



OFFICE MEMORANDUM

DATE: September 7, 2011

TO: Region Engineers
Region Delivery Engineers
TSC Managers
Resident/Project Engineers
Region Construction Engineers

FROM: Gregory C. Johnson, P.E.
Chief Operations Officer

Randel R. Van Portfliet, P.E.
Bureau Director of Statewide Field Services

SUBJECT: Bureau of Highway Instructional Memorandum 2011-05
FHWA Oversight Project Contract Modification Procedures
(Supercedes BOH IM 2005-11)

The Federal Highway Administration's (FHWA's) Oversight Project Contract Modification Procedure clarifies that FHWA's approval is needed for all contract modifications on projects being overseen by their agency. MDOT's delivery engineer is responsible for completing form FHWA-1365 "Record of Authorization to Proceed with Major Contract Revision" (attached) and forwarding all documentation to FHWA's area engineer that is overseeing the project to obtain the necessary approvals.

Prior approval from FHWA is required for all major changes in work before the work commences. This approval is obtained by electronic submission of form FHWA-1365 to the area engineer overseeing the project. The area engineer will approve or comment on the submitted form and transmit it back to MDOT's delivery/project engineer electronically for inclusion into the project file and to be attached to the contract modification. FHWA typically responds within a few days and has internal procedures in place to track approvals electronically to stay within the confines of their 10 calendar day maximum review time.

Major Changes or Major Extra Work

All major work performed prior to obtaining pre-approval from FHWA will be considered non-participating. However, when an emergency or unusual conditions justify expediency, the area engineer may provide verbal pre-approval of the change and immediately follow-up such verbal approvals with a formal written approval. Major changes or major extra work are defined as any change that will significantly affect the cost of the project to the federal government, alter the termini, character, or scope of work.

FHWA's Michigan Division has further defined major changes below:

1. Any contract modification resulting in a net change to the contract of \$50,000 or more.
2. Any group of items related to the same general issue costing \$50,000 or more.
3. Any change to the termini, character, or scope of the project, regardless of the amount.
4. All extensions of time.
5. Any changes to incentive/disincentive (I/D) clauses, A+B provisions, or warranties.
6. Any value engineering change proposal, regardless of amount.

Non-Major Contract Modifications

Non-major contract modifications also require formal approval from FHWA, although advance approval and form FHWA-1365 are not required prior to the work being performed. The submission of the approval documents is the same as for major changes in work outlined above.

Clarifications

FHWA does not distinguish between item types, extras, adjustments, changes to original items, overruns, or other various contract modification terms, and only considers the total dollar value change to the contract with regard to FHWA's dollar value limit criteria listed above. If the total project budget increases \$50,000 or more, it is considered a major change.

Changes that do not meet threshold criteria should still be discussed with FHWA's area engineer, prior to work commencing. However, the net value of the offsetting items will still determine the threshold for major items of work. For example, a substitution of a Hot Mix Asphalt (HMA) paving mix that adds \$500,000 and also deletes \$500,000, results in a net zero contract modification. This type of change should be discussed with the area engineer for eligibility and other concerns but the contract value threshold still considers it as a non-major change and form FHWA-1365 is not required. FHWA oversight projects must have FHWA approval of all contract modification changes, and keeping your area engineer informed of any unusual issues early will help insure smoother projects and faster contract modification approvals. In addition, contract modifications that are 100 percent locally or state funded still require FHWA approval on oversight projects.

Please share this information with consultants and local agencies in your area.

Chief Operations Officer

Bureau Director of Statewide Field Services

FHWA approval 08-22-11

Attachments

BOHD:C/T:RJC:mnn

Index: FHWA

cc:	C & T Division Staff	P. Sebenick	APAM	MML
	M. DeLong	G. Moore	CRAM	
	B. O'Brien	L. Wieber	MAA	
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Instructions for Completing Form FHWA-1365 “Record of Authorization to Proceed with Major Contract Revision”

MDOT’s delivery engineer is only responsible for completing the information requested in the sections outlined in blue on form FHWA-1365 as FHWA uses other portions of the form. The form will electronically “lock” after it has been signed, and changes cannot be made without “unlocking” the form and re-submitting it for approval.

Below are federal form definition terms or words that may have different meanings than MDOT’s standard specifications/procedures:

FHWA Portion Terms

- Evaluation of Cost Data: Need to look at how the cost was determined.
- Limitations Extent of Federal Participation: This will/may limit FHWA participation.
- Determination of Satisfactory Adjustment in Time: Extension of Time justification is acceptable.
- Adequate Submittal of Written Supporting Data: The supporting data for the work is sufficient.
- Proposed Revision Authorized without Federal Participation: The work is authorized without FHWA participation.

MDOT Portion Terms

- Change Order: Contract Modification.
- Work Order: Work Order (Form #1137).
- Supplemental Agreement: 3rd Party Agreement, i.e. Railroad or DNRE agreements.
- Specification Change: A change in the specifications for the work, i.e. 23A substituted for 22A.

NOTE: More than one box may be checked in both MDOT and FHWA areas.