

Appendix A

Contingencies and Supplemental Work Approval Procedures

Contingency Limitation

When the project contingency is based on 5 percent of the project's estimated total costs for contract items, supplemental work items, and state-furnished materials and expenses, no documentation or approval for project contingency is required.

Contingency Approval Process

When the 5 percent project contingency must be increased or decreased, the project engineer must prepare a memorandum justifying the need and requested percentage for contingencies. A fully developed risk management plan with a quantitative risk assessment would be an acceptable document to help justify an exception to the 5 percent contingency. The contingency justification memorandum must be recommended by the district director and have the concurrence of the chief, Division of Design. The district director submits the justification memorandum to the chief, Division of Design for concurrence before submittal to the chief engineer for project contingency approval. If FHWA's concurrence is necessary, it must be secured prior to submittal to the chief, Division of Design.

For FHWA delegated and high-profile projects, the FHWA must concur when project contingencies exceed 5 percent and the increase in contingencies is greater than \$200,000. The FHWA issued a letter on June 19, 2008, "Federal Participation in Construction Contingencies," that made all contingency funds eligible for federal-aid funding based on Caltrans current 5 percent contingency amount in the engineer's estimate. The project engineer must obtain FHWA concurrence when project contingencies exceed 5 percent and the increase in contingencies is greater than \$200,000.

Distribute a copy of the approved contingency justification memorandum and, when required, the FHWA concurrence to:

- The PS&E submittal to the Division of Engineering Services, Office Engineer
- The project history file
- The resident engineer's file

Supplemental Work Limitations

Supplemental work is limited to 5 percent of a project's estimated total cost for contract items. Supplemental items are limited to items shown on the pre-approved or acceptable supplemental work item list.

For all projects, the project engineer must prepare and submit a memorandum justifying the need and cost for each supplemental work item.

The project engineer can use the following resources (attached) when preparing the justification for supplemental work items memorandum:

Attachment A—FHWA Pre-Approved Supplemental Work Items

<http://www.dot.ca.gov/hq/construc/sw/approvedlist.html>

Attachment B—Acceptable Supplemental Work Items

<http://www.dot.ca.gov/hq/construc/sw/additionallist.html>

Attachment C—Partial Listing of Items Inappropriate for Supplemental Work

<http://www.dot.ca.gov/hq/construc/sw/inapprop.html>

Attachment D—Sample Justification for Supplemental Work Items Memorandum

<http://www.dot.ca.gov/hq/construc/sw/ctjustmemo.html>

Attachment E—Sample Supplemental Work Justification Letter to FHWA

<http://www.dot.ca.gov/hq/construc/sw/fedjustltr.html>

Attachment F—Approval Requirements for Contingencies and Supplemental Work

<http://www.dot.ca.gov/hq/construc/sw/approvaltable.html>

Supplemental Work Cost Limitation

To reduce the number of projects requiring approval for exceeding supplemental work items total cost limit, some supplemental work items with well-defined need and cost justification can be excluded when calculating the 5 percent cost limitation. These are identified as “Excluded from limitation” in Attachment A—FHWA Pre-Approved Supplemental Work Items.

For every project the project engineer must prepare a justification of supplemental work items memorandum. For state and FHWA delegated projects, when the total cost of non-excluded supplemental work items cost is less than 5 percent of project’s estimated total cost for contract items and the supplemental work items are on the pre-approved or acceptable supplemental work item list, no approval of justification for supplemental work items memorandum is required. For FHWA identified high-profile projects, the FHWA must approve supplemental work. See the Supplemental Work Need and Cost Justification section below for FHWA requirements.

For FHWA delegated and high-profile projects, the FHWA must concur when total cost of expected non-excluded supplemental work items exceeds 10 percent and is greater than \$200,000.

Supplemental Work Item Limitation

If any supplemental work item for a project is not on either the pre-approved or acceptable supplemental items list, either Attachment A or Attachment B, the justification for supplemental items memorandum must include the rationale for each proposed item not pre-approved or acceptable and explain why the work is necessary and should not be included as a bid item. Explain any uncertainty regarding the quantity of the extra work that may be involved, the

impracticality of fully specifying the work, or other variables that would make the work impractical as a bid item. If a supplemental work item requires a patented or proprietary product, material or process, a Public Interest Finding (PIF) is required. Attach a copy of the approved PIF to the justification memorandum. Requirements for PIFs are included in the *Ready-to-List and Construction Contract Award Guide (RTL Guide)*.

The Division of Construction, working with the FHWA, will update the FHWA Pre-Approved Supplemental Work Items list biennially and may include additional supplemental work items if warranted.

