



Department of Energy

Washington, DC 20585

March 10, 2011

MEMORANDUM FOR DISTRIBUTION

FROM:

DAE Y. CHUNG
PRINCIPAL DEPUTY ASSISTANT SECRETARY
FOR ENVIRONMENTAL MANAGEMENT

SUBJECT:

Environmental Management Policy on Managing Contract
Changes for Capital Projects and Operations Activities

A mature and rigorous integrated contract and project change control process is critical to the successful execution of the Office of Environmental Management (EM) mission. Change control is a key element of EM's Roadmap for Journey to Excellence, Goal 6 "Improve contract and project management with the objective of delivering results on time and within cost." EM executes over 90 percent of its clean-up program through contracts. To drive performance, EM moved away from large, site-wide Management and Operating (M&O) contracts to smaller, performance based, Federal Acquisition Regulation (FAR) Part 15 type contracts. EM currently has two M&O contracts, where as in 1995, we had 12. Improved performance through non-M&O contracts, however, can only be achieved if EM is a strong owner and uses a disciplined, timely, and integrated contract and project change control process.

Disciplined: In order to drive performance, EM primarily uses FAR Part 15 cost reimbursable contracts for its clean-up work. These types of contracts are advantageous to the Government only if a rigorous disciplined change management process is followed. A disciplined change management process provides the most up-to-date status of contract and project changes and provides the decision makers the information necessary to evaluate options for planning the future direction of a project or operations activity. Only work authorized in the contract can be included in the contractor's Performance Measurement Baseline (PMB) and/or Management Reserve (MR).

Timely: Contract and project changes must be timely so that the contract and project(s)/activities remain aligned. In accordance with FAR 43.2, *Change Orders*, contractors are required to submit contract change proposals that are of high quality and in a timely manner. In addition, contractors must assert their right to an adjustment under the Changes Clause (see FAR 43.205, *Contract Clauses*) within 30 days from the date of receipt of the written order issued by an authorized government Contracting Officer (CO).

Integrated: When a contract or project change is realized, the Federal Project Director (FPD), CO, and the Site Budget Officer must develop and manage an integrated plan to ensure the contract change, project baseline change, and any budget change approval are all accomplished in an integrated manner so that the contract remains current and aligned with changes in the project scope.



The goals of the contract and project change control process are to ensure the performance baseline (PB) is not exceeded, the contractor's PMB is kept current, and the contract remains aligned with the project (attachment 1). The integrated contract and project change control process is an important management procedure that 1) ascertains that a change is required, 2) ensures that the required change is agreed upon, and 3) manages the actual change when and as it occurs. Formal change control includes not only the decision-making framework for assessing, negotiating, and implementing contract changes, but also includes project management and performance tracking systems, authorization and control levels, budgeting and financial management, and contract and project documentation.

The following principles and policies are mandatory for any EM-funded work and any deviation must be approved in advance by the Principal Deputy Assistant Secretary for Environmental Management. Each item is fundamental to improving EM's contract and project change management process:

- 1) Once we award the contract, we must maintain alignment between the contract and the Contract PB (Contract PB = Contractor's PMB + MR).
 - a) Contract and multi-year contract performance baselines must always be in complete alignment. Before a project change is approved that involves a contract change, the contract change must be negotiated and ready to be authorized.
 - i) Approval of a Baseline Change Proposal (BCP) must be executed in accordance with EM Integrated Contract and Project Management Changes Process (attachment 2).
 - ii) FPDs must not approve project baseline change proposals from the contractors that involve a contract change when the contract and project change process has not been completed in accordance with attachment 2.
 - b) The CO must ensure compliance with FAR 43.102, *Policy* and FAR 32.702, *Policy*, respectively, in the issuance of the contract (definitization) modification for a BCP.
- 2) The purpose of a contract "true-up" is for the Department of Energy to request the contractor to submit both technical and cost proposals for the differences in the scope of the Statement of Work, that was established in the solicitation and that may have changed at the time of award. The changes may be due to the timing in the award of the contract or the amount of work actually completed by the incumbent contractor.

The goal is to complete a contract “true-up” within 180 days after completion of contract transition.

- 3) We must be a strong owner and conduct the needed oversight to ensure changes are necessary and that the change process is consistently followed. All EM sites must have a functioning site level Change Control Board to support the FPD and CO in review and approval of contract and project change proposals.
- 4) We must ensure contractors submit contract change proposals only for the added or reduced scope (i.e. not a complete re-estimate).
- 5) We must ensure contractors submit contract change proposals to COs before or with project change control documents. Contract changes in the contract change documents must clearly identify the delta between the previously approved scope, cost, and schedule in the contract and the new scope, cost, and schedule.
- 6) The only way the CPB can have work added is for the work to be authorized through the contract, and the only person authorized to issue a contract change is the CO.
 - a) The CO and the FPD must strictly follow the guidance provided in the Six-Step Process for Contract Change Order Administration for DOE Prime Contracts (attachment 3). The EM goal is to complete all contract changes within 180 days. The timeline starts when the CO issues a bilateral or unilateral change order re-directing the contractor’s performance within the Scope of Work. The CO will complete negotiation before approval of the BCP.
- 7) We must perform Independent Government Cost Estimates before receipt of the contractor’s change proposal.
- 8) We must adhere to the FAR, the Department of Energy Acquisition Regulation (DEAR) and Agency policy and procedures for change management.
 - a) All contract changes must be executed by COs in accordance with the appropriate FAR 52.243, Changes clause of the contract.
 - b) COs must use Standard Form 30, *Amendment of Solicitation/Modification of Contract* for all changes.
 - c) COs must obtain cost or pricing data in accordance with the provisions of FAR Part 15.403, obtaining cost or pricing data. The threshold for obtaining cost or pricing data is \$650,000 and the exceptions must be strictly adhered to in accordance with the FAR.

- i) COs must obtain a certificate of current cost or pricing data per FAR 15.403-4(b)(2). Waivers for this requirement may only be granted by the EM Head of Contracting Activity.

Previously issued policy and guidance documents applicable to contract and project change control include: Project and Contract PB—Key Terms and Relationships; EM Integrated Contract and Project Management Changes Process; Contract Change Order Administration of DOE Prime Contracts; and Timely Resolution of Contract Changes.

If you have any questions, please contact Mr. J. E. Surash, Deputy Assistant Secretary for Acquisition and Contract Management, at (202) 586-6382.

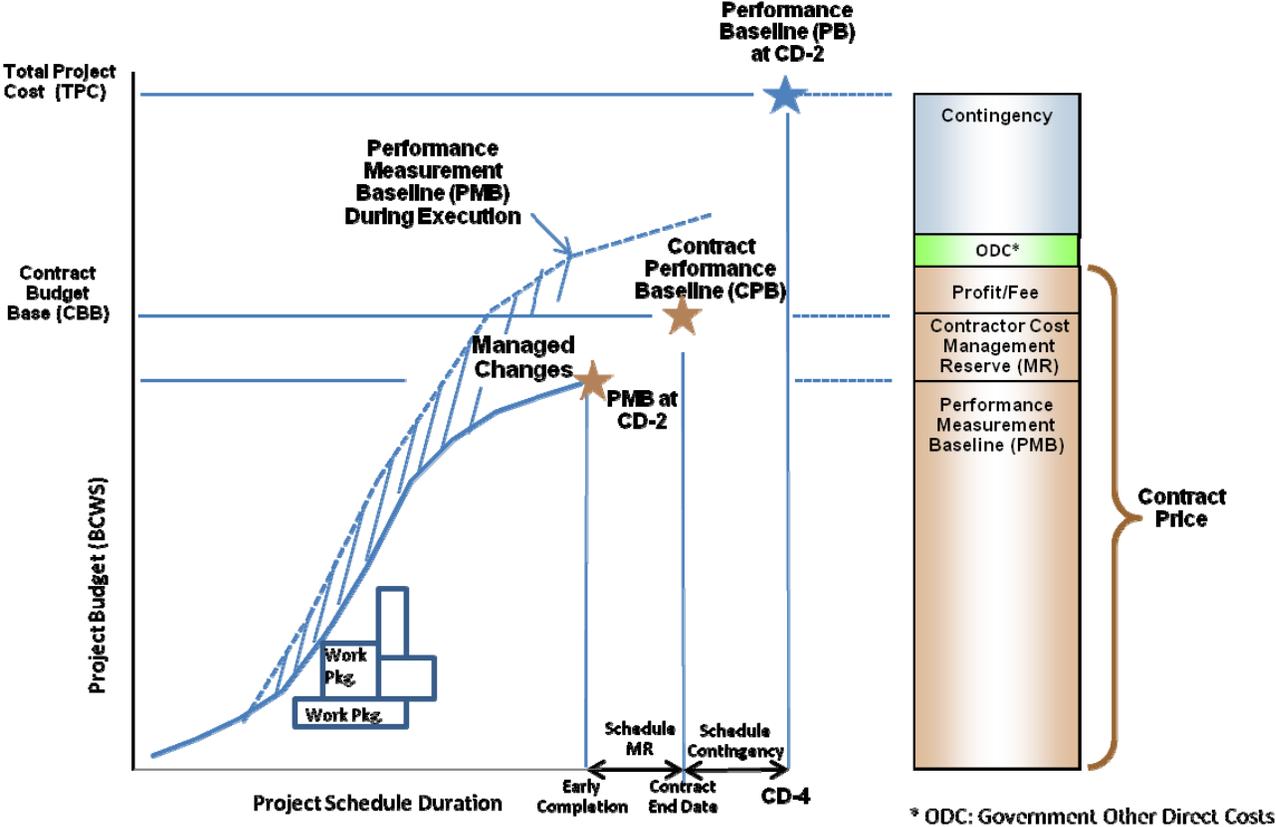
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Project and Contract Performance Baselines-Key Terms and Relationships



