

VIRGINIA DEPARTMENT OF TRANSPORTATION
CONSTRUCTION DIVISION

INSTRUCTIONAL AND INFORMATIONAL MEMORANDUM

GENERAL SUBJECT: CONTRACT CHANGE MANAGEMENT	NUMBER: IIM-CD-2024-04.01
SPECIFIC SUBJECT: MODIFICATION OF ACTIVE CONSTRUCTION CONTRACTS	DATE: April 22, 2024
	SUPERSEDES: IIM-CD-2020-02.01
APPROVED: <p style="text-align:center">Kerry. A. Bates, P.E. State Construction Engineer</p>	Kerry A Bates 2024.04.22 12:35:12-04'00'

Effective Date

This Instructional and Informational Memorandum (IIM) is effective upon approval.

CHANGE ORDER GUIDANCE

A change order formally establishes changes to the contract and is used to add, modify, or delete pay items, contract time, or other terms or conditions of the contract.

There are two types of change orders, bilateral and unilateral. A bilateral change order is used when both parties agree on the impacts (cost, time, contractual, etc...) of the changed condition. A unilateral change order is used by VDOT to make a contract change when both parties cannot agree on the impacts.

A change order shall not be used to implement a change solely for the convenience of the Contractor. Value engineering proposals shall be in accordance with the VDOT Road and Bridge Specifications (Specifications) and executed as a single bilateral change order that documents cost and time savings.

For the purposes of this document, Responsible Charge Engineer (RCE) shall be synonymous with the Engineer as defined by the Specifications and shall include responsible charge positions for projects under Design-Bid-Build, Design-Build, and Public-Private Partnerships. The Engineer may delegate development of change order documents under this IIM to an

appropriately qualified individual; however, the Engineer shall remain responsible for adherence to all requirements. A Consultant RCE may recommend for approval but may not sign as the approving authority.

I. Entitlement

Entitlement shall be established per Section 104 of the Specifications to validate the changed conditions from the original contract documents and shall be documented on the Form C-10A. For design-build projects entitlement cannot be established for a Type I differing site condition after the expiration of the scope validation period.

II. Approval of Concept

A conceptual level scope of work shall be documented along with entitlement on VDOT Form C-10A. The Contractor and the Engineer should then discuss the proposed scope of work in sufficient detail to establish their respective estimates. The VDOT approval authority for the C-10A should be based on a reasonable estimate by the RCE of the cost and/or time impact of the proposed change in accordance with Section X. The C-10A is an internal document and does not need to be shared with the Contractor. If the approval authority is exceeded during the change order process, the previously approved C-10A should be routed to the respective approval authority prior to the issuance of the C-10. The signature approval on the C-10A shall coincide with the signature approval on the C-10. The renewal of an on-call contract does not require a C-10A.

The Approval of Concept shall clearly indicate whether the scope is:

- Clearly Defined
- Not Clearly Defined

and

- Federally Eligible
- Not Federally Eligible

The concept shall be categorized into one of the following categories on the C-10A and C-10:

- UTIL – delays or extra work caused by utilities
- CHAR – changes to the character of work as noted above
- ADD – additional work or scope, not originally planned
- PLAN – plan error or omission
- CONT – error or omission in contract document
- VALU – contractor value engineering proposal
- LEG – local, state or federal government proposal
- POL – VDOT policy or guidance changes that result in changes or additional work
- VDOT – delayed NTP or VDOT caused delay
- MISC – changes that do not fit into any other categories
- NBID – items specified in contract with set unit price, not bid on by the Contractor
- RENW – renewing/extending time limit on a renewable/on-call contract (C-10 only)

III. Change Condition with “Clearly Defined” Scope

The Engineer will use the scope of work identified on the C-10A to develop an Independent Government Estimate (IGE). The Engineer shall ensure that the initial IGE is developed in a manner that is independent of the Contractor's price proposal.

