

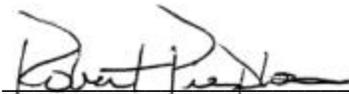


Construction Program Procedure Bulletin

CPB 00-8 Contract Administration of Time-Related Overhead (TRO)

References: Public Contract Code, Section 7102
Construction Manual, Chapter 2-70
Standard Specifications, Section 9-1.07B
Standard Specifications, Section 9-1.03

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Approved: 
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Background

Section 7102 of the *Public Contract Code* provides for compensation of damages due to unreasonable, owner-related delays. The majority of these damages can be attributed to extended or unabsorbed field office overhead (FOO) and home office overhead (HOO).

Historically, compensation for contractors' overhead costs has been included in contracts as part of the compensation of all contract work items and as part of the force account markups specified in Section 9-1.03, "Force Account Payment," of the *Standard Specifications* for work covered by contract change orders. This method has provided payment for contractors' overhead costs when the costs of work added to the project are commensurate with the time extension. However, when the costs of work added are not commensurate with the time extension and the time extension is unreasonable, then the Contractor may be able to recover their overhead costs in accordance with Section 7102 of the *Public Contract Code*. Section 9-1.07B, "Final Payment and Claims," of the *Standard Specifications* requires the contractor to submit an independent Certified Public Accountant (CPA) audit that is in conformance with government accounting standards to support the claim for overhead costs. The contractor's audit is then reviewed by the State and a credit for overhead already included in additional work payments is taken by the state. The process usually takes place after the return of the proposed final estimate and can be difficult to fully resolve.

In an effort to provide timely compensation for owner-related delays, Caltrans and industry have developed a contractual method to compensate contractors for overhead costs during state-caused delays. The method is to include an overhead bid item specification in contracts that is referred to as time-related overhead (TRO). The payment will be based on time of the delay, instead of the markup percentage costs of the change to the contract. The overhead bid item includes compensation for both FOO and HOO. The TRO bid item will be included in most contracts greater than \$5 million in estimated construction costs. It is anticipated that eventually all contracts will incorporate the TRO bid item specification. The Toll Bridge Program has successfully implemented TRO as a contract item and special provision into contracts during the last two years.

Implementation of the TRO item and special provision, and associated critical path method (CPM) and force account special provisions, is expected to produce the following benefits:

- Allows a bid item for compensation of TRO based upon competitive bidding that is driven by market forces and contractor efficiencies.
- Permits administration of overhead compensation at the resident engineer's level.
- Provides "real time" project management, allowing the project manager and resident engineer to quickly quantify cost delay impacts as the proposed changes or disputes occur.
- Reduces contentious, non-partnering atmosphere. Eliminates polarized positions on overhead disputes during contract administration.
- Resolves delay issues before the completion of the work.
- Eliminates time-consuming, complex, and expensive audits in most cases.

Existing Procedure

Subsection "Claims for Overhead" of Chapter 2-70 of the *Construction Manual* describes the current overhead claims and auditing process, including requirements of the contractor's claim for additional overhead compensation, and responsibilities of the district/region construction division, the Construction Program Office of Contract Management (OCM), and the Office of Audits and Investigations.

New Procedure

Responsibilities:

District/region construction division

Resident engineer shall:

- Be responsible for progress payments on the TRO contract item and provide concurrence on all contract time extensions. Senior resident engineers may also approve contract time extensions in accordance with CPB 99-5, "Contract Change Order Approval Delegation".
- Ensure CPM time impact analyses are submitted by the contractor, and review and accept or reject time impact analyses for all contract time extensions.
- Consult with the construction engineer regarding the justification for contract time extensions and reductions.
- Ensure that the 20% cap is enforced as follows: prior to acceptance of the contract, no more than 20% of the original total contract amount (all items) multiplied by the ratio of working days charged to date divided by the original total contract working days shall be compensated for TRO.
- Ensure that any remaining TRO amount to be compensated above the 20% cap is paid to the contractor in the first payment after the contract work is complete, excluding plant establishment.
- Determine when a unit price adjustment (quantity exceeds 149 percent and the adjustment is requested by the contractor or is in the best interest of the State) and associated independent CPA audit is necessary and write the district audit request memorandum.

Construction engineer shall:

- Provide concurrence or approval on all contract time extensions and reductions.
- Provide concurrence that a unit price adjustment and associated independent CPA audit is necessary, review the district audit request memorandum, and notify the construction division chief that an audit request will be sent for signature.

Construction division chief provides a signature of approval on the district audit request memorandum and sends the request to the Construction Program OCM chief.

Construction Program

Construction Program coordinator provides concurrence to the district/region division chief that an audit review of the contractor's independent CPA audit is necessary and provides a signature of concurrence on the district audit request memorandum.

The Office of Audits & Investigations is also involved in the TRO contract administration process, as indicated in the guidelines.

Guidelines:

The intent of the TRO special provision, "Overhead," is to mitigate disputes that may arise during projects dealing with state-caused delays and the associated FOO and HOO costs. The TRO special provision utilizes a contract bid item approach to obtain a daily overhead rate (bid \$/working day). The TRO estimated quantity will be based on the number of working days, excluding any days for plant establishment, as specified in the "Beginning of Work, Time of Completion and Liquidated Damages" of the special provisions. In the event an early completion progress schedule, as defined in "Progress Schedule (Critical Path)" of the special provisions, is submitted by the contractor and accepted by the engineer, the quantity of time-related overhead eligible for payment will be based on the total number of working days as specified in "Beginning of Work, Time of Completion and Liquidated Damages" of the special provisions, rather than the contractor's early completion progress schedule.

