

Check out
the video

Project Construction and Contract Administration Contract Administration Change Orders

www.fhwa.dot.gov/federal-aidessentials

When contract changes are needed, approval from the oversight agency must be obtained as part of Federal funding procedures



You may have heard the saying, “The best laid plans . . . often go awry.” The highway construction industry recognizes that it is unrealistic to expect that a construction project can be built without changes to the original project plans. Although designers and engineers prepare project plans with diligence and great care, unforeseen conditions, utility conflicts, or unknown geology are items that often can’t be anticipated and factored into project design and specifications.

It may also become apparent after a construction project has begun that design alterations are needed to make the constructed work a better fit for the field conditions. When this happens on your construction project, the project contract needs to be modified to accommodate the required changes. However, contract changes need to be approved as part of the Federal funding procedures. Properly executing contract changes is critical to a project’s success.

What is a Change?



A change is any alteration to the original construction contract. Change orders are negotiated agreements with the contractor that

affect the cost, schedule, design details or specification requirements, or any combination of these. Not every agency uses the same terminology for contract changes. Other common terms used to refer to contract changes are change order, contract change order, supplemental agreement, contract modification, work order, and time adjustment or time extension.



A claim is also processed as contract change. A claim is formal request for additional compensation that is a step beyond the normal change order process. Claims are usually the result of unresolved modifications to a contract that have been previously denied in the change order process.

Processing Changes for Implementation

Generally, the reason change orders are needed is to make contract adjustments, such as plan or specification corrections, or changes to cost or time allowed to complete the work.

Regardless of the reason for the change, initiate a change request and follow the appropriate procedures to obtain approval by your oversight agency. The oversight agency is either the State department of transportation (State DOT) or the Federal

Highway Administration (FHWA). Changes to a contract require the same level of approval as the initial contract.

Upon receipt of the request for approval of a contract change, the oversight agency will assess your request to determine whether the proposed changes are eligible for continued Federal-aid participation. Depending on the magnitude of the proposed changes, the level of detail of information needed for analysis may increase. When developing a change request, at a minimum, be sure to assess these four issues for every proposed change:

1. Why is the change necessary?
2. What will the impact be on the original scope of work?
3. Who is responsible for costs or delays?
4. Who should pay for the changes?

Supporting Documentation

To ensure that proposed changes are allowable and accepted for your federally funded project, there are three activities that must occur.

Documentation

Prepare documents that justify the need for the contract modification and the proposed cost changes.



Examples of documentation include;

- Accurate records that show the time, labor, equipment, and materials
- Cost estimates prepared by the agency that can be compared to the costs in the proposed change order submitted by the contractor
- Evaluation of construction schedule modifications needed and incorporated into the change
- Court orders or other legal agreements that are used to resolve a claim

Negotiation

A change is normally negotiated with the contractor. The change order will reflect the final agreements on:

- What work will be completed
- Any specifications that are modified, deleted, or added
- Cost revisions, and time adjustments.



Approval

Finally, a change order must have the approval of the oversight agency for it to be accepted as

part of a revised contract. At this stage the oversight agency makes a determination of allowable

Federal-aid participation.

The actual procedures for approval of contract changes by an oversight agency vary based on the impact the changes may have on a contract. Refer to the Stewardship and Oversight Agreement between the State DOT and FHWA or detailed procedures for all change orders. Agreements for project funding between your agency and the oversight agency also may contain separate procedures.



Summary

Change happens! How you handle contract changes for your Federal-aid project can substantially impact the funding participation for those changes. Just remember, whether you have a change to the time allowed for completion or make a major specification modification, make sure to get oversight agency approval for all proposed changes to your Federal-aid contracts.

Additional Resources

- FHWA's contract administration guidance including parts 11.B.7 and III.B.6 regarding contract changes and claims
<http://www.fhwa.dot.gov/programadmin/contracts/coretoc.cfm>
- Federal regulation (Subparts 120-124) on how to process proposed contract changes
<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=168f75d324ce934ea14ab47b16c08d22&rgn=div5&view=text&node=23:1.0.1.7.23&idno=23>
- Link to an example change order for a cardinal change in the scope of the work authorized for construction
<http://www.fhwa.dot.gov/programadmin/contracts/111596.cfm>
- Form FHWA-1365 for documenting major contract revisions authorization
<http://www.fhwa.dot.gov/programadmin/contracts/fhwa1365.cfm>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH63-11-F-00066 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.