

13. Contract Changes

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13.1. General

Contract change documents refer to changes to the contract that are executed after the contract has been awarded. They may include the modification of bid items, quantities, material requirements, specifications, contract time, or details of construction; and the resolution of disputes, equitable adjustments, or any other deviations from the original contract. Once executed the change document becomes a part of the contract.

Changes within the scope of the project are made using a change order. Change orders are described in more detail in Sections 13.2 and 13.3. For federal aid projects also reference 23 CFR 635.120–121.

An Interim Work Authorization (IWA) may be used to initiate changes to the contract on an interim basis until a subsequent change order is executed. IWAs are described in Section 13.4.

All technical changes need to be reviewed, approved and sealed by a professional engineer as described in Section 13.5.

Contract changes outside the scope of the project are made according to the procurement code (AS 36.30). If the work is awarded to the current prime contractor, then you may use a supplemental agreement to the existing contract. Supplemental Agreements are described in Section 13.6.

For changes to the contract, the Project Engineer can initiate work with an IWA or a change order. In such cases the Project Engineer must keep the Group Chief/PM and the Department employee with Delegation of Authority informed of estimated costs. Normally the Project Engineer and contractor will fully execute the change document before work begins. No payment for proposed changes will be made to the contractor until after the change document is signed by both parties and approved.

For major changes (as defined by the stewardship and/or oversight agreement) and supplemental

agreements to federal-aid projects, the Department and the federal agency must authorize the changes prior to the start of new work.

Contracts administered for other agencies may require their approval before start of new work. Refer to the individual project agreements or memoranda of understandings.

When emergency conditions occur that threaten the safety, health, welfare, or sanitary conditions of the public, DOT&PF infrastructure, or the environment; the Project Engineer may verbally initiate changes to the contract with change documents to follow as soon as practicable. The Department employee with Delegation of Authority must approve the verbal authorization prior to beginning work, unless communications are unavailable or delayed. In this case, the Project Engineer may assume this responsibility and will notify the Department as soon as practicable.

Do not separate an issue into multiple IWAs or change orders to avoid the major change order threshold.

The regional staff person assigned to coordinate DBE matters should coordinate with the Statewide Civil Rights Office when there are changes relating to EEO, OJT, and DBE (Section 7.2).

13.2. Change Order Process

Either the Department or the contractor may initiate a request for changes to the contract. See Figure 13-1 for a flow chart of the Change Order Process.

The Project Engineer, in consultation with the group chief/PM, should determine the following things about the proposed change:

- Is it a change?
- Which party pays for the change?
- Is the change outside the scope of the project?
- Is funding agency concurrence needed?
- Are modifications required for any environmental documents or permits?
- Is there sufficient funding available, or will other project reductions be necessary?
- Is this a technical change requiring a professional seal? If so, who will seal the change order?

Discuss the need for a change with the involved parties. The proper disciplines should be involved in

the change order discussions. Consult with the funding agency when required by agreement. The Department employee with Delegation of Authority to approve the change order must decide whether a change order is needed.

If the Department decides a change order is needed, there are two ways that a contractor's proposal may occur:

1. If the contractor initiates the proposed change and has already submitted a proposal with work description and detailed cost and pricing data, the Project Engineer should verify that the description is accurate and the cost estimate includes certification that the data is accurate (required by AS 36.30.400[a]); or
2. If the Department initiates the proposed change, the Project Engineer will issue a Request for Proposal (RFP) to the contractor by Form 25D-067, or by letter or email.

The contractor should submit a proposal based on the RFP, with detailed cost and pricing data, and a certification that the data is accurate (required by AS 36.30.400[a]).

The Project Engineer must prepare an adequate and independent cost estimate of the proposed work. They may use Form 25D-049 or regional equivalent.

Compare the engineer's cost estimate with the contractor's proposal. Prepare the change order if the estimate and proposal are similar. Negotiate a cost with the contractor if the estimate and proposal are different; when agreement is reached prepare the change order.

