ORDER

 US DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	RECORD OF APPROVAL FOR CONTRACT CHANGE ORDER (CO)					
CONTRACT	FEDERAL PROJECT	DISTRICT	COUNTY	STATE	CHANGE ORDER #	TYPE OF CO
				INDIANA		
TYPE OF REVISION:	<input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> SUPPLEMENTAL AGREEMENT <input type="checkbox"/> SPECIFICATION CHANGE <input type="checkbox"/> TIME EXTENSION <input type="checkbox"/> WORK ORDER <input type="checkbox"/> OTHER					
REQUESTED BY:	PROJECT ENGINEER/SUPERVISOR	PHONE NUMBER	E-MAIL ADDRESS	DATE OF REQUEST		
PROPOSED CHANGE						
REASON FOR CHANGE						
PREVIOUSLY DISCUSSED WITH FHWA?		IF YES, WHO?		DATE:		
TIME EXTENSION?		IF YES, NUMBER OF DAYS:		METHOD OF PAYMENT?		
ESTIMATED		IN COST:				
ACTIVITIES ON CRITICAL PATH AFFECTED BY CO:						
APPROVING OFFICIAL						
<input checked="" type="checkbox"/> THE WORK COVERED BY THE PROPOSED REVISION AS DESCRIBED ABOVE IS HEREBY AUTHORIZED SUBJECT TO SUBMISSION OF SUPPORTING DOCUMENTATIONS, INCLUDING , BUT NOT LIMITED TO COST EVALUATION AND TIME EXTENSIONS.						
PARTICIPATION DETERMINATION:						
COMMENTS:						
APPROVED BY:				<input type="radio"/> FHWA (FULL OVERSIGHT) <input type="radio"/> INDOT (STATE OVERSIGHT)		
SIGNATURE:				DATE:		
FORM FHWA-1365 FOR INDIANA DIVISION 09/2011				REVISED DATE:		

Form FHWA 1367, “Federal-aid Ineligibility Notice (FIN)”



Federal-Aid Ineligibility Notification

To: <div style="border: 1px solid black; height: 60px; width: 100%;"></div>		Notification Number: <input style="width: 150px;" type="text"/>
		<input type="checkbox"/> Initial <input type="checkbox"/> Revised <input type="checkbox"/> Cancelled
		} Use the same notification number shown on the initial notification
Project Number: <input style="width: 100%;" type="text"/>		
Items identified below or on the attached sheet have been determined to be ineligible for Federal-aid reimbursement for the reasons state: Items / Total Cost: <div style="border: 1px solid black; height: 300px; width: 100%;"></div>		
		Total Ineligible Cost: <input style="width: 100px;" type="text"/>
		Federal Share Billed: <input style="width: 100px;" type="text"/>
The above items shall not be claimed until corrective action has been taken and approved by FHWA on a Form FHWA-1367. If the cost have been paid by FHWA, credits are due on the next request for reimbursement.		
Distribution: <div style="border: 1px solid black; height: 20px; width: 100%;"></div>		
Signature: <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	Title: <div style="border: 1px solid black; height: 20px; width: 100%;"></div>	Date: <div style="border: 1px solid black; height: 20px; width: 100%;"></div>

FORM FHWA-1367 (9/2011)

Form FHWA 1446B, “Final Acceptance Report”

 FINAL ACCEPTANCE REPORT			
DIVISION	REPORT NUMBER	DATE OF FINAL INSPECTION	PROJECT NUMBER
INDIANA			
TIME ELAPSED	CONTRACT START DATE	DATE WORK COMPLETED	ACCEPTANCE BY CONTRACT AGENCY
LOCATION			
SCOPE OF PROJECT			
NOTES: FHWA-47: <input type="checkbox"/> Submitted <input type="checkbox"/> Not Required Materials Certification: <input type="checkbox"/> Submitted <input type="checkbox"/> Not Required There is compliance with Section 1.23 of Regulations pertaining to encroachments on the right-of-way.			
REMARKS: <input type="checkbox"/> SHA procedures and controls were sufficient to assure that this project completed in reasonable conformance with the approved plans and specifications including authorized changes and extra work.			
ACCEPTANCE OF PROJECT IS RECOMMENDED		ACCEPTED BY FEDERAL HIGHWAY ADMINISTRATION	
Signature		Signature	
Title	Date	Title	Date

Information regarding DBE Program as it relates to COs

A recipient's DBE Program applies to all its Federal funded contract, including change orders to an existing contract which have more than a minimal impact on the contract amount.

If there is a change order to a contract on which there is a DBE contract goal, then that contract goal applies to the change order as well as to the original contract. This is true regardless of whether the recipient or the contractor initiates the change order.

For example, suppose that a recipient awards a \$1 million contract to Firm X. The contract goal is 15 percent. Firm X meets the contract goal by obtaining DBE participation from subcontractors or suppliers (only 60% of supply contract amounts can be applied toward meeting a DBE goal) amounting to \$150,000. Part way through performance of the contract, the recipient determines that additional work is necessary, and issues a change order that will add \$500,000 to the total contract price. The 15 percent contract goal applies to this additional \$500,000. To meet the contract goal as applied to the change order, Firm X would have to make good faith efforts to obtain an additional \$75,000 in DBE participation. It could meet this obligation either by obtaining the additional \$75,000 in work by DBE subcontractors or suppliers or by documenting good faith efforts.

The recipient would determine, on a case-by-case basis, what would constitute good faith efforts in the context of a particular change order. This could include modifying the contract goal amount applicable to the change order if circumstances warrant.

There may be situations in which a change order has such a minimal effect on the overall contract amount or the expected DBE participation on a contract that it would not be sensible to alter DBE requirements on a contract that it would not be sensible to alter DBE requirements affecting the contract. If a recipient believes that a change order has such a minimal effect, the recipient should contact the relevant INDOT's DBE Program Manager for guidance on whether it is necessary to alter DBE requirements affecting the contract.