



Contract Change Management or Change Control

Overview

Contract changes can be minor, administrative changes such as a change of address or they can be substantial changes that affect the price and delivery.

The state generally uses a **bilateral amendment**, in which all parties to the contract agree that a modification is necessary because the scope of work, the term of the contract, or some other provision of the contract needs to be altered.

Change Management/Change Control Process

Agencies should have an effective change management process in place. Failure to manage and control changes can result in an unintentional modification to the scope of work, extension of the schedule, increase in the contract cost, circumvention of management controls and diminished contractor accountability. An effective change management process includes but is not limited to:

- Formal, written approval of all changes prior to the change taking place.
 - Do not verbally authorize the supplier to begin working on a change before formal process is fully analyzed, documented and approved in writing.
- Evaluation of the impact of each change to the contracting objective, the corresponding deliverable and/or products, the schedule, cost, and increase in agency overhead resulting from the change, impact to work in progress/completed work, standards, and acceptance criteria.
- If the contract contains a contingency allowance, develop a plan for how draws against this allowance will be requested and approved.
- Documentation of all changes, no matter how small and avoids any informal undocumented change process.
- Establish a single point of contact to recommend or authorize any change. Document the change as approved or disapproved. If a change is approved, document the change and the impact to the scope of work through a contract amendment or purchase order change notice, whichever is applicable.
- Ensure the appropriate governance and level of authority is applied for change orders that impact scope or cost.

Contract Changes and Contract Scope

Whether a contract may be materially changed, depends upon certain principles. State law requires a competitive process in most situations. The specific method of

competition depends upon the type of goods or services needed. If competitive, the resulting contract must be consistent with what was asked for during the competition, usually contained in the solicitation document. Not being consistent can violate the competitive process requirements.

If a change is needed to a contract, the change must be within the scope, or range, of what was provided in the solicitation. A significant difference would be a material or substantial change in the scope of services, and would not be allowed because it had not been originally subject to fair competition. To permit such a change would go against the ideas of competition and a fair playing field for the suppliers.

To determine what constitutes scope changes to advertised specifications, the significant question is whether the changes are material or substantial.

Material or substantial changes are not measured by the number of changes made to the original specifications. Rather, they are measured by whether the extent of the changes would so substantially alter the original specifications that not re-advertising the revised specifications would deny a procurement opportunity to someone who would have been able to respond to the revised specifications. If much is revised, then those changes should be treated as a new proposal.

Whether a change is material or substantial is a fact question. What is fundamental is the principle that materially changing solicitation specifications after receipt of responses denies an opportunity for others to participate in the solicitation. **Therefore, any contract amendments are required to be within the scope of the original contract and the competitive process underlying the original contract.**

It is important to remember that application of the above principles will depend upon the facts and situation. Agencies should always consult with legal staff and the Office of Procurement Services before proceeding.

Administrative Changes

These are changes that are within the scope of the contract and do not affect or alter the rights of the parties. These changes are typically executed via a unilateral amendment. Examples of administrative changes include:

- Changes in billing instructions or address;
- Corrections of typographical errors not affecting the substance of the contract;
- Changes as permitted by the specific contract language;
- Changes in agency personnel assigned to the contract.

Substantive Changes

These are contractual changes that affect the rights of both parties. Such changes generally require bilateral amendments (agreement by both parties). Examples of substantive changes include:

- Change in the price of the contract.

- Change in the delivery schedule.
- Change in the quantity.
- Change or nature of deliverables. (i.e. the specifications)
- Change of key personnel.
- Change of any terms and conditions.

Constructive Changes

If a contractor perceives that work beyond the scope of the contract was ordered by the agency, the contractor may claim that the contract was “constructively” changed, and the contractor may be entitled to additional compensation for the changes. Generally, a constructive change will require a bilateral amendment. Constructive changes may occur when agency personnel:

- Provide suggestions to a contractor;
- Accelerate the delivery schedule;
- Direct the work to be performed differently;
- Change the sequencing of the work;
- Delay accepting or rejecting deliverables;
- Delay reviewing invoices and approving payment;
- Interfere with or hinder performance.

Contract transparency and ensuring fair competition is in the interests of the state, its bidders and contractors. Changes to the contract should be visible to all parties as the contract and change orders should routinely be used by the project team for clarification and compliance. A clear and transparent contract helps reduce conflict during the life of the agreement and ensures that a neutral party—the contract—can be employed as the first line of conflict resolution.