

**Metro**

CONSTRUCTION COMMITTEE
May 20, 2004**SUBJECT: PROCESSING OF CONSTRUCTION CHANGE ORDERS****ACTION: RECEIVE AND FILE AN ORDINANCE ESTABLISHING
PROCEDURES FOR PROCESSING CHANGE ORDERS****RECOMMENDATION**

Receive and file the attached ordinance establishing procedures for processing construction change orders at the May Board meeting and adopt it at the next meeting.

ISSUE

Public Utilities Code §130243 sets forth a procedure for the processing of construction contract change orders by the MTA. This section calls for the contractor to submit certified cost and pricing data to justify the claimed cost for the change. If the value of the proposed change exceeds \$100,000 the MTA must audit the submitted data. This process can be time consuming and cumbersome and can result in project delays. In the past, it has often resulted in the final valuation of the change being delayed until after contract completion. Despite these disadvantages, this process can be very useful when there is a significant disagreement between the MTA and the contractor as to the appropriate value of a proposed change. However, the process makes little sense, and does not appear to be required, when the contractor's proposed price for the change does not significantly exceed the value of the change as determined by the MTA.

The proposed ordinance recognizes this fact and offers an alternative process when the contractor's price for the change is not significantly different than that of the MTA. The ordinance requires that proposed changes be priced by the MTA estimating unit and reviewed by management audit unit. Without knowing the value of the change established by the MTA, the contractor will submit its price to complete the change. If the contractor's proposed price does not exceed the MTA estimate by more than 5%, the contractor's proposed price will be the recommended value for the change order, without the need for the contractor to submit certified cost and pricing data. If the contractor's proposal exceeds the MTA estimate by more than 5%, the contractor will be offered the opportunity to accept the MTA estimate as the value for the change order. If the contractor requests a higher value, it must justify its request by submitting certified cost and pricing data, which will be subject to an MTA audit. If this process does not result in agreement as to the value of the change, the matter will be resolved through litigation or any agreed to alternate dispute resolution process.

The new process proposed by the ordinance will initially apply only to design-build contracts. If the experience under the ordinance proves satisfactory, the ordinance can be amended at a later date to make it applicable to all construction contracts. For construction contracts other than those which are design-build, the ordinance describes the current change order valuation process.

The law requires that an ordinance not be approved at the first meeting where it is presented to the Board for consideration. Therefore, this ordinance is being presented as a "receive and file" item this month and will be again presented for final consideration at a subsequent meeting.

POLICY IMPLICATIONS

The proposed ordinance would create a new, but streamlined process for pricing design-build construction change orders. Because certified cost and pricing data will no longer be required for all change orders, the change order file will not always contain such data. However, this should not be significant since certified cost and pricing data will not be provided only in those instances when the contractor's proposed price for a change and the MTA's estimate are in substantial agreement.

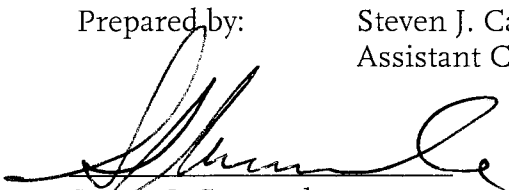
ALTERNATIVES CONSIDERED

The MTA could continue with its current process for pricing change orders. However, the proposal is recommended since it should streamline the change order pricing process, but in a manner which stills allows for the appropriate valuation of proposed changes. This should help to avoid construction delays as well as delays in finally establishing the value of change orders.

FINANCIAL IMPACT

It is anticipated that the adoption of this ordinance will result in some modest budget savings through a reduction in the staff used to complete certified cost and pricing data audits.

Prepared by: Steven J. Carnevale
Assistant County Counsel



Steven J. Carnevale
Assistant County Counsel
Transportation Division

ATTACHMENT: Proposed Construction Contract Change Order Ordinance

AN ORDINANCE AMENDING TITLE 4, CONTRACTING, OF THE MTA
ADMINISTRATIVE CODE RELATING TO THE PROCESSING OF
CONSTRUCTION CONTRACT CHANGE ORDERS

Be it ordained by the Board of Directors of the Los Angeles County

Metropolitan Transportation Authority:

SECTION 1: Chapter 4-15 is added to the MTA Administrative Code to read as follows:

4-15-010 Identification of Changes. Whenever any party proposes a change to a construction contract which will involve the expenditure of MTA funds above the amounts contemplated by the existing contract, the MTA contract administrator shall consult with the MTA General Counsel, and technical experts if necessary, to determine whether the proposed change includes work within the scope of the statement of work in the base construction contract as modified by already approved change orders. If it is determined that the proposed change includes work within the scope of the statement of work in the base construction contract as modified by already approved change orders, the requested change order shall be denied. If it is determined that the proposed change includes work which is not covered by the statement of work in the base construction contract as modified by already approved change orders the change order shall be priced as set forth in this chapter.

4-15-020 Pricing of Changes on Design-Build Contracts. When a change to a construction contract which has been awarded as a design-build contract is identified, as set forth in section 4-15-010, the value for the change shall be established as follows:

A. The MTA will submit to the contractor a change notice describing the scope of the proposed change.

1. If the MTA determines that the cost to complete the work described in the change notice can be determined based upon an evaluation of the scope of the work set forth in the change notice and without the need for detailed plans and specification, the value of the proposed change, including both design and construction, will be included in a single change order. The value of the change order will be determined in accordance with paragraphs B, C and D.

2. If the cost to complete the work described in the change notice cannot reasonably be determined without detailed plans and specifications, the cost of the design of the proposed work and the cost to actually construct what is designed will each be set forth in separate change orders. The value of each change order will be determined in accordance with paragraphs B, C and D.