The Engineer, will develop the IGE by detailing the additional cost of the changed condition using any of the following methods:

- Estimated quantities and associated unit prices derived from the contract
- Estimated quantities and associated unit prices derived from bid histories. Where possible, bid histories from projects with comparable quantities, geographical constraints, and scope should be utilized.
- Itemized cost breakdowns of work packages (labor, materials, and equipment) that utilize industry resources

Industry resources may include R.S. Means, the Equipment Watch Blue Book, and materials suppliers. Blue Book rates should be considered maximum rates. When available, appropriate adjustment factors for year and region must be applied. Subject matter experts may be consulted to help develop estimate costs.

For substantial changes, updated prevailing wage rates may apply to the changed work and the Engineer shall coordinate with Central Office to provide these rates to the Contractor. These rates shall apply only to the changed work.

Contract unit prices represent the complete cost of work. Additional markups (i.e. profit, overhead) shall not be applied to existing contract unit prices or new unit prices developed utilizing bid histories.

No costs associated with a compensable delay shall be included in the IGE. These costs cannot be considered until a schedule impact analysis is submitted, reviewed, accepted and the delays are determined to be solely the fault or responsibility of VDOT. The IGE is a cost estimate related to a proposed procurement transaction and is not subject to Freedom of Information Act requests (FOIA), per § 2.2-4342. The IGE should not be shared outside of the Department until the procurement transaction has been executed or abandoned. This should not limit a good faith exchange of information between the Engineer and the Contractor as part of the IGE reconciliation process.

IV. Changed Condition with “Not Clearly Defined” Scope

For changes without a clearly defined scope, the Engineer shall direct the Contractor to proceed on a force account basis in accordance with Section 109.05 (b) of the Specifications. The Engineer and the Contractor should agree on the necessary labor, materials, and equipment for the changed condition prior to the Contractor beginning work. The Engineer shall continuously monitor and document the prosecution of work. Forms C-115 and C-116 shall be used and become the basis for the C-10.

V. Reconciliation of Change Orders for Concepts that have Clearly Defined Scope

The Engineer should review the Contractor's price proposal to ensure that each unit price represents a reasonable and balanced cost. If the Contractor's price proposal does not exceed 110% of the IGE, then a bilateral change order may be executed in the amount of the Contractor's price proposal. If the Contractor's price proposal exceeds 110% of the IGE, then the Engineer and the Contractor should endeavor to reconcile the difference between the two estimates to achieve fair and reasonable pricing for the work. The Engineer shall document modifications to the IGE during the reconciliation process.

If the Contractor and VDOT cannot agree on a price for the scope of work identified in the change order, then VDOT should execute a unilateral change order in the amount of the IGE, not to include the 10% threshold mentioned above, or abandon the concept. In cases where it is cost prohibitive to perform the additional work as a change order to the contract, the Engineer should determine if there are other cost-effective means to perform the work.

VI. Contract Time Extension

A change to contract time may be initiated by either the Department or the Contractor.

The Engineer should review requests for time from the Contractor to ensure compliance with the relevant scheduling specification or special provision. A contract time extension may be considered for any change but shall not exceed the number of days of actual delay to the project's critical path. Any extension of contract time should be identified as either compensable or non-compensable per section 109 of the Specifications and any adjustments to contract dates shall be made in accordance with section 108 of the Specifications. The Department may grant a time extension without a request from the Contractor for Department directed actions which affect the Contractor's ability to prosecute critical path work.

Calculations to determine field office overhead (FOOH) and home office overhead (HOOH) associated with compensable delays are outlined in section 109 of the Specifications. Payment for FOOH and HOOH shall not be made until this cost is incurred by the Contractor. FOOH and HOOH should be evaluated daily, reflect actual costs incurred, and be paid monthly. Where applicable, the C-10 shall require the Contractor submit FOOH and HOOH rates immediately prior to costs being incurred and actual rates at the end of each estimate period.

VII. Execution of Change Orders

The Contractor should not begin work associated with change conditions until a change order is executed. The Engineer may direct in writing the initiation of work prior to change order execution if doing so would avoid/minimize project impacts (e.g. safety, environmental, material impacts, etc.). If additional work is being performed without an executed bilateral change order, actual costs and time incurred by the contractor (labor, equipment, material, and time) must be tracked by VDOT personnel daily.

