

SECTION 01035 - MODIFICATION PROCEDURES

1.0 CHANGES IN CONTRACT PRICE

Whenever corrections, alterations, or modifications of the work under this Contract are ordered by the Construction Manager and approved by the City and increase the amount of work to be done, such added work shall be known as extra work; and when such corrections, alterations, or modifications decrease the amount of work to be done, such subtracted work shall be known as work omitted.

The difference in cost of the work affected by such change will be added to or deducted from the amount of said Contract price, as the case may be, by a fair and reasonable valuation, which shall be determined in one or more of the following ways as directed by the Construction Manager:

- a. By unit prices accepted by the City and stated in the Contract Documents;
- b. By unit prices subsequently fixed by agreement between the parties;
- c. By an acceptable lump sum proposal from the Contractor; or
- d. By Force Account (as described in Paragraph 01035-3.0, **FORCE ACCOUNT PAYMENT**, when directed in writing and administered by the City through its agents or representatives.

When required by the Construction Manager, the Contractor shall submit, in the form prescribed by the Construction Manager, an itemized breakdown with supporting data of the quantities and prices used in computing the value of any change that may be ordered.

The Construction Manager will review the Contractor's proposal for the change and negotiate an equitable adjustment with the Contractor. After there is an agreement the Construction Manager will prepare and process the Change Order and make a recommendation for action by the City. All Change Orders must be approved by the City in writing before the work can be authorized and the Change Order executed.

The prices agreed upon and any agreed upon adjustment in Contract Time shall be incorporated in the written order issued by the City, which shall be written so as to indicate an acceptance on the part of the Contractor as evidenced by its signature. By signature of the Change Order, the Contractor acknowledges that the adjustments to cost and time contained in the Change Order are in full satisfaction and accord, payment in full, and so waives any right to claim any further cost and time impacts at any time during and after completion of the Contract for the changes encompassed by the Change Order.

2.0 NEGOTIATED CHANGE ORDERS

Under the methods described in Paragraph 01035-1.0b and 1.0c above, the Contractor shall submit substantiating documentation with an itemized breakdown of Contractor and subcontractor direct costs, including labor, material, equipment rentals, and approved services, pertaining to such ordered work in the form and detail acceptable to the Construction Manager. The direct costs shall include only the payroll cost for workers and foremen, including wages and fringe benefits as established by negotiated labor agreements or state prevailing wages. To the actual payroll cost will be added a labor surcharge which shall be the actual costs of taxes and insurance. Such labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual payroll cost and subsistence and

travel allowances. No other fixed labor burdens will be considered, unless approved in writing by the Construction Manager.

Other direct costs include the cost of materials used and equipment delivered and installed in such work as substantiated by appropriate documents; the cost of construction machinery and equipment based on fair rental or ownership values acceptable to the Construction Manager as described in Paragraph 01035-3.0, **FORCE ACCOUNT PAYMENT**; and the cost of incidentals directly related to such work. The direct costs shall not include any labor or office costs pertaining to the Contractor's managers or superintendents, its office and office facilities, or anyone not directly employed on such work, nor the cost of small tools as all such indirect costs form a part of the Contractor's overhead expense.

Under the method described in Paragraph 01035-1.0b and 1.0c the maximum percentage which will be allowed for the Contractor's combined overhead and profit will be:

a. For work by its own organization, the Contractor may add the following percentages:

1.	Direct Labor	24 percent
2.	Materials	15 percent
3.	Equipment (owned or rented)	15 percent

b. For all such work performed by a subcontractor, approved in accordance with the provisions in Section 00100-17.0 **SUBCONTRACTORS**, said subcontractor may add the same percentages listed in (a.) above to its net costs, for combined overhead and profit. The Contractor may add up to five (5) percent of the subcontractor's net cost, before above markup. Said additional five (5) percent markup shall reimburse the Contractor for additional administrative costs, and no other additional payment will be made by reason of performance of the extra work by a subcontractor.

