



Standard Operating Procedure (SOP)

<p>Subject:</p> <p>Project Changes – 1365 Form</p>	<p style="text-align: right;">Division Administrator _____ (Title)</p> <p style="text-align: center;">11 20 2018 (Date)</p>
<p>Update Requirement: This SOP must be reviewed and updated when the District of Columbia Division considers necessary.</p>	

Federal Highway Administration (FHWA)-District of Columbia Division (DCDIV)/District Department of Transportation (DDOT) Contract Changes Guidelines

REFERENCES

- 23 CFR 1.9 Limitation of Federal participation
- 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
- Contract Administration Core Curriculum Participant’s Manual and Reference Guide 2006
- CACC III.B.5 Change Orders

BACKGROUND

Federal-aid (FA) policy requires that, consistent with the Federal need to preserve and protect the expenditure of funds, proposed major changes in a State Transportation Agency’s contracts be formally approved in advance by the Division Administrator (DA). The DA for the DC Division (DCDIV) has delegated approval of all changes on FA projects to the Program Leads within the DCDIV office. When emergency or unusual conditions justify it, the delegated approver may give advance verbal approval which is to be ratified with a formal written approval as soon as practicable.

OBJECTIVES

- To ensure proposed changes on Federal-aid projects are properly reviewed, documented, and approved.
- To provide guidance regarding request for approval of changes using FHWA Form 1365.

DEFINITIONS AND PROCEDURES

Assumed Projects - Federally funded projects whose oversight has been assumed by DDOT under 23 USC 106(c), to perform specified approvals and related responsibilities according to the DCDIV-DDOT Stewardship & Oversight Agreement.

PoDI – A Project of Division Interest is a project that has an elevated risk, contains elements of higher risk, or presents a meaningful opportunity for FHWA involvement to enhance meeting program or project objectives. DCDIV performs partial oversight of the PoDI Project based on the Project Specific PoDI plan.



Programmatic PoDI: Project based on risks that apply program-wide or categorically to a large subgroup of projects, so that the Division wishes to handle approval actions for all those projects. **Procedures for Approval of Changes in this document, apply also, to Programmatic PoDIs.**

Major Project: Projects over \$500 million. All major projects are PoDI projects.

PROCEDURES FOR APPROVAL OF CHANGES

For all changes on a PoDI: DDOT will submit Form 1365 and required documentation to the DCDIV for formal approval of changes (e.g. time, budget, scope, issuance of task orders) on all PoDIs. Upon review of the Form 1365 and required documentation the DCDIV will notify DDOT the approval result. If approved, then the Form 1365 will be signed electronically or by hand by the appropriate FHWA Program Lead, and sent to DDOT. Refer to Form 1365 and supporting documentation below.

Change on Assumed Project: DDOT does not have to notify the DCDIV Office of changes on Assumed Projects. However, it is expected that DDOT's procedures will encompass those areas noted above as it assumes FHWA Title 23 oversight role and approval responsibilities. DDOT will document the changes on the OCFO's Program Action Request (PAR) form and will track the approvals through DDOT's ProTrak+ database.

The FHWA DCDIV will evaluate DDOT's procedures through process review techniques as identified through annual risk based assessments.

FHWA Form 1365 and supporting documentation:

DDOT and DCDIV agree to use the FHWA Form 1365 (Attached) as the instrument for formal request and approval changes to PoDIs.

DDOT should submit FHWA Form 1365 with supporting documentation including as a minimum applicable:

- DDOT's cost analysis of the change, separate from Contractor's estimate.
- For transportation projects, prior to submitting any FHWA Form 1365, DDOT will need to review the list of frequent Non-Federal Participating items to determine federal-aid eligibility. Refer to the attachment for frequent Non-Federal Participating items. FHWA is prohibited from participating in costs associated with routine or recurring maintenance but may participate in cost effective preventive maintenance. (See the October 8, 2004 HQ memo for additional discussion.)
- The FHWA DCDIV Office may provide special instructions for how changes should be reflected on Form 1365 for specific unique projects.

