

Highway Contracts



Ross Hendrickson | Construction Support

State Aid for Local Transportation

06/12-2025

SALT Construction Staff

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Abbreviations used in this session

- CAM – [Contract Administration Manual](#)
- CFR – Code of Federal Regulations, specifically, [23 CFR](#)
- CPM – [Critical Path Method](#)
- FHWA – [Federal Highway Administration](#)
- IAW – In accordance with
- MFCA – Minnesota False Claims Act
- OCIC – [Office of Construction and Innovative Contracting](#)
- OPMTS – [Office of Project Management and Technical Support](#)
- PCO – Progress Controlling Operations

- Division I – General Requirements and Covenant
- Division II – Construction Details
 - .1 Description
 - .2 Materials
 - .3 Construction Requirements
 - .4 Method of Measurement
 - .5 Basis of Payment
- Division III – Materials
 - .1 Scope
 - .2 Requirements
 - .3 Sampling and Testing

- 1100 General Requirements and Covenant
- 1200 Bidding Requirements and Conditions
- 1300 Bidding Requirements and Covenants
- 1400 Scope of Work Consultant Contract Administrator (can recommend approval)
- 1500 Control of Work
- 1600 Control of Material
- 1700 Legal Relations and Responsibility to the Public
- 1800 Prosecution and Progress
- 1900 Measurement and Payment

Post Letting / Preconstruction

- Preconstruction meeting
 - Include all relative project stakeholders, utilities, inspectors, DSAE, construction support, contractors, office support, survey crew.
- Change in construction status
 - Please email form to the materials lab, IA (if a federal aid project), DSAE, DSAEA, Construction Support.

Materials Certification

- All materials need to be certified prior to coming on the jobsite, if not, withhold payment until this is provided that. https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=24718885
- All projects need a Grading and Base Report, preliminary and final. https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=24718867

Materials Testing

- All materials, unless on the Approved Products list, need to be tested prior to payment. [Approved/Qualified Products – MnDOT](#)
- All Federal Aid projects need to have Independent Assurance certify inspectors and contractor personnel are testing correctly , once per year.
- All testing rates are called out in the Schedule of Materials Control (SMC).

1401 Intent of Contract

- Doesn't cover every detail
- Best general practice prevails
- Parties must agree on proposed changes
- The Department's failure to itemize every allowable exception or condition in the Contract does not mean that the Contract provisions will be enforced equally under all conditions or on all parts of the Work.

- 1501 Authority of the Engineer
 - Engineer of Record = Resident Engineer (specified on the Contract with the Contractor)
 - The Commissioner designates Last, First or his/her successors as the Engineer of Record for this Contract
 - Deciding Questions
 - Suspending Work
 - Basis of Decision

Project Authority - 1509

- 1509 Authority of the Project Engineer and Project Supervisor
 - This was deleted from spec book for a few years, it was added back in the 2020 spec book and will remain
 - Act as the Engineer's representative
 - Project **Engineers** are delegated all duties and authorities of the Engineer except for those delegated under 1512, "Unacceptable and Unauthorized Work."
 - Project **Supervisors** are delegated all duties and authorities of the Engineer except for those delegated under 1512, "Unacceptable and Unauthorized Work," and any duty or authority which would require licensure as a Professional Engineer in the State of Minnesota.

- 1510 Authority and Duties of the Inspector
 - Act as Engineer's representative
 - May notify the Contractor of non-conforming Work
 - May reject materials
 - May suspend operations until issue is decided by the Engineer
 - May not alter or waive provisions of the Contract
 - Is not obligated nor authorized to provide direction, superintendence, or guidance to the Contractor, its crews, its Subcontractors, or suppliers to accomplish Work

1503 Conformity with Contract Documents

- Targets and tolerances
- Running on the edge of specifications
- Temporary Construction
 - In constructing temporary facilities that do not become a part of the permanent improvement, the Engineer may waive requirements that the Engineer considers unnecessary in fulfilling the intended service or function of the facility.

