

University of Maryland College Park
Change Order Guidelines

I. Introduction

This document is intended as a guideline for those currently doing business and those interested in pursuing business with the University of Maryland College Park on construction projects. The document was created in response to the Change Order Fairness Act (15-112 of the State Finance and Procurement Article, Annotated Code of Maryland) and the Change Order Fairness Act Construction Change Order Workgroup.

This document is intended to be a quick reference relating to the Construction Change Order process. It is not intended to replace or supersede the General Terms and Conditions included in the eMaryland Marketplace bid documentation.

II. Pre-Bid Meetings and Questions

The date of the pre-bid meeting and deadline for questions will be included in the eMaryland Marketplace bid documentation. Subcontractors are encouraged to attend pre-bid meetings, but are not required. Questions submitted after the deadline will be accepted, but will only be answered at the discretion of the Procurement Officer.

III. Pre-Construction Meetings

Subcontractors are encouraged to attend pre-construction meetings, but are not required. Pre-construction meeting attendance is required for the Prime Contractor. The Prime Contractor should notify subcontractors of the meeting date, time and location to allow attendance. It is strongly encouraged that MBE subcontractors attend these meetings in order to understand the documentation requirements and point of contacts for the MBE program.

IV. Delegation of Authority

The Procurement Officer is the only person authorized to direct changes to the work. Except in any emergency endangering life or property, no extra Work or changes to the Work shall be done unless authorized in writing by the Procurement Officer prior to any such Work or changes to the Work being done.

Limits of authority for change order approval:

Procurement Officer - \$250,000

Director, Procurement - \$1,000,000

Assistant Vice President, Procurement - Unlimited

V. Changes

- A. The procurement officer may, at any time, without notice to the sureties, if any, by written order designated or indicated to be a change order, make any change in the work within the general scope of the contract by issuing a construction change directive, including but not limited to changes:
- i. In the specifications (including drawings and designs);
 - ii. In the method or manner of performance of the work;
 - iii. In the State-furnished facilities, equipment, materials, services, or site;
or
 - iv. Directing acceleration in the performance of the work.
- B. Any other written order or an oral order, including a direction, instruction, interpretation or determination, from the procurement officer that causes any such change, shall be treated as a change order under this clause, provided that the contractor gives the procurement officer written notice stating the date, circumstances, and source of the order and that the Contractor regards the order as a change order. Work is not to commence until receipt of the written change order.
- C. Except as herein provided, no order, statement, or conduct of the procurement officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. Subject to paragraph (F), below, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed by any order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, that except for requests based on defective specifications, no request for any change under B. above, shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the University is responsible, the equitable adjustment shall include any increased cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.
- E. If the Contractor intends to request an equitable adjustment under this clause, he shall, within thirty (30) days after receipt of a written change order under (1) above, or the furnishing of written notice under (A) above, submit to the procurement officer a written statement setting forth the general nature and monetary extent of request, unless this period is extended by the University. The

statement requesting an equitable adjustment may be included in the notice under (B) above.

- F. Each proposed contract modification that affects contract price shall be subject to the prior written approval of the procurement officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification will cause an increase in cost that will exceed budgeted and available funds, the modification may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget. The procurement officer will promptly notify the contractor if insufficient funds are available to proceed with a contract modification.
- G. No request by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment under this contract.
- H. Prime contractors must notified subcontractors within 5 days of receiving an approved change order.

VI. Modification of Contract Price

When changes in the work require adjustment of the Contract Price, such modification shall be accomplished as follows:

- A. The Contractor shall promptly submit to the University and to the Architect a fully itemized breakdown of the quantities and prices used in computing the value of the requested change along with a detailed explanation and justification for the proposed change regardless of the nature of the change.
- B. For all changes in the Work to be performed by a subcontractor, the Contractor shall furnish the subcontractor's fully itemized breakdown of quantities and prices which shall bear the original signature of a representative of the subcontractor authorized to act for the subcontractor. If requested by the University or the Architect, proposals from suppliers or other supporting data required to substantiate costs shall be furnished.
- C. Modification of the Contract Price, when required, shall be determined as follows:
 - 1. When unit prices are stated in the Contract or have been subsequently agreed upon, by application of such unit prices.
 - 2. A lump sum price agreed upon by both the University and Contractor.

3. If the change involves only a credit, the Contract Price will be reduced by the amount it would have cost the Contractor if the work omitted had not been eliminated; including overhead and profit, however, the Contractor and the subcontractor will be allowed to retain a sum not in excess of three percent (3%) for handling.
4. Re-stocking fees for return of materials or supplies may be allowed on the basis of actual cost to the contractor or five percent (5%) of the original material cost, whichever is less. The University retains the option to purchase excess materials for disposal or use by the University.
5. If the change involves both a credit and debit, both sums shall be shown and the two sums balanced to determine the adjusted total cost or credit. No allowance to the Contractor shall be made or allowed for loss of anticipated profits on account of any changes in the Work.
6. Unless otherwise specified, the allowable mark-up for combined overhead and profit for work performed by the Contractor with his own forces will be based upon the monetary value of the Work in accordance with the following schedule:

Not to exceed fifteen percent (15%)

These mark-ups shall be applied to additive and deducted charges in the same manner.