B. Regardless of whether a proposed change is to be added to the contract under a single change order as described in subparagraph A.1., or two change orders as described in subparagraph A.2., the MTA and the contractor will separately determine the appropriate value of the proposed change. The MTA determination of the value of the proposed change shall be made by an MTA estimating unit, which shall be organizationally independent of the MTA administrative head of construction. The MTA determination of value of the proposed change shall be the estimated cost to the contractor to complete any necessary design work and the actual construction work for the proposed change, plus any contractor markup allowed by the base construction contract. Such cost of design and cost of construction may be determined through

separate change orders as described in subparagraph A.2. If separate change orders are issued, the change order for the construction work shall not be issued until sufficient design work has been completed to enable a reasonable estimate of the cost of the construction work. The MTA determination of value of the proposed change shall be reviewed for accuracy by the MTA management audit services unit. The MTA determination of value of the proposed change, as reviewed by the MTA management audit services unit, shall be provided to the MTA contract administrator, but shall be kept confidential and not provided to the contractor.

C. The contractor shall submit to the MTA contract administrator the contractor's proposed value for the change. Such proposed value may be for the cost of design, the cost of construction, or the cost of both, depending upon whether the MTA selects, at its sole discretion, to issue one change order for both design and construction as described in subparagraph A.1., or separate change orders for design and construction, respectively, as described in subparagraph A.2. If the contractor's proposed value for the change does not exceed by more than five percent the MTA proposed value for the change as determined pursuant to paragraph B., the change order(s) shall be issued, or recommended to the Board of Directors if beyond the approval authority of MTA staff, at the value proposed by the contractor.

D. If the contractor's proposed value for the change exceeds by more than five percent the MTA proposed value for the change as determined pursuant to paragraph B., the contractor shall be offered the opportunity to accept the change at the MTA proposed value. If the contractor rejects this offer and demands a higher value for the change, the contractor shall submit to the MTA certified cost and pricing data supporting

the value of the change at the amount proposed by the contractor. If the contractor proposed amount exceeds \$100,000, the MTA shall conduct an audit of the contractor's certified cost and pricing data. If upon review and audit, if required, of the contractor's certified cost and pricing data, the MTA determines that the contractor's proposed value for the change is reasonable, the change order shall be issued, or recommended to the Board of Directors if beyond the approval authority of MTA staff, at the value proposed by the contractor.

E. If after the completion of the procedures set forth in paragraph D., the MTA and the contractor are not able to agree on the value of the change, the value of the change shall be determined through further negotiations or, if necessary, through legal action or any alternative dispute resolution process which the parties have agreed to utilize. In order to allow continuation of work under the construction contract during any period where a dispute as to the value of the change is being resolved, the MTA may issue a unilateral change order at the MTA's value of the proposed change as determined pursuant to paragraph B.

F. Nothing in this chapter shall prevent the MTA from using an alternative method of pricing a proposed change order, if the MTA, in its sole discretion, determines that such alternative method of valuation of the proposed change is in the best interest of the MTA, will produce a value which reasonably reflects the actual cost to complete the work, and the method of valuation set forth in this chapter is impractical under the circumstances.

4-15-030 Pricing of Changes on Design-Bid-Build Contracts. When a change to a construction contract which has been awarded as a design-bid-build contract is

identified, as set forth in section 4-15-010, the value for the change shall be established as follows:

A. The MTA shall submit to the contractor a change notice describing the scope of the proposed change which shall include the plans and specification describing the specific work to be done under the proposed change order.

B. The contractor shall submit to the MTA the contractor's estimated cost to complete the change along with certified cost and pricing data supporting the value at the amount proposed by the contractor. If the amount exceeds \$100,000, the MTA shall conduct an audit of the contractor's certified cost and pricing data. The MTA estimating unit, which shall be organizationally independent of the MTA administrative head of construction, shall make a determination of value of the proposed change. If upon review and audit, if required, of the contractor's certified cost and pricing data, and a review of the value assigned to the change by the MTA estimating unit, the MTA determines that the contractor's proposed value for the change is the appropriate value, the change order shall be issued, or recommended to the Board of Directors if beyond the approval authority of MTA staff, at the value proposed by the contractor.

C. If after the completion of the procedures set forth in paragraph B., the MTA and the contractor are not able to agree on the value of the change, the value of the change shall be determined through further negotiations or, if necessary, through legal action or any alternative dispute resolution process which the parties have agreed to utilize. In order to allow continuation of work under the construction contract during any period where a dispute as to the value of the change is being resolved, the MTA may

issue a unilateral change order at such value as the MTA's estimating unit determines to be the appropriate value of the proposed change.

4-15-040 Administrative Policies. The CEO may develop administrative policies not inconsistent with this chapter, governing the change order review and approval process, which may include, but are not limited to, policies establishing reasonable time deadlines for the completion of the administrative steps set forth in this chapter.

SECTION 2:

Publication of Ordinance. Upon adoption, this Ordinance shall be signed by the Chair of the Board of Directors of the Los Angeles County Metropolitan Transportation Authority. The Board Secretary shall cause the publication of this Ordinance once, within fifteen days of its adoption, in a newspaper of general circulation printed and published within the area served by the Los Angeles County Metropolitan Transportation Authority and the Board Secretary shall attest to such adoption and publication of this Ordinance.

Dated: _____
Chair, Board of Directors

Date Adopted by Board of Directors: _____

Date Published: _____

Attested to:

Dated: _____
Board Secretary

