



INDIANA DEPARTMENT OF TRANSPORTATION

Driving Indiana's Economic Growth

Memorandum

August 24, 2009

CONSTRUCTION MEMORANDUM 09-15

TO: District Deputy Commissioners
Technical Services Directors
District Construction Engineers
District Testing Engineers
District Area Engineers
Project Engineers/Supervisors
Office of Materials Management

FROM: Mark A. Miller, Director *Mark A. Miller*
Division of Construction Management

SUBJECT: Contract Time Adjustments and Time Waivers

The purpose of this memorandum is to clarify how contract time adjustments and time waivers are to be applied and documented.

The primary difference between a contract time adjustment and a time waiver is that a contract time adjustment is associated with changes in the physical work performed on the contract and a time waiver is not. Physical work is work performed by the contractor, a subcontractor or a third party such as a utility or railroad. A contract time adjustment is typically used when necessary to revise the contract time up until substantial completion. A time waiver is typically used to eliminate liquidated damages for delays that are not the fault of the contractor after substantial completion.

Effective September 1, 2009, the following guidance should be followed for all contract time adjustments and time waivers. This guidance is in addition to the requirements of the Department's policy for time extensions and is not intended to supersede any part of the policy.

Contract Time Adjustments

A contract time adjustment is used when it is necessary, as defined in the contract documents, to modify a contract date or time period for completion of specified contract work. This applies to intermediate completion dates, contract completion dates, closure periods, work days, calendar days and any other date or time specified in the contract, either original or by change order.

For an intermediate contract date and time period, completion of the work means that the portion of work specified in the contract for that date or period has been completed and can be used for its intended

purpose as defined in the contract. This is typically the date that the portion of work is opened to traffic or is otherwise placed into service for its intended purpose.

For a contract completion date or time, completion is defined as the last day of work. However, when the work is substantially complete in accordance with 101.59 and the contractor and Department agree that the project is ready for pre-final inspection, additional time is given in accordance with 108.09 for punchlist work and removal of signs, which generally constitutes the last day of work. Time given for punchlist work and removal of signs should be addressed by a time waiver and not a contract time adjustment.

A contract time adjustment is to be documented on an approved change order and is to be made as soon as the adjustment is agreed to by the contractor and the Department. When a change order is generated to add new work or significantly change the quantities of existing work, the time associated with the work should be addressed in the same change order if possible. In cases where the time associated with a change may not be immediately known, it is permissible to adjust the time on a future change order. All change orders should address contract time with one of the following statements in the explanation portion of the document:

- “A contract time adjustment is required for this change and has been addressed herein.”
- “A contract time adjustment is potentially required for this change, but cannot be quantified at this date. Any contract time adjustment required for this change will be addressed by change order at a future date.”
- “A contract time adjustment is not required for this change.”

When a contract time adjustment is not made at the same time as the change order revising the work, the future change order that addresses the time must include a reference in the explanation to the original change order that revised the associated work.

Time Waivers

A time waiver is typically used in order to eliminate liquidated damages after substantial completion of the work due to time allowed by 108.09 for completion of punchlist work and removal of signs. A time waiver may also be used to excuse chargeable time for any Department delay in performing the final inspection.

A time waiver is not appropriate to excuse time for additional work that is added to the contract after substantial completion. If additional contract work is added at the time of the pre-final or final inspection, then a contract time adjustment should be included in the same change order that adds the additional work.

A time waiver is to be documented on form IC 632, Completion Date and Liquidated Damages Data. If the reason for a time waiver cannot be fully explained on the IC 632, a letter is to be written by the granting authority and included with the IC 632 in the Final Construction Record.

Questions about the use and documentation of contract time adjustments and time waivers should be addressed to the appropriate Division of Construction Management Field Engineer for the district.

MAM:GPP:RLH/lp