1504 Coordination of Contract Documents

- Order of precedence
 1. Addenda
 2. Special Provisions
 3. Project-specific Plan Sheets
 4. Standard Plans and Standard Plates
 5. Standard Specifications

1511 Inspection of Work

- The Department inspections do not supplement or replace the Contractor's own Quality Control and do not relieve the Contractor of its responsibility to correct nonconforming Work.
- The Department will consider any Work performed or Materials used without the required certification, testing, or inspection by the Department as unauthorized Work in accordance with 1512.2, "Unauthorized Work."
- The Engineer's failure to reject nonconforming Work or Materials, from lack of discovery of the nonconforming Work or Materials or for any other reason, will not:
 - Prevent the Department from rejecting the nonconforming Work or Materials upon later discovery
 - Obligate the Department to issue final acceptance of the Contract in accordance with 1516.4, "Final Contract Acceptance"

No Penalties in Construction Contracts

- Certain deductions for safety's sake are allowed
- Permanent deductions, daily/hourly, for other reasons could be viewed as penalties
 - There are other ways to get compliance
 - Penalties are not allowed
 - Penalties are not defensible
- If including monetary deductions in provisions, be reasonable, and keep supporting documentation for decisions

- Importance of Documentation
- Pay Items
- Diaries
- DWRs
- Photos
- Videos

Why is documentation so important?

- Claims avoidance, resolution, or mitigation
- Litigation
- Questioned costs – funding
 - FHWA – CFR requirements
- Audit
 - Internal, Office of Legislative Auditor, FHWA
- Efficiency if project staff retires/resigns, or is transferred/reassigned

Documentation – why?

- Failure to record an event carries with it the implication that the event didn't occur or was insignificant; it threatens credibility of documentation.
- Anybody should be able to understand the project by looking at documentation without further explanation.
- [Office of Legislative Auditor TH Construction Contracts Audit – finding 3](#)
 - MnDOT did not always have documented support for highway contract payments

Mn Office of Legislative Auditor (OLA)

- OLA conducted an audit of TH construction contracts
 - Tested a random nonstatistical sample of 60 TH contracts finalized 7/2017 – 2/2020
 - Thirty percent, or 18 of 60 highway contracts sampled, were missing support for some contract payments or had support that was not clear. Of those, two samples had payments for items that had been eliminated from the contract and two samples had support that was indecipherable. Additionally, quantities on 17 contracts were missing support, such as tickets, measurements, and computations, or had support that did not match the amount paid. Unsupported amounts totaled \$2,185,021.
 - Retaining clear support for contract payments is a basic contract-management practice. Further, having clear support is important in the event of a dispute or federal audit and allows the department to monitor the accuracy of payments.

- Location of Item placed
 - In general “Project” is not an acceptable location; all work is to be done on project
- Date placed – especially critical if item is fuel escalation eligible
- Source documentation – all information is contained in the DWR posting
- Non-Source – QDOCs, spreadsheets, drawings, pictures, books, attachments, forms, etc.

1901.1 (P) Plan Quantity Items

- Not an absolute
- Not the same as Lump Sum
- Must be verified in the field that the original plan dimensions are still valid
 - Verification may include LxWxD checks, stake checks, form checks, spot check measurements
- (P) designations are only found on the Statement of Estimated Quantities (SEQ)

Documenting Changes to (P)

- **Computed Only Change: New (P)**
 - New (P) Quantity arrived at by adding or subtracting the computed changed portion to the original contract Proposal Quantity.
- **Actual Field Measured Change to (P): (P)+**
 - Any actual field measured additions or subtractions to the (P) Plan Quantity must include all "Supporting Documentation" with the final records.

Changes to (P) quantity documentation

- Use a Change Order to document changes to (P), you must include the following:
 - Reason for change
 - Location
 - Specific Increase / Decrease Quantity
 - Method of Measurement - Actual Field Measured or Computed

1901, Measurement of Quantities

- Method of Measurement
 - Subsection .5 of Division II specs
- The Contractor may dispute the Engineer's determination of pay quantities by submitting a written request to the Engineer. The Contractor shall state the Contract Item and sections of the Project disputed and provide details to justify the Engineer's review of the pay quantity... The Engineer will not review quantities unless the Contractor provides evidence substantiating that the quantity is incorrect.

