

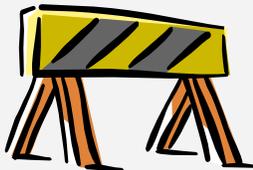
From Brenda O'Brien, Engineer of Construction and Technology

MDOT-Construction and
Technology Division
P.O. Box 30049
Lansing, Michigan 48909
Phone/517-322-1087
Fax/517-322-5664
www.michigan.gov/mdot/

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Questions regarding this
Construction Advisory
should be directed to:

Chad Rajala, Construction
Contracts Engineer, at
517-322-6630 or
rajalac@michigan.gov



BJO:SE

Documenting Price Negotiations and Impacts to Contract Time on Contract Modifications

A Federal Highway Administration (FHWA) national review team conducted reviews of projects in Michigan as part of the American Recovery and Reinvestment Act (ARRA) construction program. The reviews were to evaluate risks associated with various aspects of the federal aid construction program, which included contract administration. The review did not identify contract administration as a high-risk area; however, it did identify two areas for improvement. The review summary report noted the following:

1. Negotiated prices for extra work and changes to the contracts had minimal justifications.
2. Contract modifications did not address time impacts of the extra work or changes, and whether extensions of contract time were warranted.

Although not specifically stated, the same findings pertain to adjustments of all types. The report recommendations are based upon regulations in Title 23 CFR (Code of Federal Regulations) 635.120., titled *Changes and extra work*. The complete text of the regulation is available on the Web at: <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=23&PART=635&SECTION=120&YEAR=2001&TYPE=TEXT>.

The report recommended that the FHWA work with MDOT to develop guidelines to improve the supporting documentation for extra work price negotiations and to address whether extensions of contract time are warranted in the contract modifications. All procedures and processes discussed in this construction advisory are a part of and in accordance with the current Stewardship Agreement between MDOT and FHWA.

Documenting Price Negotiations

The regulation states, "The SHA (State Highway Agency) shall perform and adequately document a cost analysis of each negotiated contract change or negotiated extra work order". In addition, cost analysis documentation is required for all adjustments to the contract. Base payment for the work on one of the following:

1. Negotiated unit prices

When using negotiated unit prices the analysis, justification and documentation should include all applicable information from the following:

- Unit prices from an adjacent project
- Similar items on the existing contract
- Favorable comparison with weighted average unit prices for recent contracts in the general area

- Cost analysis based on materials labor and equipment to be used for the work
- Quantity of work to be completed; small quantities tend to have higher unit costs
- Other factors such as weather impacts, staging issues, scheduling issues and similar impacts to support the negotiated price is reasonable

The following statements are examples of language to include in the justifications for negotiated prices on the contract modification, as applicable:

- Unit price was taken from an adjacent project, (Job Number)
- Unit price was taken from a similar item on the existing contract
- The unit price is reasonable when compared with weighted average unit prices in the general vicinity for ____ Quarter, (Year)
- Unit price was negotiated based on material, labor and equipment costs; see analysis in file ____
- Backup documentation for unit price analysis can be found in file ____ in the project files
- Other statements as applicable to document the negotiated unit price

Subsection 109.05.C of the *2010 Standard Specifications for Construction* will contain additional information on price negotiations.

2. Negotiated unit prices based upon force account type records

When the negotiated unit price method is not available or the unit price cannot be determined prior to completion of the work, and it is shown that the cost is less than the amount if computed using actual force account records, unit prices can be supported using force account type records. Documentation for this method is to include labor, equipment and material usage, and cost totals. Convert to a unit price before adding on administrative costs, profit and other costs. When using this method to document the cost of extra work, include documentation with the contract modification for extras totaling \$25,000.00. For extra work less than \$25,000.00, keep the documentation in the project files and cross-reference the file location on the contract modification.

3. Force account procedures

When unit prices cannot be agreed upon in advance and the force account type record method is not available, use force account procedures to determine the cost of the extra work. Subsection 109.07 of the *2003 Standard Specifications for Construction* contains force account procedures. Subsection 109.05.D. of the *2010 Standard Specifications for Construction* will contain force account procedures. MDOT's *Construction Manual* contains additional guidance on documentation procedures and requirements.

Documenting Impacts to Contract Time

The second area noted in the ARRA review team report is the need to address the impacts on contract time from extra work, quantity changes, and adjustments to the contract. The contractor completes an analysis of the time impact for extra work and submits it to the engineer as part of the Work Plan under 109.07.A of the standard specifications. Include extensions of time in the contract modification, when warranted, and if it can be determined at that point. If the duration of the extension of time cannot be determined when the contract modification is prepared, document whether an extension of time is warranted on the contract modification. Any extension of time will be determined upon completion of the extra, additional, or adjusted work. In all cases, use Section 108 of the standard specifications for construction to determine the extension of time to be granted.