If an agreement cannot be reached with the contractor the Department has four options:

1. Don't perform the work.
2. Bid the work and issue a new contract for the work.
3. Perform the work with Department personnel.
4. Issue a unilateral IWA or change order to the contractor based on:
 - a. Time and Materials; or
 - b. Items of change work.

The next step in the change order process is for the Project Engineer to prepare the change order and backup documentation. Changes in contract time must be justified and documented. The justification should include analysis of controlling items of work or a critical path method. See Section 14.4 for more information.

A technical change order must be sealed. See Section 13.5 Requirements for Professional Seals.

The group chief/PM reviews the change order, and it is approved by the Department employee with the appropriate Delegation of Authority for the dollar amount of the change order. The exact process may vary by region. If additional funding is required, request a Project Development Authorization (PDA) revision. Obtain approval from the funding agency when required by agreement.

13.2.1 Federal Agencies Approvals

On federally funded projects, consult with the funding agency when:

- There are questions about financial eligibility of the change order.
- Contract time affects the cost.
- **Before authorizing a supplemental agreement**
- The FHWA Stewardship and Oversight Agreement requires their approval for High Profile projects that have change orders over 5% of contract amount or \$500,000, whichever is greater.
- FAA projects may require a grant amendment to fund the change order when the contract amount exceeds the budgeted amount plus contingency.

13.2.2 Time and Materials Basis

The time and materials basis (federal language calls it force account procedure), is a contractually specified method of compensating the contractor directly for hourly equipment and labor costs, and the cost of purchased materials.

Federal time and materials procedures (23 CFR 635.120 [d]) should only be used when strictly necessary, such as:

1. When agreement cannot be reached with the contractor on the price of a new work item,
2. When the extent of work is unknown, or

3. When the work is of such character that a price cannot be determined to a reasonable degree of accuracy.

The Project Engineer must document the reason for using time and materials in the change order backup.

Certain types of extra work where the scope cannot be adequately defined, such as emergency work or differing site conditions are often documented using this approach.

Pay for time and materials work according to the contract. The work may be initiated with an IWA (see Section 13.4) and later finalized in a Change Order with appropriate units of measurement.

Use Form 25D-195, to record labor, equipment and materials, on a daily basis for the duration of the work. Monitor the cumulative costs closely because of their open-ended nature.

13.2.3 Preparing the Change Order

The change order should describe what is being changed. The backup information should describe why it is being changed and the justification for approving the changes in cost or time.

Prepare the contract change using Change Order and Continuation Forms 25D-068 and 25D-065. Describe what is being changed, and the amount and cost of such change. List changes in categories such as:

- Modify Specification
- Modify Plan Set or Detail
- Increase or Decrease Quantity
- Deleted Item Number
- New Item Number
- Contract Time Change

For more information on increase or decrease of quantity, see Section 13.3 Equitable Adjustments.

Summarize backup information for the change order using the Change Order Support Information/Backup and Continuation Forms 25D-064 and 25D-065.

Backup information should include:

- the reason for the change,
- the contractor's proposal,
- the engineer's cost estimate,
- an explanation or justification for the costs and time adjustments,

- justifications for using time and materials method, and
- other agency concurrence if required.

Label backups and attachments so that they are associated with the project and change order.

If the change is technical, it must be sealed according to Section 13.5. If the change is not technical, then note on the change order in the area for the seal that it is not required.

On state-funded work, changes to the materials listed on the Alaska products preference worksheet Form APPW, may result in a penalty to the contractor. When applicable, note material revisions on Form APPW and attach the form as a backup document to the change order.

Note on change order whether the subcontractors previously submitted on the Contractor Self Certification for Subcontractors Form 25D-042, are approved for new work.

Changes to contract time are shown in the "Change Order Summary" box on Form 25D-068 as either an increase or decrease in calendar days, or as a new completion date depending on the type of contract. Changes in contract time must be justified and documented in the change order backup form. The justification should include analysis of controlling items of work or a critical path method. See Section 14.4 for more information.