Diaries as Documentation

- Not optional
 - Required by CAM
 - The **Project Engineer** is responsible for ensuring that a project diary is current for every construction contract.
- Play an important role in every claim avoidance system
 - Lack of proper documentation weakens an owner's ability to defend itself from contractor requests for additional compensation

Diaries – report the normal and abnormal

- Construction personnel often believe that Diaries should be long and detailed only on those days when problems are encountered.
- Frequently, Diaries are used as a means of proving what happens on the project when things are normal.

Diaries on Contracts with CPM schedules

- Remarks related to Contractor's work should be tied to an activity number on the schedule

- The Engineer should:
 - Keep a log of unresolved issues
 - Track 1403 notification(s) with dates
 - 1403 to be discussed later

- A construction dispute with good facts and bad law can, nonetheless, result in a good outcome.
- Rarely will bad facts and good law result in a good outcome.
 - Keep written records. Although conditions in the field may constantly change, make sure you have a process in place to reduce to writing all pertinent facts that affect construction. If you have a pertinent conversation by phone or in person, make sure you follow-up the conversation in writing.

Photos as Documentation

- Recommendations
 - Take a lot of high-quality photos
 - Know the issue you are trying to document
 - The photo should tell a story with as little narrative as possible
 - Include a reference point that can give a sense of scale to other objects in the picture

Documentation for Photos – Photo Log

- Date/time the picture/video was taken.
- A brief description of the photograph's location, content, or what is being documented, and direction of the view depicted in the picture.
- Names of individuals present when the picture was taken and their place of employment and position.
- Light conditions and/or weather.
- Person's name who took the picture(s) and his/her signature or initials.

Videos as Documentation

- Never videotape a violation scene or accident scene with the recording microphone turned on. It is easy to reach erroneous conclusions, make other verbal mistakes, or make disparaging or prejudicial comments during a live narration.
- Remember you can't erase taped verbal errors.

First and foremost, be safe when making videos, utilize lane closures if needed. Don't wait until the end of the job to make video of non-conforming work. Be Objective.

Possible Script:

- My name/title is:
- Date:
- You are looking at:
- SP/Contract #:
- location on project: Station, Lane (EB, WB, SB, NB), Looking (E, W, S, N)
- type of work
- what you are trying to show
 - if non-conforming, unacceptable work, unauthorized work, state specification or special provision, and what is non-compliant
 - progress, (on an item or on the project as a whole)

Materials Certification

- 23CFR637 Construction Inspection and Approval
 - .201 ...to assure the quality of materials and construction
- Material Certification is making sure that the right people took the correct number of tests and resolved the tests that did not pass.
- CAM – Material Certification – Section 4
 - added to manual at request of Materials Lab, please contact Materials Lab regarding certification questions
- Process likely to change with implementation of AASHTOWare Materials

Material Certification Exception Summary (MCES)

- \$ Deducts for failures shown on MCES should also be discernible on the vouchers
- Change Order Level 1 is a tool to document all deductions for material failures.
 - 1512.1
- Finance looks for deducts on final vouchers, and many times doesn't find them.
- Explain why deducts weren't assessed

What you are certifying

- All Materials incorporated into the project were in conformance with the approved plans, special provisions, and specifications.
- The Required number of observations were made with samples taken and compared to companion samples, in accordance with the MCS.
- All QA (Quality Assurance) samples compared to IA (Independent Assurance) samples were within tolerance.
- All MnDOT and Contractor personnel were certified at the appropriate level for the tests that they performed

Materials Certification Resources

- [Materials Project Certification - Materials & Road Research - MnDOT \(state.mn.us\)](https://www.state.mn.us/materials-project-certification)
- Schedule of Materials Control (SMC): https://edocs-public.dot.state.mn.us/edocs_public/DMResultSet/download?docId=19624483
 - Schedule of Materials Control is inserted into project proposals to direct how materials are to be sampled. The sampling rates within the most current version of the Schedule of Materials Control may be modified by the Special Provisions. Therefore, one needs to refer to their specific proposal.