U.S. DEPARTMENT OF ENERGY (DOE)
OFFICE OF ENVIRONMENTAL MANAGEMENT (EM)

EM PROCESS FOR THE INTEGRATION OF CONTRACT & PROJECT MANAGEMENT CHANGES – FINAL

Prepared for:

United States Department of Energy



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June 5, 2008

FINAL

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A. Process Model Diagram

1.0 Introduction

The Office of Environmental Management (EM) has identified a programmatic objective to develop a process for synchronization of project and contract changes. This process is to be utilized by Federal Project Directors (FPDs) and Contracting Officers (COs) working on EM projects to ensure that when contract changes are required, the project baseline is updated to reflect the new work requirements, which the contractor is contractually obligated to perform. When a project changes, it is expected that the contract will change in a timely manner. Accurate project baselines and current contracts, from a performance, cost, schedule and contract management perspective, are imperative to project success and to the success of the EM program.

The process presented in this report is based upon a number of assumptions:

- Logical planning
- Compliance with Federal and Departmental policies and procedures
- Well-trained Federal project and contracting personnel working together to meet project objectives
- A foundational project and contract baseline
- Management information systems that provide the data necessary for such a team to engage in sound decision-making and implementation of those decisions.

Based upon those assumptions, the FDP and the CO can properly use this process to deal with changes in project conditions as they arise, knowing that the foundation upon which these changes are made is sound. As the changes are dealt with, the FDP, the CO, and their management can be kept informed, and be assured that the project will meet its objectives in accordance with the contract.

The process captures the steps that should be taken to ensure that the contract and the project baseline are always compatible. The process clearly sets forth the steps to be taken, who is involved in those steps, and presents the decision-making flow of the various steps. To ensure success, these process steps should be followed each time a potential change is identified; however, it must be realized that urgent circumstances occur which require unilateral action by the FDP and the CO. In such cases, the steps set out in the process must be tailored to meet the necessity but ensure that the objective of synchronizing the project baseline with the contract is met. After the urgent action has been taken, the FDP and the CO should return to the process in order to document what has occurred, secure management concurrences, and make the appropriate contractual and project baseline changes. This process is appropriate to all types of contracts and may be tailored depending upon the complexity, financial, and risk exposure of the Government.

2.0 Baseline Assumption

This description of the contract change process starts at the point that a contract has been awarded and is based on a number of pre-existing conditions as follows:

- Budget submission has been certified by the Chief Financial Officer (CFO)
- Requirements of the Department of Energy (DOE) Order 413.3A have been met
- Contract is in compliance with Federal Acquisition Regulation (FAR)/Department of Energy Acquisition Regulation (DEAR) and has been awarded
- Contract and project management staff have appropriate certifications
- Cumulative value of all contracts that support the project aligns with its project baseline
- Management information systems are in place to track the performance of both the contract and project management teams
- Fully functioning and responsive Integrated Project Team (IPT) is in place that includes members of both the contract and project management teams
- All regulatory processes and practices are up to date and being followed
- Contract Statement of Work (SOW) is clear, complete and accurate
- Contract management plan has been established and defines key contract administration procedures including roles and responsibilities of all stakeholders

The discussion of contract change processes is limited to elements necessary to adjust the contract terms and conditions to reflect changes. It is beyond the scope of this discussion to address institutional, personnel or other related issues.

3.0 Definitions

The following terms are used throughout the process and are defined here for informational purposes.

Acquisition Executive (AE) - The position with authority and accountability for the project and its requirements including milestone decisions, project lifecycle costs, and completion. The AE will appoint and chair Acquisition Advisory Boards to provide advice and recommendations on key project decisions and will approve project changes in compliance with change control levels identified in Project Execution Plans and DOE O 413.3A. The AE will conduct quarterly project performance reviews. Roles and responsibilities are defined in DOE O 413.3A, page 34 (See Deputy Secretary).

Bilateral Modification - A contract modification that is signed by the contractor and the contracting officer, as defined in FAR 43.103.

Change Control Board (CCB) - The review body with authority for approving changes that are consistent with the project's baseline performance requirements, budgeted cost and schedule. Membership to the CCB should include the FPD, CO, and subject matter experts that support the project on technical matters. The CCB plays a critical role in managing change to the project's baseline and ensuring prospective changes are clearly defined, appropriate, and within the cost, schedule and performance parameters approved by the AE. The CCB seeks the AE's approval on prospective changes that exceed the change thresholds identified in DOE O 413.3A.

Change Order – Per DOE M 413.3-1, a unilateral or bilateral modification of the contract issued by the Contracting Officer (CO) directing the contractor to do something not identified in the contract SOW but within the general scope of the contract and for a “not to exceed” amount

of funds. The purpose of this clause is to allow the CO to direct the contractor to perform work not identified in the contract very rapidly. This clause allows work to proceed while the adjustments in contract cost and other contract terms are negotiated.

Contracting Officer (CO) – As described by subsection 2.101 of the Federal Acquisition Regulation (FAR), a Contracting officer is “...a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.”

Contracting Officer’s Representative (COR) - A Contracting Officer’s Representative is an individual appointed by the Contracting Officer and given authority to monitor the contract and provide direction that does not otherwise result in a change to the contract’s cost, schedule or performance requirements. A COR must meet the competency and training requirements prescribed in the Office of Federal Procurement Policy’s November 26, 2007 memorandum entitled “Federal Acquisition Certification for Contracting Officer’s Representatives” and DOE Order 361.1B, Acquisition Career Management Program. According to DOE-EM policy, the Federal Project Director (FPD) is the COR.

External Independent Review (EIR) – DOE O 413.3A defines an EIR as a project review conducted by individuals outside DOE, specifically, a contractor selected by the Office of Engineering and Construction Management (OECM). Provides an independent assessment of the project including an Independent Cost Review or develops an Independent Cost Estimate, on which OECM will base its review. The purpose of the review is to review project risk including validation of the project’s performance baseline.

Independent Project Review (IPR) – DOE O 413.3A defines an IPR as an important project management tool performed by reviewers from within or outside the Program, but having no association with the project being reviewed, to ensure safety and security is effectively integrated into design and construction for high risk, high hazard, and Hazard Category 1, 2, and 3 nuclear facilities. The review should also serve to verify the project’s mission, organization, development, processes, technical requirements, baselines, progress as well as to ensure safety documentation is complete, accurate and reliable for entry into the next phase of the project. The definition currently cited in the process is associated with the Technical IPR conducted prior to CD-1.

Integrated Project Team (IPT) – Consistent with the Office of Management and Budget Circular A-11, an IPT is a multidisciplinary team formed to manage major capital projects. OMB recommends an IPT be established to “...analyze the performance and capability of the portfolio of assets used by the program, [and] should be led by a qualified program manager, supported by budgetary, financial, procurement, user, program, information resource management, value management professionals, and other staff as appropriate.

