

WSDOT Design-Build Project Delivery Guidance Statement

Title –Changes and Change Order Approval Authority

(Minor Changes, Deviations, Reductions in Scope, Value Engineering, Concept Approval of Changes, Timely Decision Making, Change Order Approval Authority)

Date – March 5, 2009

Format – Final

Relevant Section of WSDOT DB Guidebook – 6.10

Contract Changes

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1. Introduction

The purpose of this guidance statement is to define the various types of changes allowed within a Design-Build Project and to communicate WSDOT policy on approval authorities for the various types of Design-Build contract change orders. In general, we have either WSDOT directed changes or Contractor proposed changes.

2. Guidance Statement

2.1. Direction

WSDOT wants the Design-Builder to have significant flexibility in determining how best to design and construct the Project within the parameters established by the Contract. Nonetheless, WSDOT approval is required for Deviations and Changes to the contract. WSDOT's internal process for types of change and change order approval authority will follow requirements detailed below and outlined in the attached Design-Build change order checklist.

There are several common categories for types of changes, the expectations regarding the change value, and required approval authorities. This document outlines criteria regarding approval of contract deviations/changes.

2.2. Non-Controversial, Non-Material Changes

The WSDOT project team and the Design-Builder shall use good faith efforts to resolve all non-material, non-controversial changes in an expeditious manner. These types of changes require approval of WSDOT's authorized representative at a project team level and are typically no cost. State Construction Office approval is generally not required unless it falls into one of the approval categories defined on the Design-Build change order checklist. Examples of non-controversial, non-material changes are those documented via a Field Change Request or Non Conforming Report, or other similar document.

2.3. Minor Changes

At the discretion of WSDOT Project Team, and as detailed below and in section 1-04 of the Request for Proposal (RFP), payment or credit for any change amounting to \$15,000 or less may be authorized as a "Minor Change." The procedure for Minor Changes, outlined in the Construction Manual Section 1-2.4C(7), may be used in lieu of the more formal procedure outlined in Section 1-04.4 of the RFP. A Minor Change generally does not require State Construction Office approval unless it falls into one of the approval categories defined on the Design-Build change order checklist. The Minor Change process is limited to changes that satisfy all three of the following criteria:

1. Non-structural,
2. Estimated credit or debit is \$15,000 or less, and

3. Contract Time is changed by 10 days or less.

2.4. Changes in General

Changes are defined as deletions, additions, modifications, or revisions to the Contract Documents per Section 1-04 of the RFP, including such things as the Project Description, Basic Configuration, Contract Technical Requirements, applicable WSDOT Standards, previously approved deviations, applicable laws, and regulatory approvals. Changes are typically defined by a Change Category A or B. Category A proposals are generally associated with a Reduction in Scope or Value Engineering Type Change. Category B proposals are generally technical in nature, include changes in work methods, and may or may not require a cost reimbursement from the Design-Builder depending on the nature of the change.

The Design-Builder may apply in writing to WSDOT for a change to the Contract, subject to the following:

1. Except in the case of inadvertent or unknowing Deviations, Design-Builder shall apply for Deviations before they are incorporated into the Work.
2. WSDOT shall have no obligation to approve any applications for change. Design-Builder has the burden of persuading WSDOT that the requested change:
 - a.) Provides similar essential functions or characteristics of the facility;
 - b.) Is equivalent in safety with the relevant standards;
 - c.) Is recognized as a good industry practice for comparable facilities;
 - d.) Will not cause any increase in operating costs as compared to such costs if the change was not implemented.
3. Request for change shall include:
 - a.) Narrative description of the proposed change including a demonstration or description of how the proposal meets the contract requirements and the change category.
 - b.) Description of the existing contract requirements that are involved in the proposed change.
 - c.) Discussion of differences between existing contract requirements and the proposed change, together with advantages and disadvantages to WSDOT and the Design-Builder for each changed item.
 - d.) Itemization of the contract requirements (with reference to specific sections) which must be modified if the change is approved.
 - e.) Justification for changes in function or characteristics of each item, and effect of the change on the performance of the end item, and the contract requirements, including environmental compliance.
 - f.) Description of any previous use or tests of the proposal and the conditions and results. If the proposal was previously submitted on another WSDOT

project, indicate the date, Contract number and the action taken by WSDOT.

- g.) Date or time by which a Change Order must be issued in order to obtain the maximum cost reduction, noting any effect on contract schedule.
- h.) Complete cost analysis including:
 - a cost estimate for the existing contract requirements compared to the Design-Builder's cost estimate of the proposed changes including development and implementation, and
 - an estimate of any additional costs that will be incurred by WSDOT, including any additional right-of-way and relocation costs.
- i.) Any additional information requested by WSDOT shall be provided in a timely manner, including results of field investigations and surveys, design computations and revised plan sheets.