Schedules



1803 Progress Schedules

- Local Agency will administer Contracts IAW 1803
 - The Contractor shall prepare the Progress Schedule as specified in 1803.2, “Bar Chart Schedules,” or 1803.3, “Critical Path Method (CPM) Schedules.”
- 1803.1.A.3 Non-compliance
 - The Contractor's refusal, failure, or neglect to pursue timely acceptance of any schedule shall constitute reasonable evidence that the Contractor is not prosecuting the Work with the diligence that will ensure its completion within the applicable Contract Time

Schedules – why?

- The schedule forces the Contractor to build the project on paper first
- Because lack of a progress schedule can make it much more difficult for MnDOT to defend against Contractor Claims
- It's our best tool to monitor the Contractor's production

Bar Chart vs. CPM

- The special provisions will identify the type of schedule required on the Contract
- The Bar Chart (1803.2) identifies the PCO's and a CPM (1803.3) identifies the “critical path” for your project.
 - Essentially, the PCO's are a critical path by inspection.
 - We have to treat PCO's differently than non-PCOs (same for critical vs. non-critical).

Schedule – What to look for

- Sequence and duration of PCO's.
 - It's important that the Owner and the Contractor agree on the PCO's before construction begins.
 - The schedule is the template for the PCO's that are entered into diaries.
 - Inspectors should not have to speculate what the PCO is for any given day.
 - Bar Charts may have more than one PCO in a given time period.
 - Pay attention to overlapping time periods of PCO's.
 - Understanding PCO sequence, duration, and overlap are important when utilities are being moved concurrently with the Contractor's operations.

Project Schedules

- An impact to the PCO will either eat up float or cause the end of the project to be bumped.
 - Even if the impact was not compensable, was it excusable?
 - See 1806.2 Types of Delays
 - If impact is excusable, try to negotiate a set amount of time for an impact to the Contract.
 - Now is the time to negotiate time!

1803.3 CPM Schedules

- Analysis like bar chart
- Specifics too large of a topic for this class
- [1803 Project Schedules attachment](#) in Special Provisions
- OCIC Resources:
 - [Bradley Cegla](#)
 - [CPM Courses](#)

1803 Schedule – 1906 Progress Estimate Connection

- The Department will withhold each monthly progress estimate for failure to submit an original or updated schedule on time and in the manner required. Payment withheld for violation of the schedule requirements will be included in the next progress estimate following the Contractor's submission of the required schedules.
- However, 1906 requires progress estimates once a month at regular intervals
 - Withholding is option

- An Estimate
 - Unacceptable project schedule
 - Not submitted or current
- Administrative Voucher
 - \$0 Progress Estimate
- On an estimate
 - Be detailed and descriptive for all withholdings on an estimate
 - Reference specification which entitles withholding
 - Withhold against proper item, do not use Mobilization for material failures
 - Don't assume the "officers" of the Contractor are told correct information by the superintendent

Payment Estimates

- Approvals not an exercise in clicking
 - Review
 - Delete when appropriate
 - Make changes/adjustments as needed
 - Check funding
 - Check Contract adjustments – automatic for time incentives/disincentives
 - Exceptions