For DOE-EM projects, the IPT is organized and led by the FPD and consists of professionals representing diverse disciplines including specific knowledge, skills and abilities needed to support the FPD in successfully executing a project.

The IPT is accountable for developing the project’s contracting strategy and for providing regular and systematic oversight of the contractor’s performance relative to established project

baselines and contract requirements, and coordinating changes through the CCB. Monitoring mechanisms include monthly Earned Value Management (EVM) reports, property management reports, and other status reports. The IPT should include the FPD, CO, Contracting Officers Representative (COR), and other stakeholders as designated by the FPD, and outlined in DOE O 413.3A (Sec. 5.k.5)

When repetitive problems occur within a project, it is the IPT's responsibility to determine the cause of the problem and determine a reasonable solution. The IPT monitors the overall project's health including the type, frequency, and extent of changes.

Management Reserve - Management Reserve refers to dollars included in a project baseline to address realized risk identified in the contractors Risk Management Plan

Modification or contract modification - Any written change in the terms of a contract, as defined in FAR 2.101.

Request for Equitable Adjustment (REA) – A contractor's proposal to the CO identifying additional costs, schedule changes, etc. that will change the terms of the contract as a result of the Change Order. As set out in FAR 43.204, a REA is the contractors' proposal to the government emanating from a unilateral change order to the contracts terms and conditions.

Urgent – If work must begin before a bilateral contract modification can be put into place

4.0 Process Explanation

4.1 Events that Trigger a Contract and Project Change

A contract and project change may be initiated by any number of events including, but not limited to:

- Changes to the funding profile
- Changes in law or regulation including DOE Orders applicable to the contract
- Changes in technology
- Changes in site conditions
- Changes in technical direction provided by the Government
- Changes in availability of Government Furnished Services and Information
- Changes in schedule

4.2 Identification of a Prospective Change

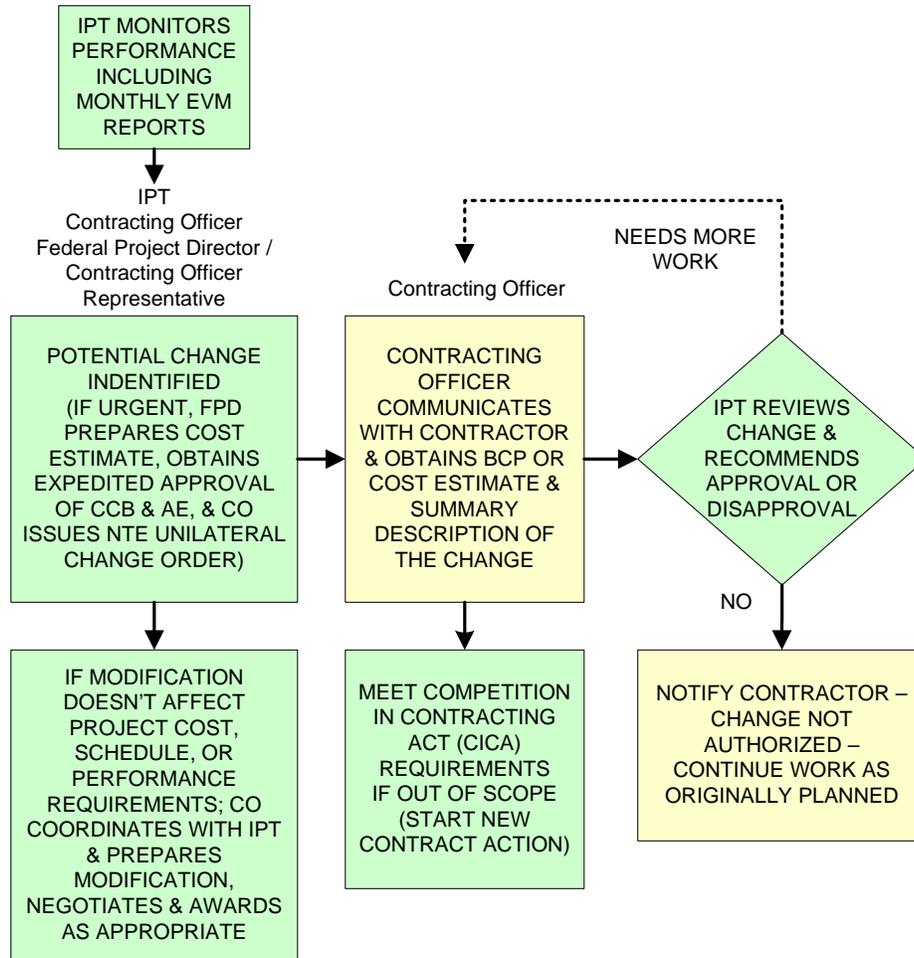


Figure 1. Process for Identifying a Prospective Change

The Contracting Officer (CO) shall always be notified of a prospective change to the project or contract’s cost, schedule or performance requirements, and only the CO may approve a change by providing explicit written or oral direction to the contractor. Accordingly, all stakeholders are required to notify the CO immediately and before an event is identified that could or does trigger a change to the contract and/or project. Among the stakeholders that could provide such notification to the CO are: (1) the contractor; (2) the Federal Project Director (FPD) (or Contracting Officer’s Representative (COR), if not the FPD) and (3) the Integrated Project Team (IPT). Based on the initial description of the change and working with the IPT, the CO may conclude that the change is not appropriate, or the nature of the change does not require a formal change to the contract. In this event, the CO notifies the contractor and work continues as planned.

It should be noted that the process provides the opportunity for the FPD and CO to review a project change and determine unilaterally that the change is of such an urgent nature (e.g. the change needs to be executed by the contractor prior to completion of routine change order/REA/bilateral modification process) that it must be expeditiously issued. When this situation arises, the CO will proceed with a unilateral change order based on the FPD providing a procurement request that reflects a general description of the requirement, and funding consistent with the FPDs rough order of magnitude cost estimate. The FPD will also provide a statement describing the urgency.

In these situations of urgency, the FPD is NOT relieved of the responsibility of presenting the change to the IPT and obtaining their agreement for the project change. Rather, the FPD will proceed with obtaining these approvals using expedited and informal means. If required, the FPD must also submit the change to the Change Control Board (CCB).

Alternatively, after reviewing the initial description of the change, the CO and the IPT may determine that the prospective change could impact the project's cost, schedule, or performance requirements. If so, and when a more detailed description of the change is beyond the capacity of the Government Program Office, the CO should promptly require the contractor to provide a more detailed description of the change along with an accounting of the type and extent of its potential impact on the project's cost, schedule, or performance requirements. This direction must include a clear description of the information needed, as well as direction that no work may be performed or costs incurred unless and until approval of the change is provided from the contracting officer.

The CO must also determine if the potential modification would be within scope, and can be accommodated by the "Changes Clause" of the contract. In general, a contract's changes clause allows changes within the general scope of the contract and is limited to revisions like; (1) designs, drawings, or specifications or work scope; (2) method of shipping or packing; (3) place of delivery. If the proposed modification cannot be accomplished within the authority of the changes clause, the requirements of the Competition in Contracting Act (CICA) must be met. The contracting officer must satisfy the individual actions required by CICA, which may require preparation of a justification for other than full and open competition, an appropriate synopsis (whether for a new competitive action or for the intent to award a sole source action), and/or a completely new competitive procurement action and contract award.