Once the scope and estimated cost of a contract change is known, the Project Engineer should verify with the Group Chief/PM that there are sufficient construction phase funds to pay for the work. If not, refer to Section 12.6 for the steps needed to secure additional funding. Once the change document is signed, encumber additional funds as needed.

The amount of the change order determines which Department employee has Delegation of Authority and can authorize the work by signing the "Approved By" line. Signature authority is established by regional policy.

The contractor has two choices when signing Change Order Form 25D-068. Typically the contractor signs and dates it as accepted. This constitutes a bilateral agreement to terms, conditions, and prices stated. When the contractor does not agree with the change, they should sign that they acknowledge the change order. This indicates receipt of the change order, but

not the mutual agreement on the basis of payment and/or time allowance (unilateral). Document if the contractor won't sign the change order.

Further disputes may be settled at the Project Engineer level, or the contractor can follow Highway Specification 105-1.17 Claims (Airport GCP 50-17) to initiate the claims process.

After change orders are signed, copies must be provided to the funding agencies, as required by agreements between the Department and funding agency.

13.3. Equitable Adjustments

The Standard Specifications define an equitable adjustment as an increase or decrease in Contract price or time calculated according to the terms of this Contract.

An equitable adjustment is necessary:

1. If the contractor finds differing site conditions (Highway 104-1.03 or Aviation GCP 40-03, Differing Site Conditions) and an increase or decrease in the cost of, or the time required for, performance of the contract. The Project Engineer will prepare a change order for an equitable adjustment to the contract. The contractor must cooperate with the Project Engineer to reach a prompt and fair settlement.
2. If the contractor agrees to cooperate when:
 - a. A contract requires a mandatory source or designates the material source (Highway 106-1.02 or Aviation GCP 60-02, Material Sources), and
 - b. The quality and quantity of material produced from it is not as represented, making a change of source necessary.
3. If the final quantity of a major contract item varies more than 25 percent above or below a bid quantity (Highway 109-1.04 or Aviation GCP 90-04, Compensation for Altered Quantities). Either party to the contract may request an equitable adjustment in the contract unit price of that item. If the final quantity of work is greater than 125 percent of the bid quantity, the equitable adjustment will be made only for those units that are in excess of 125 percent of the bid quantity. If the final quantity of work is less than 75 percent of the bid quantity, the equitable adjustment will

be made for those units of work done and accepted, with the total payment limited to 75 percent of the amount bid for the item.

4. If a major contract item is eliminated (Highway 109-1.09 or Aviation GCP 90-09, Eliminated Items)
5. If the contractor finds conflicts with existing utilities or utilities that are not shown or described in the contract (Highway 105-1.06 or GCP 50-06, Utilities)
6. If a contractor requests additional time due to the Project Engineer's suspension of work (Highway 108-1.06 or Aviation GCP 80-06, Contract Time, Extension of Contract Time and Suspension of Work)

See Section 18.16 of this manual, for more on Calculating Equitable Adjustments.

13.4. Interim Work Authorization

Interim Work Authorization (IWA) can be used to initiate any type of change to the contract that can be made by change order except changes to contract time. An IWA initiates a change on an interim basis until a subsequent change order is executed.

For FHWA-funded projects, the IWA should only be used to initiate changes to the contract when a delay would:

1. Jeopardize life, property or result in environmental damage;
2. Unduly delay the time of completion of a project; or
3. Unduly increase the cost of a project.

The IWA **or its backup** documentation must identify the situation that warrants **the IWA** implementation.

The IWA does not relieve the Project Engineer of the responsibility to document the associated change order. However the IWA provides written authorization for the contractor to begin and get paid for change work.

If an IWA or series of related IWAs may become a major change order, discuss the IWA with the federal funding agency before issuing it.

The Project Engineer may issue the IWA only after obtaining verbal or written approval from the person

having the Delegation of Authority for the estimated amount. Write that person's full name on the IWA.

Both the Project Engineer and the contractor's representative must sign and date the IWA.

Note on the IWA whether subcontractors previously submitted using Contractor Self Certification for Subcontractors Form 25D-042, are approved for new work.