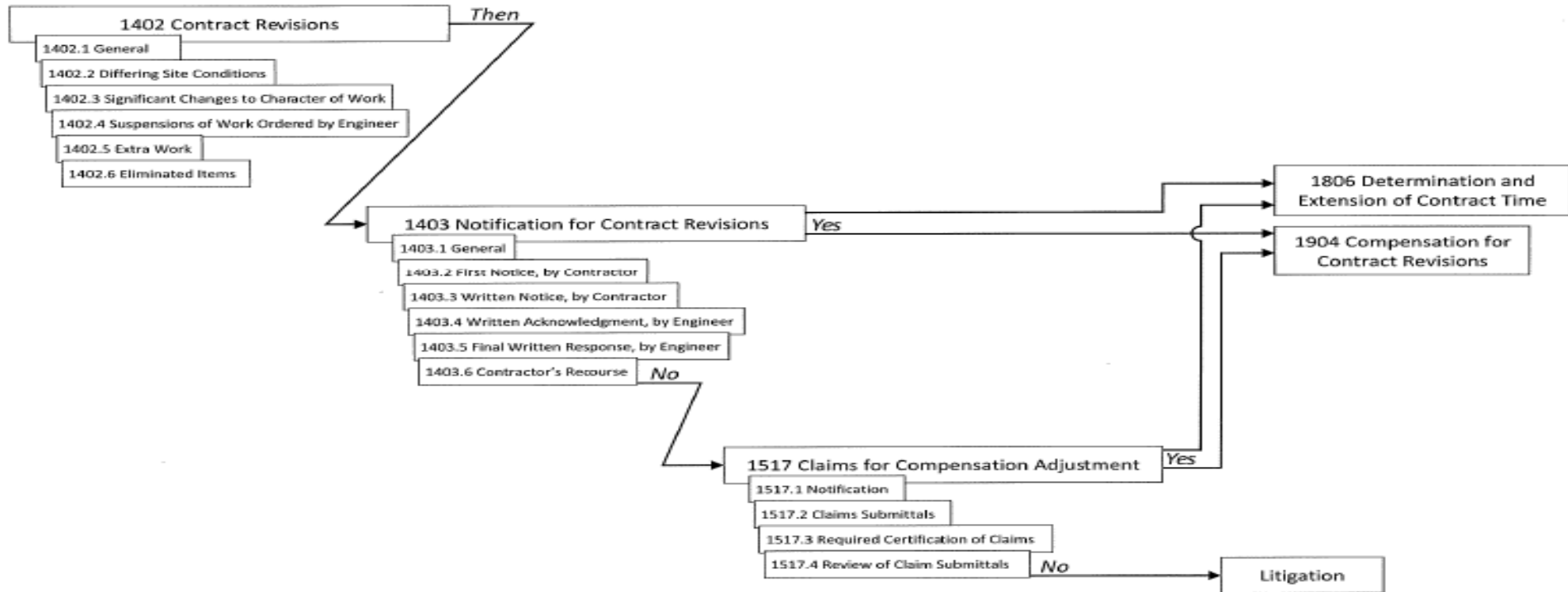
1402 Contract Revisions



Contract Revisions Flow Chart

Contract Revisions Flowchart

If the Contractor believes it's encountered a revision as defined by the following:



Contract Revisions

- 23 CFR 635.109 requires language in 1402 if any federal money is funding Contract
- [Construction - State Aid - MnDOT](#)

- 1402.1 - Authorizes owner to make changes
- 1402.2 – Differing Site Conditions
 - Tells you how to deal with unforeseen conditions
- 1402.3 – Significant Changes to the Character of the Work
 - Requires the Contractor to do the extra work
 - Defines significant changes
- 1402.4 – Suspension of Work Ordered by Engineer
- 1402.5 – Extra Work
- 1402.6 – Eliminated Items

1402.2 Differing Site Conditions

- If one of the following subsurface or latent physical conditions are encountered at the site **the party encountering such conditions shall promptly notify the other party in writing** of the specific differing conditions before they are disturbed and before the affected work is performed:
 - Differ **materially** from those indicated in the Contract, or
 - If unknown physical conditions of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in the Work provided for in the Contract.

What is “materially”?

- If neither party could have expected what was encountered
- “to a significant extent or degree – to a level where it would have had more than a “nominal” effect on the contractor’s bid had the contractor known of the situation at bid time; something significant enough that it would affect the contractor’s selection of means and methods; a substantive change as opposed to merely a change in “form”; varies significant from what the parties reasonably expected.”