4.3 FPD Requests IPR & EIR, When Required

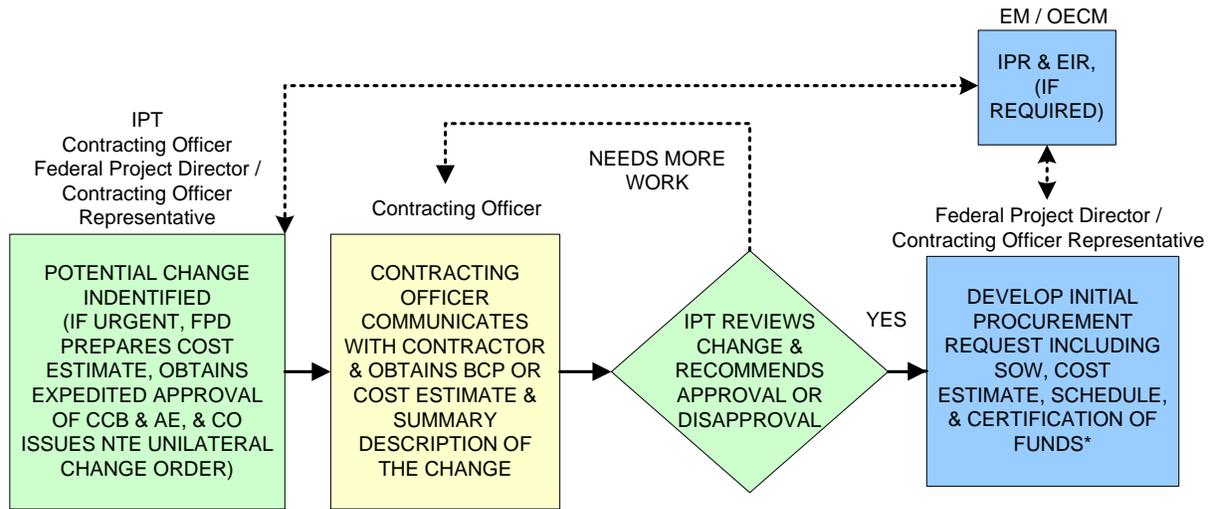


Figure 2. Process for Requesting IPR & EIR

Working with the IPT, and by regularly monitoring the contractor’s performance, the FPD may become inclined to request an external peer review (e.g., Independent Project Review (IPR) and External Independent Review (EIR)) of the project in order to review the project’s risk and validate its baseline. Triggers for such review may occur when an extraordinary number of changes are occurring or actual performance is raising questions regarding the project’s overall risk in achieving its baseline objectives. The FPD may also engage such a review to validate the contractor’s proposal in response to a prospective change. The requirement for an EIR is determined by the estimated cost of the proposed contract change as well as the changes in the project baseline, per DOE O 413.3A.

4.4 Approval Process

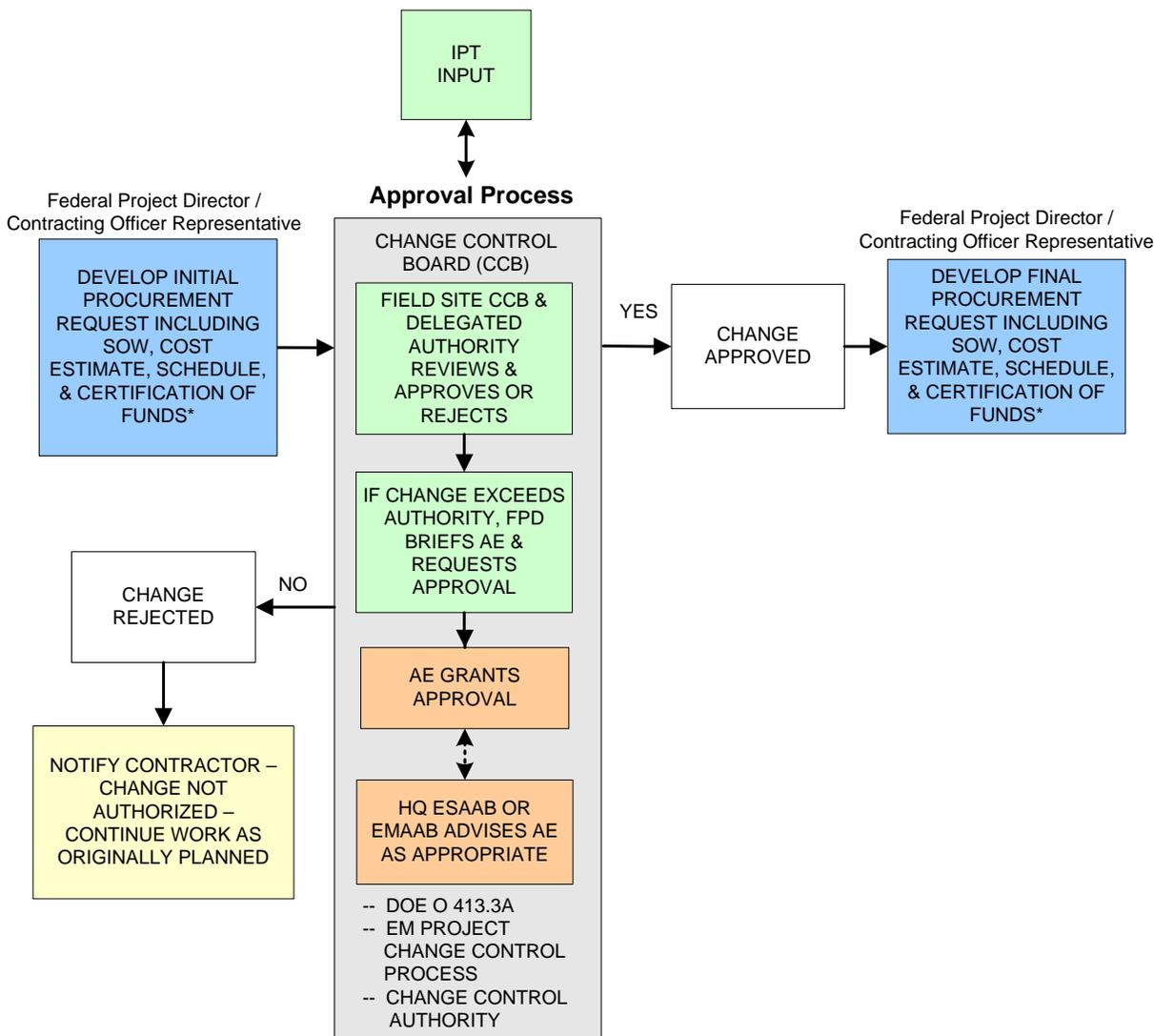


Figure 3. Process for Approvals

As outlined in section 4.2 “Identification of Prospective Change” above, a prospective change may be identified by the contractor or the Government, and upon notification of a prospective change, the CO will seek information from the program office or contractor (if adequate Government technical capabilities do not exist) in order to characterize its extent and impact on the project. Upon receipt of the contractor’s description of the change, accompanied by the baseline change proposal (BCP), and other supporting cost and technical information, the FPD and CO should immediately obtain review and approval or rejection of the change from the field site CCB. The IPT provides input to the CCB relative to the contractor’s performance to date. The CCB either affirms the change as necessary, or rejects the change and returns the request to the contracting officer for final disposition to the contractor. As prescribed in DOE O 413.3A as well as DOEs Acquisition Guidance (administered by MA – Chapter 71.1), all prospective

changes that increase the baseline value by more than 25%, or the schedule by longer than six-months, must be forwarded for DOE headquarters Energy Systems Acquisition Advisory Board (ESAAB) or Environmental Management Acquisition Advisory Board (EMAAB) for review with subsequent approval by the Acquisition Executive (AE). The FPD will be responsible for securing additional funds if the change increases the overall project cost or profile. If the AE disapproves the change, the CCB notifies the FPD and CO, who in turn provides notification to the contractor.