The "Basis of Payment" field must have the appropriate box checked: Work shall be paid:

- On a time and materials basis,
- At an agreed unit, or
- lump sum price.

Prepare the IWA using Forms 25D-070 and 25D-065.

IWAs may be started in one unit of payment and converted to a different unit of payment (such as lump sum) in the change order. The subsequent change order shall address changes in contract time, if required.

IWAs should be converted to change orders as soon as practicable, but no later than March 31 in the year after the IWA was issued. If more time to convert is necessary, document the reason in the project files.

13.5. Requirements for Professional Seals

Policy and Procedure 70-1003 requires that plans, drawings, plats, and all reports or similar documents that the public relies on for the design or construction of a project be sealed by the designer of record or by the person under whose direct supervision they were prepared. It can be found at the D&ES Construction Standards website.

Technical change orders made during construction that fall within the practice of architecture, engineering, or land surveying must be sealed by the designer of record or shall bear the seal, date and signature of those making the design change or under whose direct supervision the change was made. See AS 08.48.341 (9, 10, and 11) for the definitions of the practice of architecture, engineering, or land surveying.

Seal Required

Some examples of technical change orders that require a professional seal are:

- structural changes to a bridge, building, piling, footing, retaining wall, pier or dock,
- changes related to type or quality of material requirements,
- revisions in geometric design (alignment, and/or grade),
- revisions of pavement structural section,
- changes to safety appurtenances,
- technical specification changes, and
- typical section modifications.

Seal Not Required

Some examples of nontechnical change orders are:

- administrative matters, such as quantities and payment amounts,
- extension of contract time,
- changes to methods of measurement and basis of payment,
- specification changes not related to structural elements (seed specifications, paving deadlines, surface tolerances, color selections, staking requirements, temporary facilities, etc.),
- changes to utilities requested by the utility owner, or repairs to utilities, that do not affect the road structure,
- changes to drainage features that do not affect the road structure or clear zone requirements, and
- temporary erosion, sediment and pollution control BMPs.

The seal must comply with 12 AAC 36.180. The regulation allows for a similar electronic or digital representation of the seal.

If other registered professionals prepare portions of plans, documents, or other professional work, a registrant may seal only the portion of the work for which it has direct professional knowledge and direct supervisory control (12 AAC 36.185.7[b], Use of Seals).

The Project Engineer, in consultation with the Group Chief/PM, *should decide early* in the change order process if the change is technical and if it is necessary for the change to be sealed.

The change order form has an area for a seal to be applied or inserted. If not required, note it as "not required" or "N/A." The seal may be affixed to an attachment instead of the change order form. Note on the change order form that the attachment is sealed.

13.6. Supplemental Agreements

Supplemental agreements cover changes to the contract that the Department considers outside the scope of the contract, and that are awarded to the current prime contractor. See Figure 13-2 for General Guidelines for the Supplemental Agreement Process. Handle all supplemental agreements in accordance with the procurement code (AS 36.30.300). All supplemental agreements are bilateral agreements.

The Department describes the additional work required. The chief procurement officer makes the determination of whether the proposed additional work falls within or outside the scope of the contract.

13.6.1 Small Procurement

If the amount of the supplemental agreement is less than \$200,000, the Department may acquire the additional services through the Small Procurement process (AS 36.30.320).

13.6.2 Limited Competition Procurement

A Limited Competition Procurement (AS 36.30.305) may be made for amounts less than \$100,000, when there are only two contractors and when competitive sealed bid processes are impractical or contrary to the public interest. See DPDR 10.01.040, Alternate Procurements, for the procedure for limited competition procurements.

13.6.3 Single Source Procurement

Supplemental agreement work may use Single Source Procurement (AS 36.30.308).

The Project Engineer prepares an Engineer's Estimate and a written determination using the Waiver Request for Alternate Procurement Methods (Form 25D-026). Cite the specific reasons why a competitive process is not practicable. Provide the specific and significant interests of the State that justify awarding a contract as a single source. Specify the duration of the work in the determination. The determination should demonstrate the cost effectiveness of performing the work by single source procurement, and address any public necessity that cannot be delayed.

