



United States Department of the Interior

NATIONAL PARK SERVICE
DENVER SERVICE CENTER
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IN REPLY REFER TO:

DSC CONTRACTING SERVICES STANDARD OPERATING PROCEDURE (SOP) 2006-005
Revised Aug2014

To: Denver Service Center: Contracting Services, Design & Construction,
and Transportation Divisions

From: Chiefs: Denver Service Center: Contracting Services, Design & Construction,
and Transportation Divisions

Subject: Use of Contracting Officer's Directives (COD) in Construction Contracts

1. **Purpose:** The purpose of this Standard Operating Procedure (SOP) is to provide guidance to the Denver Service Center, Contracting Services (DSC-CS), Design & Construction (DSC-D&C), and Transportation (DSC-T) Divisions on the use of Contracting Officer's Directives (COD) in contracts for construction. (External Distribution)
2. **Effective Date:** This SOP is effective upon issuance.
3. **Expiration Date:** This SOP remains effective unless superseded or canceled.

In accordance with FAR Subpart 43.102, only Contracting Officers acting within the scope of their authority are empowered to execute contract modifications on behalf of the Government.

Contract modifications, including changes that could be issued unilaterally, shall be priced before their execution if this can be done without adversely affecting the interest of the Government. If a significant cost increase could result from a contract modification and time does not permit negotiation of a price, at least a maximum ceiling price shall be negotiated unless impractical.

No Contracting Officers or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Funding for modifications on construction contracts continues to be a major issue for the Denver Service Center. It is not uncommon for a Project Manager to submit a fully justified funding request and not receive approval to fund the modification for several weeks or longer.

In these instances, the Contracting Officer may make a determination that a COD is appropriate in order to continue the progress of the work without interruption while awaiting approval of the funding request. This process should be used sparingly, and when used, definitized through formal modification within 30 days of issuance. If not expeditiously definitized, CODs can result in higher final negotiated pricing and higher risk of claims/REA. The benefit of the tool is

to provide continuance of construction on 'emergency' changes that would have increased cost associated with delays. Cost / Benefit should be weight by the project team prior to issuance.

4. **Required Documents:** The Project Manager shall discuss emergency work requirements with the Contracting Officer to determine an appropriate strategy. If a COD is the tool most beneficial to the Government, the following steps are required, including a final COD package uploaded to the DSC SharePoint Purchase Requisition Log for processing and tracking progress.

- 1) Draft written justification to support the issuance of the COD.
 - a) Technical Branch Chief & CO Branch Chief signature is required on the form.
 - b) Justification supporting COD action rather than Modification is required.
- 2) Prepare Independent Government Estimate (IGE) for the work to be completed.
- 3) Provide Schedule of Values (SOV) from the contract to support work deletion items. Identify the 'fund source' in the SOV. .
- 4) Draft Contracting Officer's Directive Letter.

The estimated or negotiated cost of the work shall be supported by the actual IGE and clearly stated in the COD. (**Dollars noted in COD should reflect IGE**) The cost shall be based on negotiated amount for the work when possible or the IGE for the work if a negotiated amount cannot be achieved due to the urgency of work required. In the event the COD amount is based on the IGE, the contractor shall be required to submit a price proposal for the directed work within a specified period, but no later than 10 days after receipt of the COD.

The COD shall also serve as the RFP letter if one has not been issued. The COD shall include a statement that until additional funds are made available to issue the definitizing modification, the Government will remove the stated cost of the directed work from the contract by deleting associated, non-essential work identified for removal in the COD by modification in order to cover the cost of the COD requirement. The COD will identify the specific line item(s) from the contractor's Schedule of Values that will be removed from the contract if funding is not approved. The contractor will be advised that no work shall be performed on the deleted line item(s) until the COD has been definitized by a contract modification, adding funding as required.

In those instances where an estimated quantity or not-to-exceed dollar amount is used as the ceiling amount of the COD, a statement that addresses the manner in which the directed work will be measured or monitored must be included in the COD. The COD shall state emphatically that the contractor is not to perform work that will cause contractor to exceed the ceiling amount of the COD.

A definitizing contract modification to incorporate the directed work shall be issued within 30 days from the date of the COD. The modification will either: 1) be issued bilaterally (including the Statement of Release provided in FAR 43.204(c)), to add funding to cover the successfully negotiated price and additional time if warranted; or 2) be issued unilaterally based upon the Government's best estimate of price and time if funding is committed, but a successful negotiation has not been attained.

If funding has not been approved within 30 days, a unilateral modification will be used to delete the item(s) of work identified in the COD and formally add the directed work to the contract.

Note that no payment for work included in a directive shall be made prior to one of the 3 modifications above being executed.

5. Approval and Tracking Process:

All proposed CODs will be reviewed and approved by both Technical and Contracting Branch Chiefs over the specified project. No COD will be processed without review/approval and submission of the above noted documents to the DSC SharePoint Purchase Requisition Log. The DSC SharePoint PR Log will send reminder e-mails to the team urging timely definitization by formal modification. If a definitizing modification has not been negotiated and processed within 30 days of issuance, a modification may be issued to delete the “removed” work per the COD.



Lori Irish
Chief Contracting Services

Concurrence:



Randy Copeland
Chief, Design and Construction



George Tait
Chief, Transportation

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