



INDIANA DEPARTMENT OF TRANSPORTATION

Driving Indiana's Economic Growth

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Michael R. Pence, Governor
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October 31, 2014

CONSTRUCTION MEMORANDUM 14-13

TO: District Deputy Commissioners
District Construction Directors
District Technical Services Directors
District Area Engineers
District Project Management Director
Project Management Director
District LPA Coordinators
Project Engineers/Supervisors
Field Engineers

FROM: Mark A. Miller, Director *Maemica*
Division of Construction Management and District Support

SUBJECT: Recoverable/Non-Recoverable Funds Determination Requirement for Error and Omission Change Orders and the Removal of Discretionary/Non-Discretionary Determination

The purpose of this memorandum is to notify all field personnel of the new **recoverable/non-recoverable** funds determination requirement for change orders coded as "errors and omissions".

Effective Wednesday, November 5th 2014, all PE/S's will be required to record error and omission change orders as being either recoverable or non-recoverable in SiteManager. The SiteManager record entry can be found in the Generic Field under the change order Header Tab. As instructed in section 2.19.6 of the GIFE, the PE/S is required to document and classify all errors and omissions change orders as either having recoverable or non-recoverable costs as they relate to consultant design. The determination of the additional costs should be made prior to generating the change order.

INDOT Project Managers should be notified of all errors and omissions change orders to help with resolution and to determine if the Designer may be held accountable for extra costs involved on the project. Furthermore, the Project Manager, PE/S, and Designer should have a joint collaboration to review and mitigate potential additional costs. If the Designer is found to be accountable for the additional costs, also known as the delta cost value, these costs are considered to be recoverable. For more information and examples concerning recoverable/non-recoverable costs, please refer to section 2.19.6 of the GIFE.

Additionally, as of November 5th 2014, the discretionary/non-discretionary determination data field is no longer required when generating a change order. This field has been eliminated from the Generic Field of the change order Header Tab.

Any questions should be directed to the Office of Construction Management.

ATTACHMENT: Section 2.19.6 of the GIFE

MAM/GGP/ddh

contract for an idea presented by the contractor. It is made in accordance with 109.04. An example of this would be where a 3 span bridge is to be constructed and the Contractor presents a new design for the bridge that uses post tensioning elements and is only 2 spans and results in a savings of \$500,000.00. If the redesign is approved then the Contractor and INDOT split the savings and the contractor is paid on a change order using this reason code.

A+B Contract: This reason code is used when the incentive payment or liquidated damage credit is a result of either completing the contract work required on an A + B Contract.

A+B+C Contract: This reason code is used when the incentive payment or liquidated damage credit is as a result of either completing the contract work required on an A+ B+C Contract.

- **Standards/Specifications Change** - The Department may elect to incorporate a new standard detail or specifications change into a contract after it is let. In these situations, a Change Order is required to modify the contract to add the new standard detail or specification. There may be monetary or time adjustments associated with these types of Change Orders. This reason code should only be used when the directive for this change comes from Central Office normally as part of a Construction Memorandum. If a change is being made to a specification, special provision or standard by any other means then it would be a changed condition to the contract and fall under another reason code.
- **Final Quantity Adjustment** - This reason code is used on Change Orders which are required when the overruns or underruns for individual pay items result in monetary adjustments that exceed the thresholds included in the Change Order Policy. These are sometimes referred to as balancing Change Orders.
- **Damage to State Property** - This reason code is used on Change Orders that are a result of payments made to the Contractor for repairs that are made to State property, normally as a result of a traffic accident.
- **Contract Renewal** - This reason code is used when the change order is for the renewal of the contract as allowed in the special provisions. Contract renewals are generally for an additional 365 days at a time for the number of renewals as allowed in the contract. These contracts are usually for mowing and traffic signal and lighting maintenance but could be for other types as well.

2.19.6 Recoverable and Non-Recoverable Change Orders and Delta Costs

The PE/S is required to document and classify all errors and omissions change orders as either having recoverable or non-recoverable costs. The recoverable/non-recoverable record entry in SiteManager can be found in the Generic Field under the change order Header Tab. The determination of the additional costs should be made prior to generating the change order.

INDOT Project Managers should be notified of all errors and omissions change orders to help with resolution and to determine if the Designer may be held accountable for extra costs involved on the project. Furthermore, the Project Manager, PE/S, and Designer should have a joint collaboration to review and mitigate potential additional costs. If the Designer is found to be accountable for the additional costs, also known as the delta cost value, these costs are considered to be recoverable and the PM will need to decide if INDOT will move forward with the possible collection of the delta cost from the consultant designer.

The delta cost is defined as the difference between the new cost of construction after remedying the error or omission and the original bid amount. For example, a soldier pile wall was originally designed for the contract without utilizing tie-backs. Then after the contract is let it was found that an extensive and expensive tieback system is actually required in order for the wall to function as required by the scope of the project. Let's say that the required addition of the tiebacks after the letting has been determined to cost \$1.5 million to construct. The original cost of the soldier pile wall as bid was \$1.0 million as-designed. In this case, the delta cost would be calculated by taking the new cost of construction, \$1.5 million, minus the original construction cost of \$1 million. The recoverable funds or delta cost would be \$0.5 million. Another example would be where the item for HMA surface overran on a project because the designer did not include all the quantities called out for all the project lines. The original quantity amount for HMA surface was 10,000 tons at \$50/ton. The overrun pushed the quantity for this item up to 15,000 tons. Bid history shows that the weighted average unit price for 15,000 tons of surface, by this Contractor, and in this part of Indiana is \$45/ton. In this case, the delta cost would be calculated by taking the original unit price, \$50/ton, minus the weighted average unit price of \$45/ton, and then multiplied by the final quantity amount of 15,000 tons. The potential recoverable funds or delta cost would be \$75,000.

2.19.7 Change Order Approval Authority

The Change Order Policy assigns Department approval authority based on the magnitude of the overall monetary or time adjustment involved. If a Change Order includes both monetary and time adjustments, the approval authority is the higher authority required for approval of the monetary adjustment or time adjustment if considered separately.

The approval authority for a Change Order is based on the monetary adjustment and time adjustment associated with that document. The Change Order approval authority is based on the adjustments of each individual Change Order and is not cumulative throughout the Contract. It is possible for Change Order No. 1 to require State Construction Engineer approval while it would be appropriate to approve Change Order No. 2 at the PE/S level.

However, in order to meet INDOT goals, once Change Order dollar amounts for a contract cumulatively reach the 4% overrun level, or where time adjustments cumulatively reach the 25 day overrun level, the PE/S will need to forward a draft of the Change Order to the District Construction Director, the Director Division of Construction Management and the Director of Capital Program Management, at the same time that it is sent to the PM. This is done as a way to address the cause of the cost or time overrun and