Send the Waiver Request to the regional director if it is under \$200,000; and to the commissioner if it is \$200,000 or more. If the waiver is denied or the contractor refuses the work, then the work shall be competitively bid.

If the commissioner or regional director approves the waiver, then the contracting officer negotiates the terms as to price and delivery of the proposed work with the prime contractor. The Project Engineer prepares the supplemental agreement (Forms 25D-066 and 25D-065) and Support Information/Backup Sheet (Form 25D-064). The latest state and federal wage rate decisions are included as a part of the supplemental agreement.

Supplemental Agreements that depend on federal funding will require the funding agencies approval before adding the work. Depending on federal funding source, send:

- A cover letter and a copy of the Waiver Request for Alternate Procurement Methods and the Supplemental Agreement to the FHWA for approval.
- A cover letter and the Supplemental Agreement to the FAA for approval.

13.6.4 Emergency Procedures

Procurements may be made under emergency conditions (AS 36.30.310) as defined in regulations adopted by the commissioner when there exists:

- a threat to public health, welfare, or safety;
- when a situation exists that makes a procurement through competitive sealed bidding or competitive sealed proposals impracticable or contrary to the public interest; or
- a need to protect public or private property.

The Project Engineer need not prepare an Engineer's Estimate. The Project Engineer prepares the documents required in Figure 13-2.

13.6.5 Competitive Sealed Bid

Procurements may be made using Competitive Sealed Bidding (AS 36.30.100). If the bid is awarded to the existing prime contractor, the work may be added to the current contract by Supplemental Agreement. If the bid is awarded to a different contractor, then the work is added with a separate contract.