4.5 Issue Request for Proposal

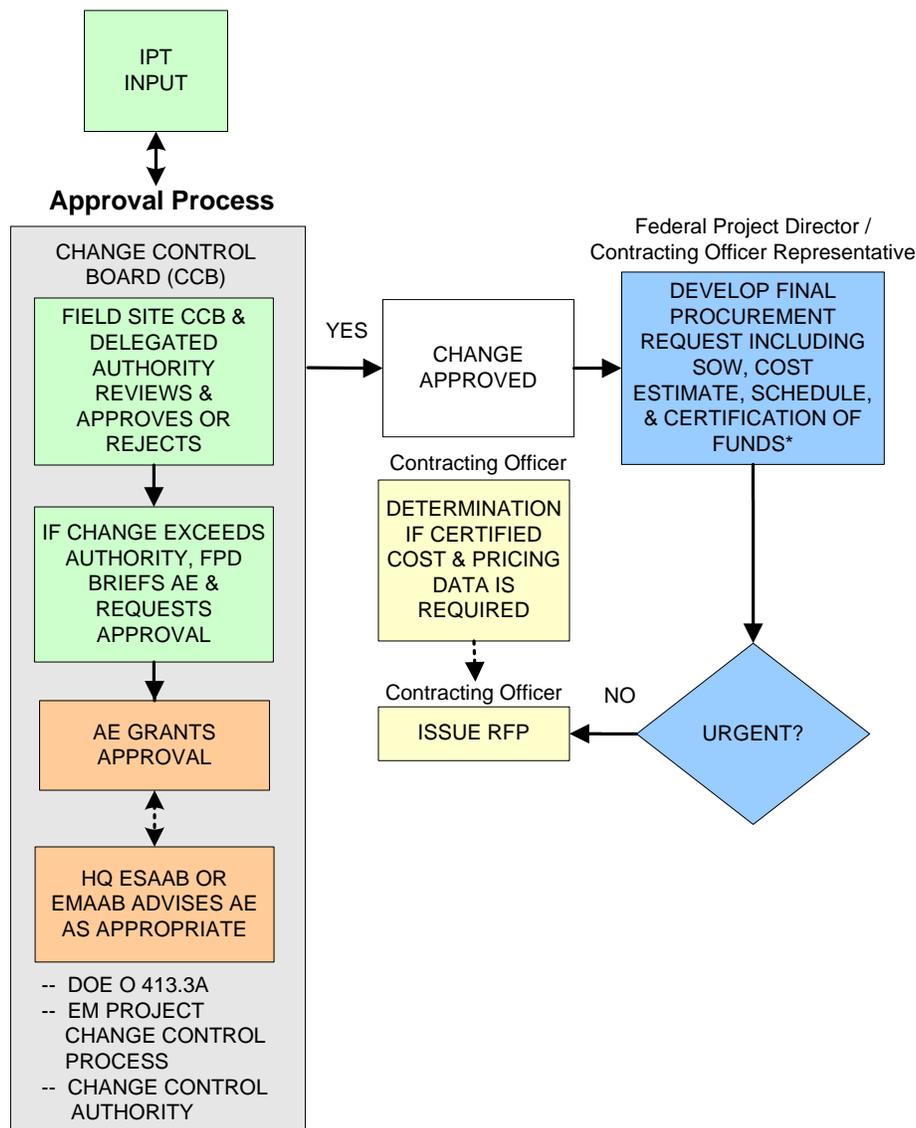


Figure 4. Process for Issuing RFP

If the AE provides approval of the change, the COR, working with the IPT, prepares a formal procurement request package that includes revised sections of the existing Statement of Work (SOW) or Performance Based Work Statement (PWS) as appropriate, along with a cost estimate, delivery schedule and certification of funds availability. The COR must also determine if the action is urgent and that the proposed change be implemented with minimal delay. When the alterations to the contract are urgent, an alternative and more expeditious process for initiating work is used as discussed later in the report.

The CO will determine if certified cost and pricing data are required by FAR 15.403-3 before requesting a proposal from the contractor. The CO will issue a Request for Proposal (RFP) to the contractor which will identify the information that must be provided in order to properly describe the prospective change and properly document the impact on the cost/price estimate and schedule. The contractor’s description of the change should also address any other changes necessary to the contract terms and conditions to effect the modification of the contract. The contractor’s proposal must be consistent with the format and content requirements prescribed by the CO and include information that supports a formal BCP, as prescribed by DOE and EM process. It should be noted that while a BCP can be approved for a change that exceeds currently available funding, the BCP approval must explicitly state that the Work Plan is limited to available funds only. In this situation, the full scope of BCP can only be authorized for execution only after full funding is available.

4.6 Process for an Urgent Requirement

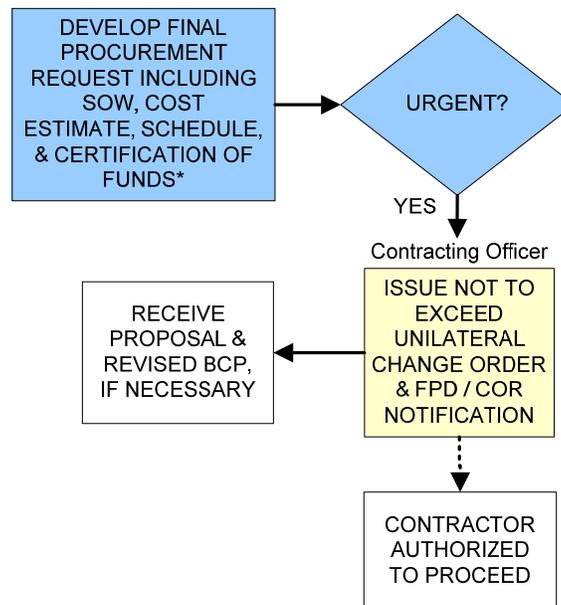


Figure 5. Process for an Urgent Requirement

Based on the prior determination of the urgency of the prospective change, the CO may issue a unilateral “Change Order” to the contractor. This change order will contain a not to exceed cost and cite the Changes Clause of the contract as the authority for implementation. It will also

define a schedule for submitting the change proposal and definitizing the impact of the change. Upon receipt of the Change Order, the contractor shall comply with the revised SOW or other terms and proceed with implementation of the change. The contractor will also promptly prepare a proposal identifying proposed changes to the contract’s estimated cost, schedule, and other factors resulting from the change.

4.7 Analysis of Prospective Change

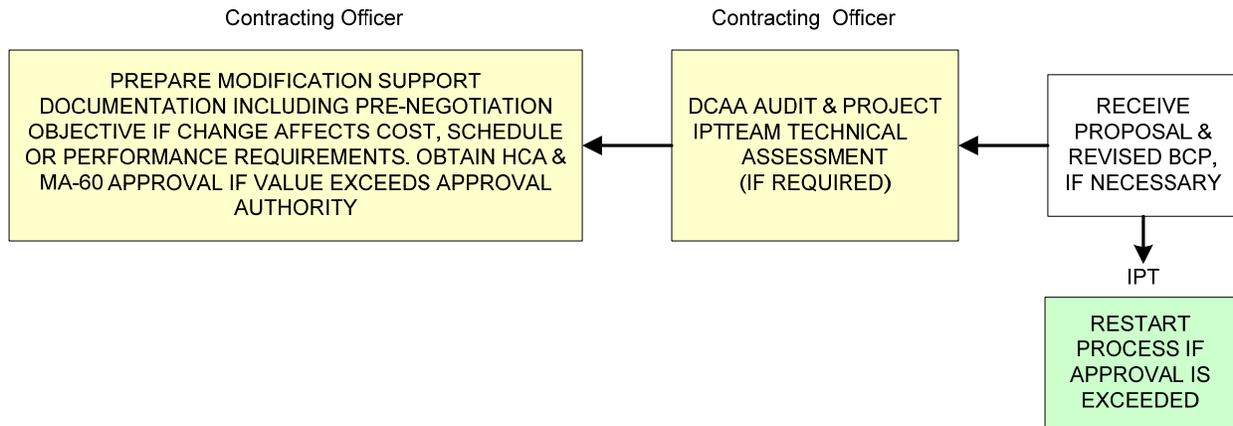


Figure 6. Process for Analyzing Prospective Change

It should be noted that the starting point is the contract and not the project baseline. The CO's pre-negotiated analysis should document how the contract (as awarded plus previous contract modifications) is proposed to be further modified.

The CO analyzes the contractor’s proposal and considers the Defense Contract Audit Agency’s (DCAAs) audit results, the CORs technical evaluation and any other relevant information in order to conduct a cost analysis and document the pre-negotiation objectives. The CO must then obtain approval of the pre-negotiation plan, including approvals from the Head of the Contracting Activity (HCA) and headquarters (HQ), based on the delegated approval authority and as required by DOE and EM policy.