Quiz time – Material or Not, Part 1

- Common ex. (CX) is based on 10” subcut over 10 miles of roadway.
- The Contractor bid work at composite price based on differential haul distances to various disposal sites.
- During Construction, County XYZ reasonably determines that subcut conditions are sufficient to only justify 8” subcut.
- Compensate the Contractor or not?
 - Discuss

Compensate the Contractor? No

- While this results in a 20% reduction in CX, the CX work was not altered materially in kind or nature from that originally planned, therefore the change is not “significant” under 1402.3; the change does not meet the percentage thresholds of 1402.3.
- If the Contractor bid a large portion of profit into this work, this change would cause a very substantial uncompensated loss to the Contractor.
- Under case law, this is a change that the Contractor could not claim was never contemplated by the parties; these kinds of changes are made all the time.

Material or Not, Part 2

- Same facts, but in this instance, County XYZ decided to eliminate the last 2 miles of the project and the CX on those miles represented the shortest hauls for the Contractor to the disposal site.
- Compensate the Contractor?
 - Discuss

Compensate the Contractor? Yes

- The reduction in CX is only 20%, so it fails to meet percentage requirements
- The Contractor is entitled to an adjustment in the contract sum because the change represented a material alteration, therefore meets one of the definitions of “significant” under 1402.3.
- Under case law, this is a change that the Contractor could claim was never contemplated by the parties; this kind of change does not happen “all the time.”

1402.3 Significant Changes to the Character of the Work

- The term "significant change" shall be construed to apply only to the following circumstances:
 - When the character of the work as altered differs materially in kind or nature from that involved or included in the original proposed construction, or
 - When a **major** contract item of work is increased in excess of 125 percent or decreased below 75 percent of the original Contract quantity.
- 1103 Major Contract Item: A Contract Item with an original value equal to or greater than 5 percent of the original Contract amount. A Major Contract Item at the time of bid will remain a Major Contract Item.

1903 Compensation for Altered Quantities

- If the Department pays for the Work of a Contract Item on an actual quantity basis and the accepted quantities of Work vary from the quantities in the Contract but do not meet the requirements established for significant changes in 1402.3, “Significant Changes to the Character of Work,” the Department will pay for the Work of the Contract Item as follows:
 - (1) The Department’s payment based on the Contract Unit Prices is payment in full for the quantities of Work performed by the Contractor and accepted by the Engineer.
 - (2) The Department will not pay for increased expenses, loss of expected reimbursement, or loss of anticipated profits or overhead suffered or claimed by the Contractor due to differences between the actual quantities of Work and the quantities in the Contract.
 - (3) The Department will not pay for loss of expected reimbursements from unbalanced allocation of costs among the Contract Items due to differences between the actual quantities of Work and the quantities in the Contract.

1402.4 Suspensions of Work Ordered by the Engineer

- All or a portion of work suspended or delayed by the Engineer, **in writing**, for an unreasonable period of time...
- The Contractor shall submit a **written request** for adjustment within 7 calendar days after receiving notice to resume work
- The Engineer will notify the Contractor of the determination whether or not an adjustment of the Contract is warranted
- The Department will not allow a Contract adjustment under this clause to the extent that performance would have been suspended or delayed by any other cause, or for which an adjustment is provided for or excluded under any other term or condition of this Contract.

Contract Revisions - Time

- Contract time needs to be addressed with each Contract revisions
 - FHWA and CAM require this
- Each Change Order has an “impact” statement
- Agreeing to time extensions for changed work at time of CO helps to reduce “end of contract” time disputes

1402.5 Extra Work

- If the Contractor believes that it has been required to perform Extra Work, the Contractor shall notify the Engineer in accordance with 1403, “Notification for Contract Revisions.” Failure to provide notice as specified in 1403, “Notification for Contract Revisions,” constitutes a waiver of the Contractor’s entitlement to compensation or a time extension and releases the Department from responsibility from providing compensation or a time extension.

1402.6 Eliminated Items

- If the Department eliminates any Contract Items from the Contract, the Department will reimburse the Contractor for all costs incurred before notification that are not the result of unauthorized Work.
- The Department will compensate the Contractor in accordance with 1905, “Compensation for Eliminated Items.”

