



CONSTRUCTION COMMITTEE
October 21, 2004

SUBJECT: PROCESSING OF CONSTRUCTION CHANGE ORDERS

**ACTION: RECEIVE AN ORDINANCE ESTABLISHING
PROCEDURES FOR PROCESSING CHANGE ORDERS**

RECOMMENDATION

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

ISSUE

Public Utilities Code §130243 sets forth a procedure for the processing by the MTA of construction contract change orders. It requires the contractor to submit certified cost and pricing data to justify its claimed costs for the additional work. If the value of this cost exceeds \$100,000, the MTA must audit the submitted data. This process can be time consuming and cumbersome and can result in project delays. It has often resulted in the final valuation of the change being delayed until after contract completion. Despite these disadvantages, this process can be beneficial when there is a significant disagreement between the MTA and the contractor as to the appropriate value of a proposed change. However, this process offers no real advantage, and does not appear to be required, when the contractor's proposed price for the change does not significantly exceed the value 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 the management audit unit. Without knowing the value of the change established by the MTA through this process, the contractor will submit its price to complete the additional work. 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 or the need for an audit. 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 follow the process in Public Utilities Code §130243 and justify its request by submitting certified cost and pricing data which the MTA will audit if it exceeds \$100,000. If this process does not result in agreement as to the value of the change, the matter will be resolved through litigation or any other agreed to dispute resolution process.

The law requires that an ordinance not be approved at the first meeting where it is presented to the Board for consideration. Therefore, the proposed ordinance is being introduced this month and will be presented for final adoption next month.

POLICY IMPLICATIONS

The proposed ordinance would create a new, but streamlined process for pricing construction change orders. Because certified cost and pricing data will no longer be required for every change order, the documentation supporting a change order may not be as detailed and complete as it is currently. However, this difference in the level of documentation should not be significant since certified cost and pricing data will be missing only in those instances when the contractor's proposed price for a change and the MTA's estimate are in substantial agreement.

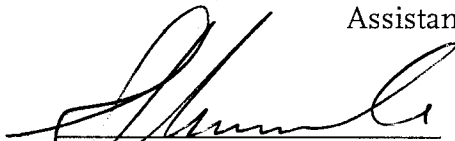
ALTERNATIVES CONSIDERED

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.

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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 Purpose and Coverage. The purpose of this Chapter is to adopt a change order procedure as required by Public Utilities Code §130243. The MTA construes the term “change order” as used in §130243 as referring only to a modification of the work to be performed under a contract for construction of a public works project, where the modification of work will result in an increase in the cost to the MTA over the then current base contract amount as modified by any already approved change orders. It is the intent of the MTA that any other contract modification, regardless of how that modification is described or denominated, is not a “change order” as that term is used in Public Utilities Code §130243, and is not subject to this chapter.

4-15-020 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.

4-15-030 Establishing the Price for a Construction Change Order. When a change to a construction contract is identified, as set forth in section 4-15-020, the value for the change shall be established as follows:

A. If the contract was awarded as a design-build contract, 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 C, D and E.

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 C, D and E.

B. If the contract was awarded as a design-bid-build contract the MTA shall submit to the contractor a change notice describing the scope of the proposed change

which shall include plans and specifications describing the specific work to be done under the proposed change order in sufficient detail to reasonably permit the contractor to evaluate the cost of the additional work and to complete it if approved. The value of the change order will be determined in accordance with paragraphs C, D and E.

C. Regardless of whether a proposed change is to be added to the contract under a single change order as described in paragraphs A.1 or B., or two change orders as described in paragraph A.2., the MTA and the contractor will separately determine the appropriate value of each 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. The cost of design and cost of construction may be determined through separate change orders as described in paragraph 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.

D. 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 construction as described in paragraph B for a design-bid-build contract, or, in the case of a design-build contract, 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 paragraph A.1., or separate change orders for design and construction, respectively, as described in paragraph 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 C., 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.

E. 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 C., 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's management audit services unit 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.

F. If after the completion of the procedures set forth in paragraph E., 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 C.

G. Nothing in this chapter shall prevent the MTA from using any alternative method allowed by law for 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.

4-15-040 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