4.8 Negotiation of Prospective Change

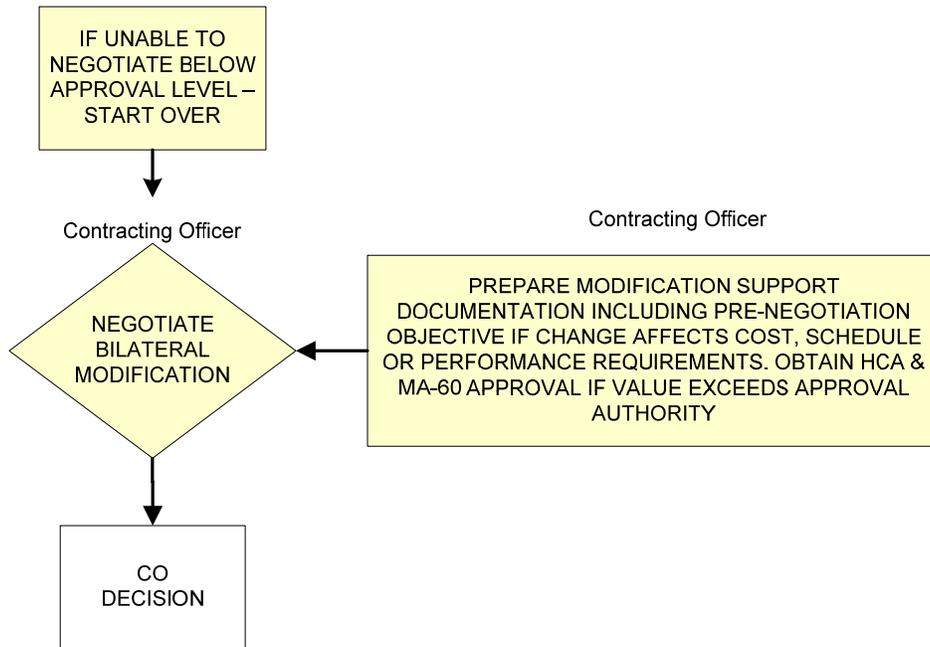


Figure 7. Process for Negotiation of Prospective Change

Based on the approved pre-negotiation position, the CO proceeds with negotiation of the prospective change with the contractor. Upon reaching agreement with the contractor, the CO documents the terms of the agreement and proceeds with preparation of the bilateral modification. If a mutually acceptable agreement cannot be reached, the CO will suspend further negotiations and notify the COR. If work was already authorized (e.g., a change order was issued subject to final definitization), the CO will take action to stop work and resolve any outstanding costs, or issue a unilateral modification reflecting the Government’s final position for the change. If the latter action is taken, the contractor may employ the “Disputes” process to seek an equitable adjustment to the contract cost and other terms that are acceptable.

4.9 Contract and Project Modified to Reflect Change

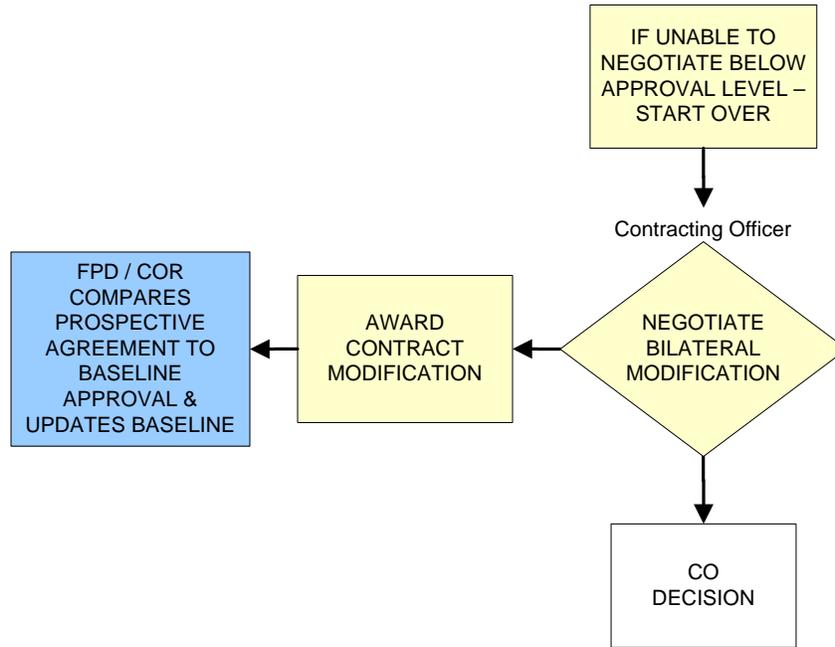


Figure 8. Process for Modification to Reflect Change

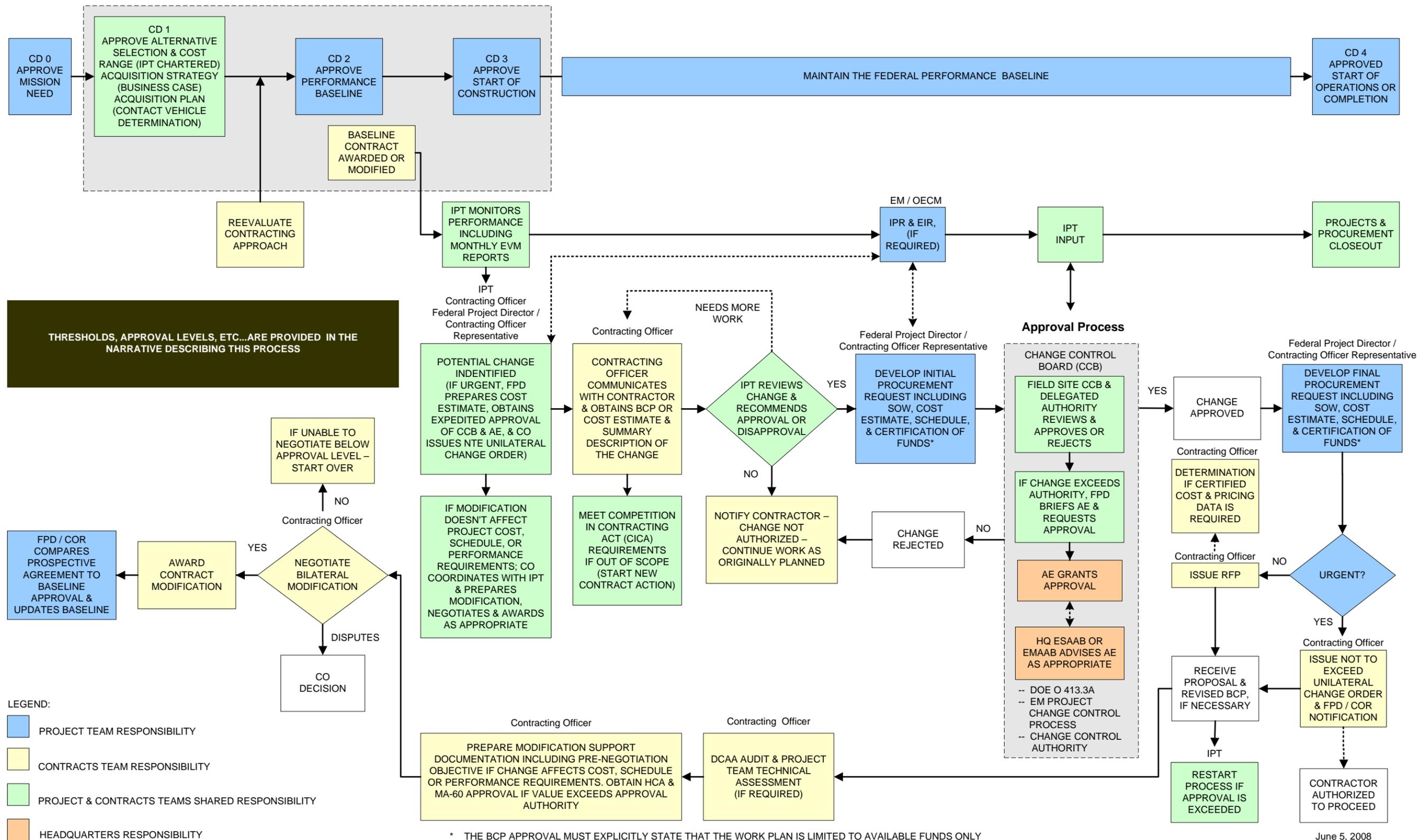
When the CO and the contractor have agreed to the changes necessary in the contract, the CO will issue a formal bilateral modification to the contract that reflects the full description of the impact of the change to the contract’s cost, schedule, and performance requirements.

The process ends when the FPD updates the baseline and Integrated Planning, Accountability and Budgeting System (IPABS). The baseline updating process will be performed soon after contract award and will include aligning the baseline with the new contract obligations. Management Reserve, which are dollars included in a project baseline to address realized risk identified in the contractors Risk Management Plan, is also included in the project baseline. Management Reserve use is to be reviewed by the FPD on a regular (monthly, quarterly etc.) basis and adjustments to the baseline resulting from the use of Management Reserve should be incorporated at the next baseline update.

