



United States Department of the Interior

NATIONAL PARK SERVICE (NPS)
DENVER SERVICE CENTER (DSC) - CONTRACTING SERVICES (CS)
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DSC CONTRACTING SERVICES STANDARD OPERATING PROCEDURE (SOP) 2006-005 Revised August 2014, 11/27/18

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.

2. Effective Date: This SOP is effective upon issuance.

3. Expiration Date: This SOP remains effective unless superseded or canceled.

4. Background and Explanation:

Revisions from previous version: Modified funding requirements.

In accordance with Federal Acquisition Regulation (FAR) Subpart 43.102, only Contracting Officers (CO) 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 funds available, or in advance of appropriations (Anti-Deficiency Act, 31 United States Code (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 (PM) 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 determine a COD is appropriate to continue the progress of 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 (request for equitable adjustment). 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 weighed by the project team prior to issuance.

5. Action Required:

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 (PR) Log for processing and tracking progress.

- 1) Draft written justification to support the issuance of the COD.
 - a) PM and CO Branch Chief signatures are required on the form.
 - b) Justification supporting COD action rather than modification is required.
- 2) Prepare Independent Government Estimate (IGE) for work to be completed and to reflect market reasonable prices.
- 3) Draft COD Letter.
- 4) **Funding: Obtain written (can be submitted in the form of an email) confirmation from the Certified Funds Approver noting:**

Funds are available in the required amount for this specific requirement.

The estimated or negotiated cost of the work shall be supported by the actual IGE and clearly stated in the COD. 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 urgency of work required. If COD amount is based on the IGE, Contractor shall submit a price proposal for the directed work no later than 10 days after receiving the COD.

The COD shall also serve as the Request for Proposal (RFP) letter if one has not been issued.

If ceiling amount of COD is an estimated quantity or not-to-exceed dollar amount, include statement in COD addressing how directed work will be measured or monitored. COD shall state emphatically that Contractor shall not perform work exceeding ceiling amount.

A definitizing contract modification to incorporate the directed work shall be issued within 30 days from the date of the COD. 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.

Note that no payment for work included in a directive shall be made prior to one of the 2 modifications above being executed.

6. 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 PR Log. The DSC SharePoint PR Log will send reminder e-mails to the team urging timely definitization by formal modification.

Lori Irish
Chief, Contracting Services

Attachments:
COD Letter
Justification for Issuance of a COD