Changes shall only be implemented if WSDOT provides written approval. The decision of WSDOT as to rejection or approval of any change and as to its status regarding "equal to or better" shall be at the sole discretion of WSDOT and shall be final and not subject to partnering, dispute resolution or appeal. Each Party shall bear its own costs in the preparation and review of the change, except that the Design-Builder may be compensated for change development costs prior to sharing savings with WSDOT.

Proposed deviations which are "equal to or better than" the underlying Contract requirement may be implemented without any sharing of the Design-Builder's cost savings provided WSDOT has approved the Deviation.

In general, changes to the RFP General Provisions, Mandatory Standards, Basic Configuration, and Proposal documents are considered to be Category A Changes and can only be changed through Value Engineering Change Proposals and WSDOT directed Changes. Changes to the Technical Requirements (excluding Mandatory Standards), Standard Specifications, Special Provisions, and Amendments to the Special Provisions are considered to be a Category B Change and can only be changed through a Contractor Proposed Change or a WSDOT Directed Change.

2.5. Changes from the Request for Proposal

Design-Builder's changes from the Proposal do not constitute a contract change if they do not change the Scope of Work, the Basic Configuration, or General or Technical Requirements of the Contract. WSDOT Project office approval would be required for all other types of change. State Construction Office approval of this type of change is needed only as defined per the Design-Build change order checklist.

2.6. Changes to the Basic Configuration

For changes that result in additions or reductions to the Work required to accomplish Basic Configuration Requirements, the fixed price shall be either reduced or increased by Change Order in an amount equal to 100% of the value of such change order (including

reduction or increase in overhead). In the event or to the extent that such change results in any time savings or increases impacts on the critical path, the Schedule and/or Milestones shall be adjusted by Change Order to reflect such savings or impacts.

2.7. Reductions in Scope of Work

For changes that result in a reduction in the Scope of Work, the fixed price shall be reduced by Change Order in an amount equal to 100% of the value of such deductive change order (including reduction, in any, in overhead). In the event or to the extent that such deductive change results in any time savings on the critical path, the Schedule and/or Milestones shall be adjusted by Change Order to reflect such time savings. Changes in the contract documents beyond the scope, intent, or termini of the original contract shall require the approval of the State Construction Office, per item 2 of the change order checklist.

2.8. Value Engineering Change Proposal (VECP)

A Value Engineering Change Proposal (VECP) is a proposal developed and documented by the Design-Builder which:

1. Would require a change in any of the Design or Construction Contract Requirements in order to be implemented (including any changes to the Basic Configuration); and
2. Reduces the cost of the Project without impairing essential functions or characteristics of the facility (including service life, economy of operation, ease of maintenance, desirability and safety) as determined by WSDOT in its sole discretion, and provided that it is not based solely upon a change in quantities.

The Value Engineering Change Proposal (VECP) shall only be approved if WSDOT provides written approval. WSDOT may approve, in whole or in part by Change Order, any VECP submitted. Until a Change Order is issued, the Design-Builder shall remain obligated to perform in accordance with the Contract Documents. The decision of WSDOT as to rejection or approval of any VECP shall be at the sole discretion of WSDOT and shall be final and not subject to partnering, dispute resolution or appeal.

When WSDOT approves the VECP, the Fixed Price shall be reduced by an amount equal to 50% of the “net cost savings”, provided that the Design-Builder’s profit shall not be reduced by application of the Proposal and the Design-Builder’s profit shall not be considered part of the Cost. The “net cost savings” shall equal the estimated difference between the Cost of performing the Work according to the Contract documents and the Cost to perform it according to the proposed change (including reductions, if any, in overhead) less;

1. the Design-Builders Cost of studying and preparing the VECP;
2. the Cost of any additional design necessary to implement the VECP; and
3. 100% of any additional costs incurred by WSDOT resulting from the VECP.

2.9. Timely Decision Making

In order to quickly respond to the Design-Builder's need to know whether to proceed or not with a change request, WSDOT agrees to provide concept approval of changes. If concept approval is not requested, WSDOT will respond to a typical Request For Change (RFC) with approval, rejection, or a request for further explanation within 10 days of receipt of the change request by the approval authorities.

2.10. Concept Approval of Changes

At the Design-Builder's option, WSDOT will review a Request for Concept Approval (RFCAs). This review will allow the Design-Builder to gauge the likelihood of WSDOT change approval prior to significant effort that may be required for complex contract changes. An RFCAs will include, at minimum, the following information:

1. Declaration of the change category and a narrative description of the proposed change;
2. Description of the existing Contract requirements which are involved in the proposed change;
3. Discussion of differences between existing requirements and the proposed change, together with consideration for advantages and disadvantages to the Design-Builder.

Concept approval or rejection will be provided from approval authorities within 3 working days of their receipt of the RFCAs. Following receipt of Concept Approval, the Design-Builder will be expected to complete necessary work to fully document the RFC, as detailed in the Contract.