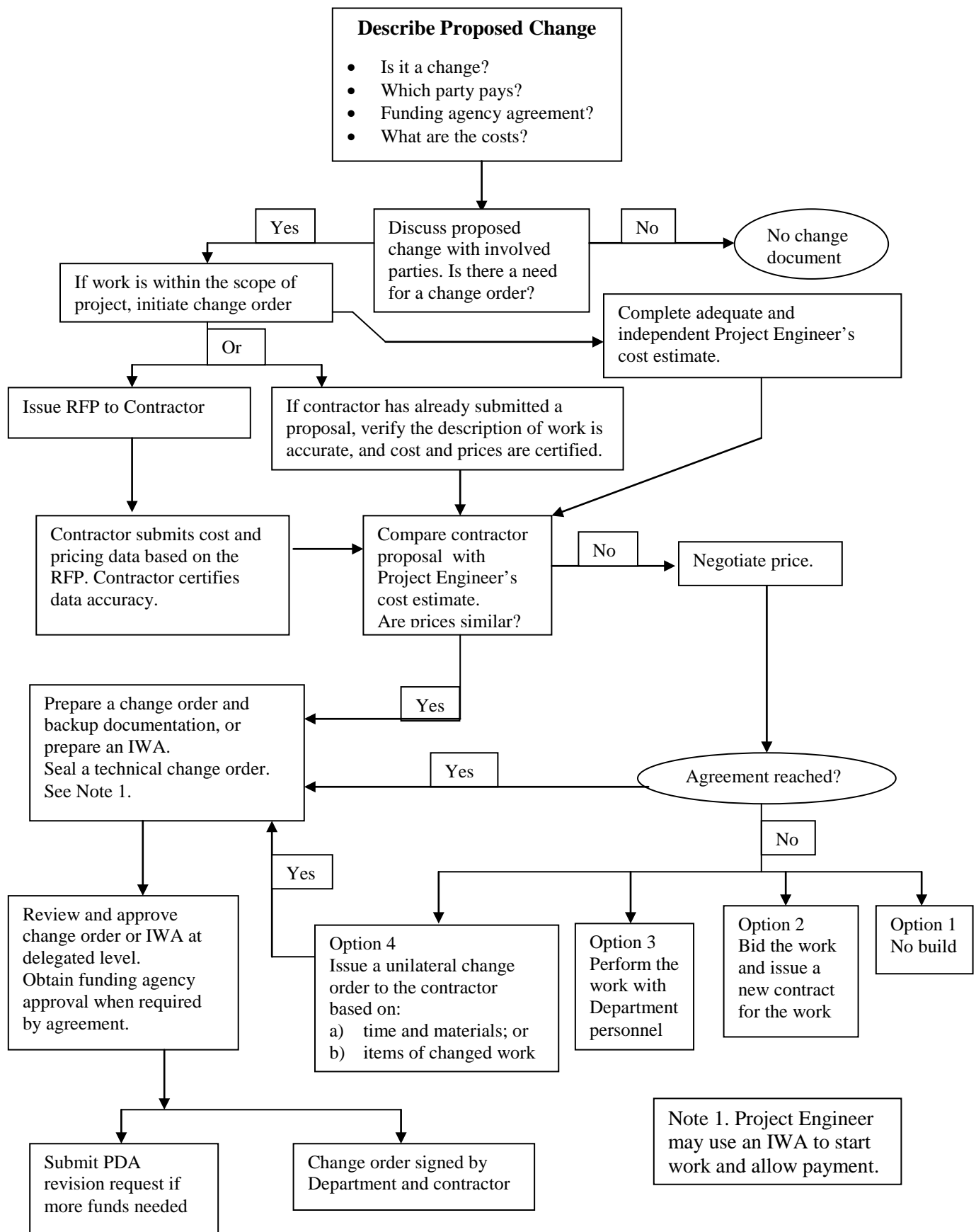


Figure 13-1
Change Order Process

General Guidelines for the Supplemental Agreement Process¹	
Cost of Change	Steps Required²
$\$0 \leq \$10,000$	<ol style="list-style-type: none"> 1. Engineer's Estimate 2. Obtain bid(s) (1 contractor minimum) 3. Approval by Department employee with Delegation of Authority 4. Supplemental Agreement and Backup Forms
$> \$10,000 \leq \$200,000$	<p>Option A (Small Procurement):</p> <ol style="list-style-type: none"> 1. Engineer's Estimate 2. Request bids (three contractors minimum) 3. Supplemental Agreement and Backup Forms <p>Option B (Limited Competition)(must be $\leq \\$100,000$):</p> <ol style="list-style-type: none"> 1. Engineer's Estimate 2. Request bids (two contractors minimum) 3. Waiver Request for Alternate Procurement Methods (Form 25D-026) 4. Obtain approval for limited competition from the regional director 5. Supplemental Agreement and Backup Forms <p>Option C (Single Source)</p> <ol style="list-style-type: none"> 1. Engineer's Estimate 2. Waiver Request for Alternate Procurement Methods (Form 25D-026) approved for single source by the regional director 3. Obtain bid (one contractor only) and negotiate scope and price 4. Supplemental Agreement and Backup Forms <p>Option D (Emergency Procedures)</p> <ol style="list-style-type: none"> 1. Waiver Request for Alternate Procurement Methods (Form 25D-025) 2. Obtain approval from the chief procurement officer <p>Option E (Competitive Sealed Bidding)</p> <ol style="list-style-type: none"> 1. Follow regular bid procedures
$> \$200,000$	<p>Option C (Single Source) see above, except the Waiver Request for Procurement is approved by the commissioner</p> <p>Option D (Emergency Procedure) Same as above</p> <p>Option E (Competitive Sealed Bidding) follow regular bid procedures</p>

Figure 13-2
General Guidelines for the Supplemental Agreement Process

¹ All requirements of the Procurement Code (AS 36.30), the Procurement Administrative Regulations (2 AAC 12), and the Policy and Procedure 10.01.040 Alternate Procurements must be followed.

² Additional Requirements: All quotes must come from a contractor currently under contract with the state. If the contract is federal-aid, all quotes must come from a contractor currently under contract on a federal-aid project. If the project is FHWA-funded, a copy of the Waiver Request for Procurement shall be included with the supplemental agreement when sent to the FHWA for approval. Help with the supplemental agreement process is available from the contracts section.