7. For work performed by a subcontractor with his own forces, the percentages for combined overhead and profit for a subcontractor will be as stated in Paragraph 6. above. On work partly or solely performed by a subcontractor, the Contractor will be allowed eight percent (8%) of the total cost of the subcontractor's labor, materials overhead and profit, including taxes and Insurance on labor required by statute. These mark-ups shall be applied to additive and deductive changes in the same manner.
8. The allowable mark-up described in Paragraphs 6 and 7 above shall be applied to work performed by the Contractor and first-tier subcontractors only.
9. On all changes in the Work, the Contractor will be reimbursed for his expenditures for Workmen's Compensation Insurance, Social Security Taxes and Unemployment Compensation Taxes covering persons actually engaged upon the Work. The actual increased cost of bonds will be reimbursed. Evidence must be furnished to support the reimbursement of additional bond expense. A fixed percentage mark-up for increased bond expense will not be acceptable. These adjustments shall be applied to

additive and deductive changes in the same manner.

10. The cost of foremen and superintendents may be added only when the Change Order makes necessary the hiring of additional supervisory personnel or makes their employment for time additional to that required by the basic contract.
 11. The Contractor shall be allowed the actual cost for rental of machine power tools or special equipment, including fuel and lubricants which are necessary to execute the Work required on the change, but no percentages shall be added to this cost. The rental rate is to be agreed upon by the University and the Contractor; the rate shall relate generally to the latest as filed by the Associated Equipment Distributors. Reimbursement on rental rates will not be authorized if Contractor owned equipment is used. Owned equipment will be reimbursed on the basis of actual cost.
 12. The Contractor may be allowed additional time for performance of additional work. Requests for additional time must be supported by an analysis of the schedule, demonstrating that critical path work will be impacted by the additional work. No additional/extended overhead shall be provided, for performance of additional work, other than the mark-ups allowed in the preceding paragraph 6. above.
 13. If the Contractor and the University cannot agree as to the extent the contract time shall be increased for extra work or the extent the Contract time shall be reduced for work omitted by the State, the increase or decrease, as the case may be, shall be determined by the Procurement Officer. Any disagreement with this decision may be appealed by the Contractor under the Disputes Clause.
 14. No order for change at any time or place shall in any manner or to any extent relieve the Contractor of any of his obligations under the contract.
 15. The Architect, with the concurrence from the University, shall have authority to make minor changes in the Work not involving extra cost, and not inconsistent with the purposes of the building. *Otherwise, except in any emergency endangering life or property, no extra Work or changes to the Work shall be done unless authorized by the University prior to any such Work or changes to the Work being done.*
- D. The allowable percentages of cost for overhead and profit are deemed to include, but not be limited to, the following:
1. Job supervision and field office expense required by the Contract, expenses for timekeepers, clerks and watchmen, cost of correspondence of any kind, and insurance not specifically mentioned herein, all expenses in

connection with the maintenance and operation of the field office, use of small tools, and cost of small trucks generally used for transporting either workmen, materials, tools or equipment to job location, and incidental job burdens. No percentage allowances will be made for maintenance or operation of Contractor's regularly established principal office, branch office or similar facilities.

- E. Change Order Forms: All change orders should be submitted via the University's online electronic Project Management system.
- F. Force Account Work: When the Contractor is required to perform work as a result of additions or changes to the contract for which there are no applicable unit prices in the contract, the University and Contractor shall make every effort to come to an agreed upon price for the performance of such work. If an agreement cannot be reached, the University may require the Contractor to do such work on a force account basis to be compensated in accordance with the General Terms and Conditions of the contract.

VII. Submittals

The procedures for submittals is included in the eMaryland Marketplace bid documentation, including the steps and documentation required.

VIII. Retainage

Retainage is withheld in accordance with the eMaryland Marketplace bid documentation to ensure the contractor satisfies its obligations and completes the construction project. Early release of retainage is at the discretion of the University. Requests for release of retainage should be submitted to the Project Manager.

IX. Payments

Payments are made in accordance with the eMaryland Marketplace bid documentation. The Project Manager should be contacted if any payment issues arise on the project. If the Project Manager is unavailable or unable to assist, the contractor should contact the Procurement Office

X. Contact Information

The University assigns a Project Manager and a Procurement Officer on every construction project. The contact information for the Project Manager and Procurement Officer is included in the eMaryland Marketplace bid documentation. Additionally, for Construction Projects, the contact information for the Manager, Construction and AE Services is listed on the Department of Procurement and Strategic Sourcing website: <https://purchase.umd.edu/directory.html>

The Project Manager should be the first line of communication on any project related issues. However, the Procurement Officer may be contacted for issues related to payment bonds and change orders.