For all such work performed by a subtier-subcontractor, approved in accordance with the provisions in Section 00100-17.0 **SUBCONTRACTORS**, said subtier-subcontractor may add the same percentages listed in (a.) above to its net costs, for combined overhead and profit. The subcontractor may add up to five (5) percent of the subtier-subcontractor's net cost, before markup, for its combined overhead and profit. The Contractor may add up to five (5) percent of the net cost of the subtier-subcontractor who performed the work, before markup. Said additional five (5) percent markup shall reimburse the subcontractor and the Contractor, respectively, for additional administrative costs, and no other additional payment will be made by reason of performance of the extra work by a subtier-subcontractor.

c. To the total of the actual costs and fees allowed hereinunder, not more than two (2) percent shall be added for additional bond and insurance other than labor insurance. The above fees represent the maximum limits which will be allowed, and they include the Contractor's and all subcontractors' indirect home office expenses and all costs for cost proposal preparation.

When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any, for each area of work, i.e. direct labor, materials, equipment, and subcontractors. The amount of credit to be allowed by the Contractor to the City for any such change which results in a net decrease in cost will be the amount of the actual net decrease and a credit in accordance with the markups allowed under the use of the method described in Paragraph 01035-3.0, **FORCE ACCOUNT PAYMENT**. The Contractor shall not claim for anticipated profits on work that may be omitted.

3.0 FORCE ACCOUNT PAYMENT

If either the amount of work or payment for a Change Order cannot be determined or agreed upon beforehand, the City may direct by written Change Order or Field Order that the work be done on a force account basis. The term "force account" shall be understood to mean that payment for the work will be done on a time and expense basis, that is, on an accounting of the Contractor's forces, materials, equipment, and other items of cost as required and used to do the work. For the work performed, payment will be made for the documented actual cost of the following:

- a. Direct labor cost for workers, including foremen, who are directly assigned to the force account work: Direct labor cost is the actual payroll cost, including wages and fringe benefits as established by negotiated labor agreements or state prevailing wages. To the actual payroll cost will be added a labor surcharge which shall be the actual costs of taxes and insurance. Such labor surcharge shall constitute full compensation for all payments imposed by State and Federal laws and for all other payments made to, or on behalf of, the workmen, other than actual payroll cost and subsistence and travel allowances. No other fixed labor burdens will be considered, unless approved in writing by the City.
- b. Material delivered and used on the designated work, including sales tax, if paid for by the Contractor or its subcontractor.
- c. Equipment rental, including necessary transportation for items having a value in excess of One Thousand Dollars (\$1,000.00).
- d. Additional bond.
- e. Additional insurance, other than labor insurance.

To the preceding costs, there shall be added the following fees for the Contractor, subcontractor, or sub-subcontractor actually performing the work:

- a. A fixed fee not to exceed twenty-four (24) percent of the cost of Item a above, and fifteen (15) percent of the costs of Items b and c above.
- b. To the total of the actual costs and fees allowed in items a, b, and c above, not more than two (2) percent shall be added for additional bond and insurance as the cost of Items d and e above.

For all such work performed by forces other than the Contractor's organization, the Contractor shall reach agreement with such other forces as to the distribution of the payment made by the City for such work. No additional payment therefor will be made by the City by reason of the performance of the work by a subcontractor or other forces.

The added fixed fees shall be considered to be full compensation, covering the cost of general supervision, overhead, profit, and any other general expense. The above fixed fees represent the maximum limits which will be allowed, and they include the Contractor's and all subcontractors' indirect home office expenses and all costs for cost proposal preparation and record keeping.

The City reserves the right to furnish such materials and equipment as it deems expedient, and the Contractor shall have no claim for profit or added fees on the cost of such materials and equipment.

For equipment under Item c above, rental or equivalent rental cost will be allowed for only those days or hours during which the equipment is in actual use. Payment shall be based on actual rental and transportation invoices but shall not exceed the monthly rate in the CalTrans

"Labor Surcharge and Equipment Rental Rates" publication. The rental cost allowed for equipment will, in all cases, be understood to cover all fuel, supplies, repairs, ownership, and incidental costs and no further allowances will be made for those items, unless specific agreement to that effect is made. For Contractor owned equipment, costs shall be based on either actual cost accounting records or the CalTrans "Labor Surcharge and Equipment Rental Rates" publication. Hourly rates shall be determined by dividing the monthly rate by 176 hours.