Work Performed Before Authorization

- Minnesota Statutes §§16A.15 and 16C.05 generally require state agencies to have a signed and encumbered agreement before the state agency can authorize a contractor to begin work. There are, however, specific statutes governing “supplemental” work added to a highway or building construction contract. Those statutes allow local agencies to **authorize supplemental work** without violating §16A.15 or §16C.05.
 - The Contractor can’t begin operations prior to Contract Execution
 - For Contract Changes, you must not pay for the work if CO is not fully executed

Change Orders

- Type 1 – signatures not required

- Documents changes allowed by contract
- Signatures required
 - Local Agency
- Optional signatures
 - Contractor
 - Consultant Contract Administrator (can recommend approval)

- Type 2 – signatures required

- Amendment to Contract
- Signatures required
 - Contractor
 - Local Agency
 - Consultant Contract Administrator (can recommend approval)

Quiz – CO Level 1 or 2?

- Waive Liquidated Damages IAW 1807.2
- Document 1905 Compensation for Eliminated Items
- Change the start date
- Revise method of measurement per 1901.11
- Document substitution of Materials IAW 1605
- Document the basis of acceptance and to adjust contract unit price for unacceptable work allowed to remain in place IAW 1512.1

1403 Notification

- Notification requirements apply to all potential Contract revisions including those defined in 1402.
- The specified time limits may only be extended through a written, jointly-signed agreement between the Contractor and the Engineer.
- The Engineer will address the underlying issue prompting the notification in a timely manner.

1403.2, First Notice, by Contractor

- The Contractor shall notify the Engineer verbally as soon as a Contract revision appears necessary.
- The Contractor shall not start or continue with an activity or Contract Item for which a Contract revision may be necessary without authorization from the Engineer.

1403.3, Written notice, by Contractor

- If the Contractor disagrees with the Engineer's response or **the Engineer does not respond to the first notice**, the Contractor shall provide a written notice
 - It should never happen that the Engineer doesn't respond to notification
- Provide this written notice within 5 Business Days of first notice if Engineer has not responded or within 5 Business Days of receiving the Engineer's response to the first notice.
- Specification includes 7 items which should be detailed in this notification

Notification – Engineer Actions

- 1403.4 Written Acknowledgement, by Engineer
 - The Engineer will provide a written acknowledgment of receipt of the Contractor’s written notice.
- 1403.5 Final Written Response, by Engineer
 - Within 10 Business Days of receiving the Contractor’s written notice, the Engineer will provide a written response that includes one of the following:
 - (1) Confirmation of the need for a Contract revision. The Contractor shall pursue time extensions in accordance with 1806, “Determination and Extension of Contract Time,” and compensation in accordance with 1904, “Compensation for Contract Revisions”
 - (2) Denial of the request for a Contract revision, in which case the Engineer will make clear, by reference to the Contract, why the issue does not represent a revision to the Contract
 - (3) A request for additional information, in which case the Engineer will state clearly what is needed and by when; the Engineer will respond within 10 Business Days of receiving the additional requested information

1904 Compensation for Contract Revisions

- Requires a Change Order (contract revision)
- If the Agency revises the Contract the Department will compensate the Contractor for the Contract revision following the sequence:
 - 1904.2, “Contract Unit Prices,”
 - 1904.3, “Negotiated Prices,”
 - 1904.4, “Force Account.”
- Such compensation for the Contract revision constitutes final and full compensation for performing the revised Work, delay costs, and all other costs not expressly precluded by 1904.5, “Non-Allowable Charges.”
- The Engineer will determine the pricing method following the sequence specified in 1904.2, “Contract Unit Prices,” through 1904.4, “Force Account,” before directing the Contractor to perform the Work in the Contract revision.

1904.2 Contract Unit Prices/1904.3 Negotiated Prices

- 1904.2 Contract Unit Prices

- Before proceeding to another pricing method, the Engineer will attempt to price and pay for the Contract revision using Contract Unit Prices.