Change approval will not be given prior to receipt and review of the fully documented RFC. If WSDOT rejects a change request following concept approval, WSDOT will provide justification for the rejection. Concept Approval does not guarantee change approval. Concept Approval is not extended to such things as design deviations or changes to mandatory standards other than those which are explicitly identified in the Design-Builder's RFC.

2.11. Approval Authority

Approval authorities for change orders are detailed in the Design-Build Change Order Checklist. The Project Engineer has authority to administer the Design-Build Contract for WSDOT and must approve all changes. Region authority is provided to a designated Regional Construction Engineer or other similar delegated authority. The Regional Construction Engineer provides an independent review and approval of change orders. State Construction Office approval is as defined in the Design-Build Change Order checklist.

2.12. State Construction Office Support and Approval

The State Construction office will assign Assistant State Construction Engineers (ASCE) to each Design-Build project. These ASCEs will act as points of contact for roadway, structures, and administration issues under the Design-Build contract in accordance with Construction Manual Section 1-2.4C(3). ASCE roles are to provide timely technical support, coordinate with other experts as needed, and act with the State Construction Office approval authority as required in the Design-Build Change Order checklist.

The State Construction Engineer may delegate State Construction Office Change Order approval authority to a designated representative on the project team. In this case, proper oversight and documented systems and processes must be established to ensure: statewide consistency, transfer of lesson's learned, maintenance of industry relationships, and use of an auditable process.

3. What are the Benefits?

The process described herein gives direction and guidance for types of change approvals for Design-Build contracting. This policy will:

1. Provide statewide consistency in change order approval expectations;
2. Allow WSDOT to capture lessons learned on a global basis; and
3. More quickly address required contract revisions.

4. Concurrence

March 5, 2009

Was the WSDOT DB Guidebook Updated with this information? No

5. Definitions

ASCE	Assistant State Construction Engineer
DB	Design-Builder
RFC	Request For Change
RFCA	Request For Concept Approval
RFP	Request For Proposal
VECP	Value Engineering Change Proposal
WSDOT	Washington State Department of Transportation

DESIGN-BUILD CHANGE ORDER CHECKLIST

Cont. #: <input style="width: 80%;" type="text"/>	Cont. Title: <input style="width: 80%;" type="text"/>	Approval from State Construction Office Required
C.O. #: <input style="width: 80%;" type="text"/>	C.O. Title: <input style="width: 80%;" type="text"/>	
Category: <input type="checkbox"/> A <input type="checkbox"/> B <input type="checkbox"/> N/A		
I. Executed by the State Construction Office		
1. Cost or credit equal to or exceeding \$500,000.*1	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
2. Change in the contract documents beyond the scope, intent or termini of the original contract.*2	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
3. Change in the condition of award.	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
II. Executed by the Region		
4. Cost or credit greater than \$100,000 but less than \$500,000.*1	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Change in contract time greater than 10 and less than or equal to 30 working days, must be related to changes implemented by change order.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
6. Change in contract time greater than 30 working days.	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
7. Design deviation (Section 2.4 of the Request For Proposal).	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
III. Executed by the Project Engineer		
8. Determination of impacts and/or overhead.	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
9. Design or construction work that does not comply with the Mandatory Standards.	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
10. A change to a Chapter 1 General Provision.	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
11. A change to a technical requirement in any of the following sections: Mandatory Standards, Design Deviations, Geotechnical Design, Pavement, Project Documentation, Bridges and Structures, Control of Materials, MWBE Goals, or QMP Requirements.	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
12. Determination of changed condition (Section 1-04.7 of the Request For Proposal).	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
13. Settlement of a claim (Section 1-09.11(2) of the Request For Proposal).	<input type="checkbox"/> Yes <input type="checkbox"/> No	X
14. Repair of damage regarding "acts of God" or "acts of the public enemy or of government authorities (Section 1-07.13 of the Request For Proposal).	<input type="checkbox"/> Yes <input type="checkbox"/> No	X

Approvals obtained:

Project Engineer: (REQUIRED) Date:

Region: (REQUIRED) Date:

State Construction Office: Date:

To be completed by the Project Engineer :

CO Reason(s) (See CCIS Source/Outcome) :

Change Order Prepared By: Date:

Has change been entered as lesson learned? Yes No N/A

Has design documentation been updated? Yes No N/A

Is change approved by program management? Yes No N/A

To be completed by the Region :

Is the change eligible for Federal participation? Yes No N/A

Change Order Reviewed by: Date:

*1 Cost or Credit greater than \$200,000 on Federal Stewardship requires FHWA approval (see Construction Manual - Ch.1-2.4C(3) and Ch. 1-3.4)

*2 Per RCW 47.28.050, any change beyond \$7,500 that is beyond the original scope shall go through the competitive bidding process.

This form represents the minimum information required by the State Construction Office.

Rev. 4/2009