The Division of Construction, working with Division of Engineering Services, will include additional supplemental work items on the Acceptable Supplemental Work Items list when specifications are approved that include extra work as the method of payment and when the type of work specified can be anticipated on a project.

Supplemental Work Need and Cost Justification

Caltrans and the FHWA require justification for the need and cost of all supplemental work items proposed to be used in a construction project. The justification for supplemental work items memorandum prepared by the project engineer provides the appropriate documentation for supplemental work need and cost.

FHWA Approval for High-Profile (formerly Full-Oversight) Projects

The FHWA has not delegated approval authority to the Department for supplemental work on high-profile projects. The project engineer must submit a supplemental work justification letter to the appropriate FHWA transportation engineer for approval before obtaining Caltrans approval. The letter should include the rationale for the need and cost of each supplemental work item. If a supplemental work item is included on Attachment A, FHWA's pre-approved list, the cost justification for that item needs to be provided. If the supplemental work item is not included on Attachment A, including supplemental items listed in Attachment B, the justification for that item is for the item's need and cost. Attachment E provides a sample justification letter to the FHWA.

If the project engineer does not obtain FHWA approval for supplemental work items, the justification memorandum must explain why the supplemental work item needs to be included in the contract and must identify the non-federal source that will be used to fund the items. The project engineer must also provide a split-funded segregated estimate.

Supplemental Work Limitation and Item Justification Approval Processes

Supplemental Work Limitation Approval Process

When the total cost of non-excluded supplemental work items exceeds the 5 percent limitation, the project engineer must submit the justification for supplemental work items memorandum to the deputy district director or region division chief for recommendation and then to the district director for approval. The district director has authority to approve cost exception requests for

supplemental work less than or equal to 10 percent of the project's estimated total cost for contract items.

For projects with supplemental work cost of non-excluded items exceeding 10 percent, the chief, Division of Construction must approve. The project engineer uses the same initial approval process, and the district director recommends and submits the justification memorandum to the chief, Division of Construction in an email to the Lotus Notes email address "HQ Construction Engineering" with the subject "SW Approval Request, District-EA." If FHWA's concurrence is necessary, it must be secured prior to submittal to the chief, Division of Construction.

For FHWA delegated projects and high-profile projects, the FHWA must concur when the total cost of expected non-excluded supplemental work items exceeds 10 percent and is greater than \$200,000. For FHWA delegated and high-profile projects, the project engineer must provide a justification letter to obtain FHWA concurrence. Attachment E, the sample justification letter, has a section with boxes for the project engineer to check yes or no that the total cost of non-excluded supplemental work item exceeds 10 percent and is greater than \$200,000.

Supplemental Work Item Justification Approval Process

For projects with supplemental work items not on the pre-approved and acceptable supplemental work item lists Attachments A and B, approval must be obtained from the chief, Division of Construction. The project engineer must submit the justification for supplemental work items memorandum to the deputy district director or region division chief for recommendation and then to the district director. The district director recommends and submits the justification memorandum by email to the chief, Division of Construction for project supplemental item approval.

For high-profile projects, include the FHWA approval letter with requests for items not on the pre-approved list. Otherwise, the justification memorandum must explain why the supplemental work items need to be included in the contract and must identify the non-federal source that will be used to fund the items. The project engineer must also provide a split-funded segregated estimate.

Submit requests for approval of supplemental work items not on the pre-approved or acceptable supplemental work item lists to the chief, Division of Construction in an email to the Lotus Notes email address "HQ Construction Engineering" with the subject "SW Approval Request, District-EA."

Justification for Supplemental Work Items Distribution

Distribute a copy of the approved justification for supplemental work items memorandum and, for high-profile contracts the justification letter and FHWA's response, to:

- The PS&E submittal to the Division of Engineering Services, Office Engineer
- The submittal to the Division of Budgets, Office of Federal Resources, for projects with federal funds according to the *Ready To List and Construction Contract Award Guide (RTL Guide)*

- The project history file
- The resident engineer's file
- PDF attachments in an email to Lotus Notes email address "HQ Construction Engineering," Subject: "FYI, Approved SW, District-EA."

Attachments: Attachment A—FHWA Pre-Approved Supplemental Work Items
 Attachment B—Acceptable Supplemental Work Items
 Attachment C—Partial List of Items Inappropriate as Supplemental Work
 Attachment D—Sample Justification for Supplemental Work Items Memorandum
 Attachment E—Sample Supplemental Work Justification Letter to FHWA
 Attachment F—Approval Requirements for Contingencies and Supplemental Work