When possible, all cost and time impacts for a change should be addressed on a single change order. If a unilateral change order is issued, the Engineer should monitor the time and cost required to complete the work and may consider adjustments based on actual time and cost. Items subject to contract price adjustments must be noted on the change order. If additional funding is necessary, it is the Engineer's responsibility to secure funding to complete the project.

The change order shall be documented using a VDOT Form C-10 and clearly document:

- A description of the additional or eliminated work
- Any changes to contract terms
- Time extensions specifying any changes to any contract date(s)
- Itemized prices for items, quantities, units, and unit prices
- Total price increase or decrease for the work being added or deleted

The completed C-10 should only be signed by appropriate Department personnel after the Contractor has signed the form. The Engineer shall not sign a C-10 where the Contractor has modified any of the terms. All executed change orders and supporting documentation must be submitted to Central Office Construction within 14 days of execution.

VIII. Documentation

Supporting documentation must be maintained for all change orders. Supporting documentation shall include copies of the following, as applicable:

- Approved C-10A
- Executed C-10
- Contractor's price proposal
- The Department's IGE and any backup documentation, including details of reconciliation of the IGE
- Force account documents (C-115 and C-116)
- Request for extension of time, schedule impact analysis, and VDOT's analysis

Plan changes shall follow the process set forth in the Field Change Documentation IIM.

IX. Global Settlement Change Orders

Global settlement change orders do not establish entitlement and are therefore not allowed. It is acceptable to resolve multiple independent change conditions on a single C-10 if entitlement is established for each condition.

X. Approval Authority

The maximum approval authority for individual change orders is as follows:

Dollar Amount Approval Thresholds (Design-Build and Design-Bid-Build Projects):

- Area Construction Engineer/Responsible Charge Engineer - \$500,000
- District Construction Engineer/District Mega Projects Engineer - \$1,500,000
- District Engineers - all change orders exceeding \$1,500,000

(requires Deputy State Construction Engineer or State Construction Engineer concurrence on Approval of Concept)

Dollar Amount Approval Thresholds (Public Private Partnership, P3 Projects):

- Area Construction Engineer/Responsible Charge Engineer - \$750,000
- District Construction Engineer/District Mega Projects Engineer - \$3,000,000
- District Engineers - all change orders exceeding \$3,000,000
(requires Deputy State Construction Engineer or State Construction Engineer concurrence on Approval of Concept)

Contract Time Adjustment Approval Thresholds (All Projects):

- District Construction Engineer/District Mega Projects Engineer - 1 to 120 Days
- District Engineers - all change orders exceeding 120 Days
(requires Deputy State Construction Engineer or State Construction Engineer concurrence on Approval of Concept)

The maximum approval authority does not apply to the renewal of renewable contracts.

XI. Administrative/System Adjustments

The following changes are considered administrative and do not require a C-10A or C-10:

- Overruns where unit prices are not changed
- Contractually allowable adjustments (fuel, asphalt, steel, etc.)
- Contractually allowable added items (i.e. PCMS, Pilot Vehicles, Undercut etc.)
- Corrections to the contract value due to disincentives, liquidated damages, underruns or other similar changes
- Change to contract value in order to process contractor payments through Cardinal

Use of administrative adjustments should be documented in the comment field of the contract administration system when entered.

XII. Federal Highway Administration Coordination

For any federally funded project on the National Highway System (NHS), with an original estimated cost of \$10 million or more, the FHWA Area Engineer must be notified when the actual contract expenditures plus construction engineering costs exceed the original estimated cost by more than 25%. The original estimated cost is calculated by taking the FHWA approved Engineer's Estimate of contract expenditures at Plans, Specifications & Estimates (PS&E), subtracting out any contingency amounts, and then adding in the estimated construction engineering costs.

For projects subject to FHWA oversight (also known as Projects of Division Interest or PODI) concurrence and/or approval should be sought prior to execution of any C-10A, C-10, or force account approval. Should FHWA not participate in a change order, the change must be fully funded by state or local funds.