Appendix A

Process Model Diagram

FINAL EM PROCESS FOR THE INTEGRATION OF CONTRACT & PROJECT MANAGEMENT CHANGES





Department of Energy
Washington, DC 20585

April 1, 2008

MEMORANDUM FOR DISTRIBUTION

FROM:

Thomas E. Brown
THOMAS E. BROWN, DIRECTOR
OFFICE OF CONTRACT MANAGEMENT
OFFICE OF PROCUREMENT AND
ASSISTANCE MANAGEMENT

SUBJECT:

Contract Change Order Administration of Department of Energy
Prime Contracts

The purpose of this memorandum is to highlight the need for good contract administration of Department of Energy (DOE) contracts (non management and operating contracts) including those covered by DOE Order 413.3A, Program and Project Management for the Acquisition of Capital Assets. One of the focus areas of the DOE's efforts to improve contract and project management is the recognition that effective contract change order administration is critical to ensuring that contract and project requirements are met. Fundamentally, the award of an appropriate contract type that best reflects performance and risk at a reasonable cost or price establishes the foundation for successful project performance. Contract management planning, as documented in a formal contract management plan (See DOE Acquisition Guide Chapter 42.5) provides the "road map" for administering and monitoring key elements of contract performance. A sound contract management plan must clearly outline (1) the roles and responsibilities of key DOE officials, (2) key contract milestones and other performance requirements, (3) processes for ensuring that the rights and remedies of the parties remain operational, and (4) an effective contract change control process.

A mature and rigorous contract change control process is, arguably, the most important element of DOE's contract management framework and activities. A change control process provides a mechanism to make timely and appropriate changes to the contract requirements to reflect changes to the contract within the scope of the contract "Changes" clause. Formal change control includes not only the decision-making framework for assessing, negotiating, and implementing contract changes, but also includes project management and performance tracking systems, authorization and control levels, financial and funding management, and contract and project documentation.

There is a direct correlation between the contract estimated cost and fee (or fixed price) and the contractor's project performance measurement baseline. Contracts for projects subject to DOE Order 413.3 require the contractor to develop and deliver to DOE a contractor project performance measurement baseline. The contractor's project performance measurement baseline total cost plus management reserve (contractor's contingency) should equal the contract total estimated or target cost or price. The contractor should not be allowed to change the contract cost, price, schedule, and/or statement of work (SOW) that it agreed to in the original award by simply submitting or



updating the project's performance measurement baseline. Contractors should be held accountable for the performance of their contracts at the agreed to contract cost or price and schedule.

Heads of Contracting Activities (HCA) are encouraged to establish formal Government change control boards (CCB) for major construction projects and environmental cleanup contracts. Contracting officers should issue approved program office or CCB changes (un-priced or bilateral) to the SOW by contract modification (Federal Acquisition Regulation (FAR) 43.201(a)) and request change proposals from the contractor.¹ Changes to project performance measurement baselines or the receipt of a revised baseline from a contractor do not constitute a contract change or a change proposal.

Validated project performance measurement baselines are valuable tools for Federal project directors and contractor project personnel to manage their projects. This management includes tracking performance against a baseline plan utilizing a certified earned value management system. However, DOE contracting officers are not authorized to modify a contract's estimated cost and fee/price or contractually required delivery dates/schedules based on a contractor's initial or revised project performance measurement baseline even if the baseline has been validated by DOE's Office of Engineering and Construction Management. A project performance measurement baseline is not considered cost and pricing data as defined by the FAR Part 15. In addition, the Department's validation reviews of these baselines do not differentiate contract overruns, new work, deleted work, change orders, requests for equitable adjustments (REA), incurred costs to date, contractor entitlement for change orders and REAs, and responsibility for schedule changes and delays. A baseline validation review also does not constitute a contract audit. A validated contractor project performance measurement baseline does not remove the contracting officer's responsibility for evaluating and negotiating outstanding contract changes and REAs even if the contractor may have accounted for these items in the revised baseline.

At times, the scope of the SOW that was established in a solicitation may change due to a delay in the award of the contract or the amount of work that the incumbent contractor actually completed versus the work that was projected to be completed at the time the solicitation was issued. In this case, the contracting officer should require the contractor to identify the differences in the scope within 60 to 90 days of contract award. Once the differences are verified, the contracting officer should issue a change order and request that the contractor submit both technical and cost proposals. This process has been referred to as a "true-up." The true-up should be negotiated as any other change order (see the attached guidance). The true-up should be completed in a timely fashion and should not wait for the submission or validation of the contractor's project performance measurement baseline.

¹ Prior to issuing either a priced or unpriced change order estimated to be in excess of the HCAs delegated procurement authority, the HCA shall obtain Office of Contract Management (MA-62) approval in accordance with Department of Energy Acquisition Regulation (DEAR) Acquisition Guide Chapter 71.

Fee may be paid on contract change orders and REA's with entitlement in accordance with applicable FAR and DEAR fee policy based on the net cost of the added and deleted work. Contractor performance that will result in the earning of minimum or no fee is not justification for adding more fees to the contract. Fee may not be based on initial or revised project performance measurement baselines. Fee may not be calculated or paid on estimated work to go or on cost overruns.

Contract change orders and REAs including the associated contract fee should be negotiated to the extent possible prior to the incurrence of significant costs. Incentive or performance fees may not be established or paid on incurred costs, past delivery dates, or other actions which have been accomplished by the contractor prior to the negotiation of the fee. To the extent that changes and REAs involve significant costs incurred prior to agreement on contract price, the fee objective should be reduced to reflect decreased cost risk. Only fixed fee adjusted for reduced cost risk shall be negotiated on changes and REAs negotiated after all costs have been incurred.

Please provide copies of this letter and the attached guidance to all procurement personnel including contracting officers, contract specialists, and cost/price analysts. If there are any questions or comments on this guidance, feel free to contact me at 202-287-1348 or thomas.brown@hq.doe.gov or one of the Acquisition Planning and Liaison Division (MA-621) procurement analysts.

Attachment

ATTACHMENT

CONTRACT CHANGE AND REQUEST FOR EQUITABLE ADJUSTMENT (REA) GUIDANCE

If the Government needs to make a change in the scope of the contract that affects an increase (or decrease) in the estimated contract cost, fee (if any), delivery schedule, or option periods, the Contracting Officer (CO) should issue a change order. The general areas a CO may direct a change are stated in the applicable changes clause cited in the contract. The proper procedure for implementing a contract change is for the CO, after assuring all internal processes and procedures have been followed, to issue a request for proposal to the contractor with a draft contract modification definitization schedule. Contract change orders and REAs should be negotiated in a timely fashion in accordance with the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR). (Note: It is important that adequate funding is available to fund the contract change in order to not violate the Antideficiency Act).

The entitlement and quantum for each contract change and REA have to be individually evaluated and documented by the contracting officer. After receipt of the contractor's proposal, the CO shall ensure that a technical evaluation and cost analysis including audit and field pricing support when required (see attached letter from Edward R. Simpson to the Procurement Directors dated August 20, 2001), be performed and documented. Before negotiating with the contractor, the CO should prepare a pre-negotiation memorandum (pre-neg) (FAR 15.406.1 Pre-negotiation Objectives)

The pre-neg should discuss the proposed contractor position and the Department of Energy (DOE) objective by cost element. The pre-neg should address the reasonableness of the proposed cost changes from the current contract cost. It should breakout the cost of the new work, deleted work, change orders, REAs, and cost overruns. While one pre-neg may address several changes or REAs, the pre-neg should address the contractor's proposal and the DOE objective for each individual entitlement.

On REAs, the pre-neg should first establish the contractor entitlement or the lack thereof for each REA. The contracting officer may need to have a separate technical evaluation of the entitlement to support the pre-neg. On each REA with entitlement, the quantum has to be addressed in same manner as changes and new work.

After contract negotiations are complete but before executing the contract modification, the Contracting Officer shall obtain a certificate of current cost or pricing data per FAR 15.403-4(b)(2) unless an exception is applicable per FAR 15.403-1(b) or waived by the Head of the Contracting Activity (HCA) (FAR 15.403-1(c)(4)). Most change orders require certified cost and pricing data unless the item

being changed is a commercial item. Any waiver of the requirement to submit certified cost and pricing data must present information and a solid case to support the action sufficient to withstand the scrutiny by internal and external reviews and be within the HCA's delegated procurement authority. For actions that exceed the HCA's delegation, the HCA must obtain prior approval from the Office of Contract Management (MA-62).