Key aspects to consider when evaluating change orders in construction projects:

1. Federal-aid Eligibility. Is the item of work eligible? Refer to the attachment for frequent Non-Federal Participating items
2. Impact to the Original Scope of Work. Is the item relevant to the scope of work for the project?
3. Basis of Payment
 - a. Does the change order contain DDOT's cost estimate for the added work **versus** the contractor's cost breakdown of the added work?
 - b. Is the cost "reasonable" within the context of the average bid unit prices and associated quantities to complete the work?
4. Adjustments to Contract Time
 - a. Is the item a controlling item within the overall schedule of the work?
 - b. Is there a significant increase in the quantities to justify a contract time extension?



FORM FHWA-1365 [REV. 11-2018]		Federal Highway Administration For use by FHWA and State DOTs					
RECORD OF AUTHORIZATION TO PROCEED WITH CONTRACT REVISION							
FEDERAL PROJECT NUMBER (FAP#):	PROJECT TITLE:	STATE: DISTRICT OF COLUMBIA					
TYPE OF REVISION:							
<input type="checkbox"/> CHANGE ORDER <input type="checkbox"/> SUPPLEMENTAL AGREEMENT <input type="checkbox"/> TIME EXTENSION <input type="checkbox"/> TASK ORDER <input type="checkbox"/> SPECIFICATION CHANGE <input type="checkbox"/> OTHER							
REQUESTED BY:		DATE:					
RECOMMENDED BY DDOT: RESOURCE MANAGEMENT (<i>signature required</i>)		DATE:					
NATURE AND REASON FOR PROPOSED REVISION (IF ADDITIONAL SPACE IS REQUIRED, USE REVERSE SIDE). Please include ALL sources of proposed budget changes (e.g. federal, local capital, third party).							
IMPACT ON PROJECT BUDGET							
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border: 1px solid black; padding: 5px; width: 25%; text-align: center;">\$ _____ INCREASE</td> <td style="border: 1px solid black; padding: 5px; width: 25%; text-align: center;">\$ _____ DECREASE</td> <td style="border: 1px solid black; padding: 5px; width: 25%; text-align: center;"><input type="checkbox"/> NOT CHANGE</td> <td style="padding: 5px; width: 25%;">AS A RESULT OF THIS REVISION</td> </tr> </table>				\$ _____ INCREASE	\$ _____ DECREASE	<input type="checkbox"/> NOT CHANGE	AS A RESULT OF THIS REVISION
\$ _____ INCREASE	\$ _____ DECREASE	<input type="checkbox"/> NOT CHANGE	AS A RESULT OF THIS REVISION				
METHOD OF PAYMENT:							
<input type="checkbox"/> FORCE ACCOUNT <input type="checkbox"/> NEGOTIATED PRICE <input type="checkbox"/> LUMP SUM <input type="checkbox"/> UNIT BID PRICE <input type="checkbox"/> OTHER							
--- FOR APPROVER USE ONLY ---							
THE WORK COVERED BY THE PROPOSED REVISION AS DESCRIBED ABOVE IS HEREBY AUTHORIZED SUBJECT TO THE CONDITIONS MARKED BELOW:							
<input type="checkbox"/> EVALUATION OF COST DATA <input type="checkbox"/> SUPPLEMENTAL AGREEMENT <input type="checkbox"/> LIMITATIONS TO EXTEND OF FEDERAL PARTICIPATION <input type="checkbox"/> NONE <input type="checkbox"/> DETERMINATION OF SATISFACTORY ADJUSTMENT IN TIME <input type="checkbox"/> OTHER (<i>explain</i>) <input type="checkbox"/> ADEQUATE SUBMITTAL OF WRITTEN SUPPORTING DATA							
FHWA DIVISION OFFICE APPROVAL							
TITLE:	SIGNATURE:	DATE:					

USE REVERSE SIDE FOR COMMENTS, IF REQUIRED)



Attachment B

Optional List of Frequent Non-Federal Participating Items for Construction Projects

- 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 are not a result of the construction activity proposed.
- Specifying use of proprietary items, unless:
 - o Suitable numbers of other proprietary items or generic items are allowed.
 - o STA certifies proprietary item is essential for synchronization with existing highway facilities or that no equally suitable alternate exists.
 - o Proprietary item is used for experimental purposes.
 - o FHWA finds it is in the public interest to use a proprietary item.
- 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 STA 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 Area 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: 3' sidewalk, A588 guardrail, salt susceptible roadside plantings.
- 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: snow plowing, trash removal, and mowing roadsides.