The TRO contract item quantity is increased for extensions and decreased for reductions of compensable time granted by the state in accordance with the TRO quantity sheet instructions. For time adjustments related to contract change order work, the TRO quantity will only be increased or decreased when a change order is written to extend or reduce contract time, respectively. Therefore, contractors shall be required to provide an accurate Time Impact Analysis (TIA) using the CPM schedule to justify any time adjustment. It is imperative that the CPM special provision is enforced for any contractor request for an extension by requiring a TIA. Pursuant to the associated CPM special provision, the TIA shall be contractor-submitted and engineer-accepted and is used to determine the quantity of extended or reduced contract working days due to work associated with a contract change order.

The associated CPM special provision specifies that an early completion CPM schedule generates early completion time that is for the exclusive use of the contractor. Banking of state-owned float will be allowed by the associated CPM special provision only for engineer's reviews of contractor submittals that are performed in

less time than allowed in the contract. Any adjustment of contract time due to other contractor or engineer-related activities (e.g., "60-day embankment settlement period"), except for "other" time extensions or suspensions, that are on the critical path will be made on a change order.

The standard TRO monthly progress pay quantity sheet with instructions is attached. The quantity of TRO will be adjusted only as a result of suspensions and adjustments of time that revise the current contract completion date. Refer to the instructions to determine whether a delay is compensable or non-compensable. Types of non-working days, in accordance with Section 8-1.06, "Time of Completion," of the *Standard Specifications*, will be shown on the Weekly Statement of Working Days (WSWD), not on the TRO quantity sheet. The WSWD remains unchanged. In addition to noting weekend/holiday and weather non-working days on the WSWD, traffic restriction non-working days shall also be noted on the WSWD.

For progress pay purposes, the TRO special provision places the following maximum constraint during the project on the daily amount compensated for TRO:

- 20 percent of the original total contract amount (all items) divided by the original total contract working days as shown in the special provisions.

Any amount bid on TRO that is greater than 20% shall be withheld from the contractor during the contract work, excluding plant establishment period. It is withheld by compensating the contractor for less TRO days than are compensable during any given progress pay period. If the contractor's total bid price on TRO is greater than 20% of the original total contract amount, the difference between the contractor's total bid price on TRO and the amount that has been paid on TRO during the contract work (20% of the original total contract amount) is considered the balance due after the contract work is completed, except for plant establishment work, for the TRO item. This amount shall be compensated to the contractor in the first payment after the contract work is complete, excluding plant establishment work, and as soon as possible to avoid interest payments on the amount.

Pursuant to the associated force account special provision, the force account markup percentage rates for labor, equipment, materials, and subcontractor work in TRO contracts are revised from the rates in Section 9-1.03, "Force Account Payment," of the *Standard Specifications* (33/15/15/5) to 28/10/10/7, respectively. The TRO markups are applied automatically by the contract administration system (CAS) for extra work bills. The TRO markups will need to be included in contract change order payment provisions and the engineer's calculations for contract change order cost or savings estimates, adjustments, and agreed prices.

In the event a cost reduction incentive proposal (CRIP) is submitted by the contractor, and is subsequently approved by the engineer, which provides for a reduction in contract time, the contract amount of TRO associated with the reduction in contract time shall be considered as a net savings in the total cost of TRO. The contractor will be paid 50 percent of the estimated net savings of TRO on the CRIP contract change order, in conformance with the provisions in Section 5-1.14, "Cost Reduction Incentive," of the *Standard Specifications*.

The TRO special provision allows a unit price adjustment of the contract item price of TRO if the quantity exceeds 149 percent of the number of working days specified in the contract. The adjustment is only required when the contractor or engineer requests the adjustment. If the engineer elects, or if requested in writing by the contractor, contract item payments for TRO, in excess of 149 percent of the number of working days designated in the Engineer's Estimate, will be adjusted to reflect the actual rate. Resident engineers shall not perform a TRO item unit price adjustment for any other reason. The contractor shall, within 60 calendar days of the engineer's

written request, submit to the engineer an audit examination and report performed by an independent CPA of the contractor's actual overhead costs. The actual rate and unit price adjustment is based on the state's review of the independent CPA audit report that is submitted by the contractor pursuant to the TRO special provision. The cost of performing an audit examination and submitting the report will be borne equally by the State and the contractor. The division of the cost will be made by determining the cost of providing an independent CPA audit report pursuant to the provisions of Section 9-1.03B, "Work performed by Special Forces or Other Special Services," of the *Standard Specifications*. The contractor will provide payment for the cost of the report and the state will reimburse the contractor one-half of the cost.

Office of Audits & Investigations provides a service to construction by performing audits. Their audit services include:

- Review of the financial aspects of the independent CPA audit report.
- Review of the project files.
- Audit of the contractor's records.

The district audit request memorandum is sent to the Construction Program chief of OCM and it is forwarded to the Office of Audits and Investigations along with the attached independent CPA audit report. The Office of Audits and Investigations will use evaluation criteria such as the Eichleay formula and General & Administrative (G & A) costs to determine allowable compensation for FOO and HOO expenses incurred due to unreasonable state-caused delays. An audit may be performed if the TRO item has exceeded 149 percent of the planned quantity, either the engineer or contractor has requested the adjustment and audit, and the requirements of the TRO special provision and Section 9-1.07B of the *Standard Specifications* have been met.

This procedure will be incorporated into the next revision of Chapter 2-70 of the *Construction Manual* and is available on the Construction Program's Internet web site:

<http://www.dot.ca.gov/hq/construc/cpb/cpbindx.htm>.

This site also has links to current contact information and the standard TRO progress pay quantity sheet with instructions.

Attachments