Prior to the commencement of force account work, the Contractor shall notify the Construction Manager of its intent to begin work. Labor, equipment and materials furnished on force account work shall be recorded daily by the Contractor upon report sheets approved by the Construction Manager. The reports, if found to be correct, shall be signed by both the Contractor and Construction Manager, or inspector, and a copy of which shall be furnished to the Construction Manager no later than the working day following the performance of said work. The daily report sheet shall thereafter be considered the true record of force account work provided. If the Construction Manager, or inspector, do not agree with the labor, equipment and/or materials listed on the Contractor's daily force account report, the Contractor and Construction Manager, or inspector, shall sign-off on the items on which they are in agreement. The Construction Manager shall then review the items of disagreement and will advise the Contractor, in writing, of its determination. If the Contractor disagrees with this determination, it shall have the right to file a claim notice as provided in Paragraph 00700-7.4.2.1, **Notice**. The Contractor shall maintain its records in such a manner as to provide a clear distinction between the direct costs of work paid for on a force account basis and the costs of other operations.

To receive partial payments and final payment for force account work, the Contractor shall submit, in a manner approved by the Construction Manager, detailed and complete documented verification of the Contractor's and any of its subcontractor's actual costs involved in the force account pursuant to the pertinent Change Order or Field Order. Such costs shall be submitted within thirty (30) days after said work has been performed.

The force account invoice shall itemize the materials used and shall cover the direct costs of labor and the charges for equipment rental, whether furnished by the Contractor, subcontractor, or other forces. The invoice shall be in a form acceptable to the Construction Manager and shall provide names or identifications and classifications of workers, the hourly rate of pay and hours worked, and also the size, type, and identification number of equipment and hours operated. Material charges shall be substantiated by valid copies of vendor's invoices.

When both additions and credits are involved in any one change, the combined overhead and profit shall be figured on the basis of the net increase, if any. The amount of credit to be allowed by the Contractor to the City for any such change which results in a net decrease in cost will be the amount of the actual net decrease and a credit in accordance with the markups allowed under the use of the method described in this Section. The Contractor shall not claim for anticipated profits on work that may be omitted.

4.0 UNIT PRICE ADJUSTMENTS DUE TO INCREASED OR DECREASED QUANTITIES

The unit prices as stated in the bid form and as negotiated in Change Orders shall apply to one hundred (100) percent of the quantity indicated to be estimated quantity for the bid item, plus or minus twenty-five (25) percent. Adjustments in unit prices will be made in accordance with Section 4-1.03B, Increased or Decreased Quantities, and 4-1.03C, Changes in Character of Work, of the State of California Specifications, with the following modifications:

- a. Delete all references to "Section 9-1.03" and insert "Paragraph 01035-3.0, **FORCE ACCOUNT PAYMENT**".

- b. Delete the last paragraph (fourth paragraph) of Section 4-1.03C, Changes in Character of Work.

5.0 TIME EXTENSIONS FOR CHANGE ORDERS

If the Contractor requests a time extension for the extra work necessitated by a proposed Change Order, the request must comply with the applicable requirements of Paragraph 01310-6.0, **TIME IMPACT ANALYSES**.

6.0 CONTRACTOR CHANGE REQUESTS

Change requests may be initiated by the Contractor's Representative. Such requests must be presented in a format mutually agreeable to the Construction Manager, and shall include the following information:

- a. Reason for Request - An introductory statement which clearly identifies the need for the change; change requests which do not directly benefit the City or the project, or which are intended solely as contractual relief shall be rejected.
- b. Nature of the Request - A complete description of the requested change, its impact on the functional performance of the System, and its effect on the delivery schedule of the System.
- c. Cost or credit of the Requested Change - The total impact on cost or credit to the City for the change to the System.

7.0 VALUE ENGINEERING COST PROPOSALS

Refer to section 00700-7.4, **Value Engineering Change Proposals (VECP)**.

******END OF SECTION*****