- 1904.3 Negotiated Prices

- If the Engineer and Contractor are unable to agree on compensation in accordance with 1904.2, “Contract Unit Prices,” they will attempt to negotiate unit or lump sum prices using one or more of the following methods:
 - Original Contract Unit Prices for similar Contract Items adjusted for increased or decreased Material costs
 - Representative historical Unit Prices of similar Work and quantity
 - Unit Prices computed by the Department
 - Cost analysis of labor, Material, Equipment, and mark-ups as allowed in 1904.4, “Force Account”

1904.4 Force Account

- If the Engineer and Contractor are unable to negotiate a price for the Contract revision in accordance with 1904.3, “Negotiated Prices,” the Engineer may direct the Contractor to perform all or part of the revised Work on a force account basis. When the Engineer directs the Contractor to perform revised Work on a force account basis, the Department will pay the Contractor as specified in 1904.4A, “Labor,” through 1904.4J, “Inefficiency.”

1904.4E Daily Records

- 1904.4E The Engineer and Contractor will document the labor, Materials, and Equipment used in performing the revised Work on a Daily Equipment Labor Rental Record (Form 2137). At the end of each workday, the Engineer and Contractor will compare and sign the Daily Equipment Labor Rental Record.
- Daily Equipment Labor Rental Records signed by both the Department and Contractor will govern over other Department and Contractor records.
- In the event the Contractor declines to sign the Daily Equipment Labor Rental Record, the Department's records shall govern.

- G Specialty work - “Specialty work” is unique Work that cannot be performed by the Contractor, its Subcontractors, or other contracting firms that generally perform work on Highway construction projects.
- The spec book does not mention the Summary of Daily Force Account but it is in the Contract Admin Manual
 - Completed by MnDOT/Consultant Staff
 - Signed
 - Summarizes work done over a period, but not used to record daily work

1904.5 Non-Allowable Charges

- The Department will not pay the Contractor for any of the following, regardless of the method of payment for the revised Work:
 - Loss of anticipated profits
 - Consequential damages, including loss of bonding capacity, loss of bidding opportunities, and insolvency
 - Indirect costs
 - Attorney's fees, claims preparation expenses, or costs of litigation

1904.5B Profit Adjustment

- Per 1402.4, “Suspensions of Work Ordered by the Engineer,” the Department will not pay the Contractor for profit on suspensions or delays ordered by the Engineer. The Department will remove profit from the mark-ups in 1904.4A, “Labor,” 1904.4B, “Materials,” and 1904.4H, “Contractor Mark-Up,” by reducing the mark-up percentages as follows:
 - Labor: from 62 percent to 57 percent
 - Materials: from 15 percent to 10 percent
 - Contractor mark-up: from 10 percent for the first \$50,000.00 to 5 percent for the first \$50,000.00

1904.6 Compensation for Delay

- Most likely, you will have contract changes unit or contract claims/support personnel involved with this
- For compensable delays as identified in 1806, “Determination and Extension of Contract Time,” the Department will pay for the costs specified in 1904.6B, “Allowable Delay Costs.” The Department will not pay for non-allowable charges specified in 1904.5, “Non-Allowable Charges,” or duplicate payment made under 1904.2, “Contract Unit Prices,” through 1904.4, “Force Account.”
- The Department will not pay for delay costs before the Contractor submits an itemized statement of those costs. The Contractor shall include the following content for the applicable items in the statement.
 - See 1904.6B – Allowable Delay Costs

1905 Compensation for Elimination of Items

- Requires a Change Order
- Please refer to “elimination of items” rather than cancellation of items/work in your Change Order
- You may request help from construction support / MNDot claims engineer, or MnDOT Audit
 - The Contractor shall allow the Department access, in accordance with 1721, “Audits,” to the Contractor's cost records and other data relating to the Contract as needed by the Department to determine compensation for eliminated Work.

1907 Payment for Surplus Items

- Requires a Change Order
- If contract is federally funded, these Change Orders are non-participating
 - FHWA will not pay any portion of materials not used/delivered to maintenance

Thank you again!

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