The results of the negotiations are required to be documented with a post-negotiation memorandum (FAR 15.406-3, Documenting the Negotiation). After the appropriate approval of the action, the Contracting Officer should implement a bilateral contract modification that includes release language per FAR 43.204, Administration.

In certain circumstances, it may be necessary to issue an undefinitized/unpriced change order modification. In these exceptional instances, the CO may unilaterally direct by contract modification an immediate change within the general scope of the contract. The changed contractual requirement should be limited to the minimum effort required to satisfy the requirement while a proposal is prepared, analyzed, and negotiated.

In the contract modification, the CO is required to set a ceiling price for the changed contractual requirements. The ceiling price should be separately identified in the unpriced change order from the pricing structure of the basic contract. It is suggested that the CO consider utilizing FAR 52.243-6, Change Order Accounting, for changes expected to exceed \$100,000 for visibility into actual costs incurred pending definitization. The process of definitizing an unpriced change order mirrors the process outlined for a traditional change order. The CO should definitize the change as soon as practicable.

Most DOE cost reimbursable contracts contain both a technical direction clause and a changes clause. Technical direction is an important tool for the contracting officer's technical representative (COR) who is often the Federal Project Director, but it must be within the SOW stated in the contract and preferably should be in writing. Technical direction may not be used to assign effort outside of the SOW and may not constitute a contract "Change" (FAR 43.202, Authority to Issue Change Orders). The CORs are responsible for ensuring that they do not exceed their authority. If, in the contractor's opinion, technical direction has been issued that constitutes a change to the contract, the contractor is responsible for notifying the contracting officer in writing as soon as possible (FAR 43.104(a), Notification of Contract Changes) prior to performing the technical direction. As a best practice, the CO should be working with the COR and the contractor to avoid situations where the contractor feels compelled to seek instruction on the propriety of a technical direction. If advanced coordination is not practicable, the contracting officer is encouraged to be proactive in reviewing issued technical directions and coordinating any required actions.

Contract Change Order Administration of Department of Energy Prime Contracts

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Department of Energy

Washington, DC 20585

AUG 2 0 2001

MEMORANDUM FOR PROCUREMENT DIRECTORS

FROM:


EDWARD R. SIMPSON, ACTING DIRECTOR
OFFICE OF CONTRACT MANAGEMENT
OFFICE OF PROCUREMENT &
ASSISTANCE MANAGEMENT

SUBJECT:

CONTRACT AUDITS

The purpose of this memorandum is to emphasize the need for obtaining timely contract audit and pricing support for contracts for the Department of Energy's (DOE) major projects such as construction and environmental remediation work. As we move away from relying on traditional management and operating contracts to accomplish our major projects, it is important that DOE obtain adequate audit and pricing support to: provide scrutiny into the offeror's or contractor's cost or price proposal; confirm that the offeror's or contractor's accounting system and practices are adequate for the contract type; and ensure that the cost or price to be paid under these new contracts is fair and reasonable.

Department of Energy Acquisition Regulation (DEAR) 915.404-2-70, Audit As An Aid In Proposal Analysis requires a cognizant Federal audit activity review of any contract or modification action of \$500,000 or more for firm fixed price contract types and \$1 million or more for all other contracts when the contract price will be based on cost or pricing data submitted by the offeror/contractor. This DEAR requirement applies to not only preaward actions but contract modifications that include changes, definitization of unpriced change orders, request for equitable adjustments, overrun proposals, claims, price negotiations of unpriced options, settlement proposals, termination proposals, determinations of cost incurred for the payment of incentive fees, separately priced task orders, etc. Changes that include both deductive and additive work must consider both the increases and decreases for the purpose of the audit threshold (e.g. a \$400,000 modification resulting from a reduction of \$500,000 and an increase of \$900,000 would be valued at \$1,400,000 for threshold applicability purposes. See Federal Acquisition Regulation (FAR) 15.403-4(a)(1)(iii)). Contracting officer decisions on claims (see FAR 33.202) exceeding the thresholds above should also be supported by audit reviews where cost and pricing data is used to support the contracting officer's position.

The DEAR requirement may be waived at a level above the contracting officer when the reasonableness of the negotiated contract price can be determined from the information already available. It should be noted that independent Government estimates shall not be used as the sole justification for any such waiver. In addition, cost/pricing reports from DOE pricing support personnel or from Department of Defense field level contract management offices (see DEAR 915.404-2) do not satisfy the DEAR 915.404-2-70 audit requirement. In general, audits should



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not be waived unless the existing cost data being used to support the contract price has been audited within the past year. Audits are also deemed necessary when significant incurred costs are involved or when historical actual cost data on previous contracts exists and are relevant to the current contract action.

While requiring cost and pricing data and obtaining proposal audits when required is normally associated with single source contract actions, it should be noted that information other than cost and pricing data and audit assistance may be necessary on competitive procurements as well. FAR 15.404-1(d)(2) requires that cost realism analyses shall be performed on cost reimbursement contracts to determine the probable cost of performance for each offeror. Cost realism analyses may also be used on competitive fixed-priced incentive contracts or, in exceptional cases, on other competitive fixed-price type contracts when new requirements may not be fully understood by competing offerors, there are quality concerns, or past experience indicates that contractors proposed costs have resulted in quality or service shortfalls (see DEAR 15.404-1(d)(3)). If there is a significant cost/price spread in competitive offers, it may be an indication that the offerors may not fully understand the Government's requirements. Additionally, when joint ventures, limited liability corporations, or other similar entities with no prior cost history propose, audit assistance may be useful in evaluating proposed indirect costs and new accounting systems.

Any prenegotiation plans on contract actions requiring Office of Contract Management, MA-52, approval that do not include the appropriate audit support required by DEAR shall include a copy of the waiver and the supporting rationale as required by DEAR 915.404-2-70(b). If there is any uncertainty about whether or not an audit is required in any specific procurement action, feel free to discuss it with your assigned MA-52 "buddy". If there are any problems arranging audit support, the Office of Policy, MA-51, within the Office of Procurement and Assistance Management, can be contacted for assistance. If there are any questions about this letter, please contact Thomas Brown of my staff at 202-586-9075.

Please distribute this memorandum to all contracting officers and pricing support personnel.



Department of Energy
Washington, DC 20585

July 16, 2008

MEMORANDUM FOR DISTRIBUTION

FROM: INÉS R. TRIAY *Inés Triay*
PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR
ENVIRONMENTAL MANAGEMENT

SUBJECT: Timely Resolution of Contract Changes

One of our contract management challenges is to reduce the backlog of contract changes for the Office of Environmental Management (EM) contracts to remain current. I want to emphasize my expectation for improving timely resolution of contract changes. EM and the Department of Energy (DOE) have issued the following memoranda within the last year encouraging the organizations and field offices to take a more proactive approach for scheduling, processing and implementing contract changes in a more timely manner:

- » July 27, 2007, EM-1 issued a memorandum advising of his expectations for the timely review and settlement of contract changes.
- » November 2, 2007, EM-50 issued guidance establishing a reporting process to manage contract changes.
- » April 1, 2008, the Office of Contract Management (MA-62) reiterated that effective contract change order administration is critical to ensure that contract and project requirements are met and that a mature and rigorous contract change control process is, arguably, the most important element of DOE's contract management framework and activities.
- » June 3, 2008, EM-50 issued Policy Directive (EM HCA 1.8) requiring EM sites to comply with the objectives outlined in MA-62's April 1, 2008, memorandum.
- » June 20, 2008, EM-50 memorandum issued final guidance that formalizes the process for integrating contract and project management changes.

To date, some improvement has occurred but more is needed. I cannot stress enough the diligence needed to ensure timelier processing of these changes. Immediate attention by the Field Managers, Field Procurement Directors and Federal Project Directors is essential to address the lack of progress and discipline in executing these contract changes. I expect all of these individuals to be present during the monthly contract change status video conference for their respective scheduled time. I also expect improved results in the immediate future in resolving the backlog of contract modifications for your respective office, as well as meeting the established EM target timeframe of 180 days.



If you have any further questions, please call Mr. J. E. Surash, at (202) 586-6382 or Dr. Mindy Connolly, Acting Director, Office of Contract and Project Execution, at (202) 586-2171.

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