Change Orders &
Additional Funding Requests

Jim Reilman, MS, P.E.
Joe Sheedy

Greenfield District Project Managers
What is a Change Order?

★ A written order issued to the Contractor by the Owner’s representative that covers changes in the contract scope of work and establishes payment for the work affected by the changes. It may also alter the completion date of the contract.
Change Order

Change Order:

- Does not add money to an existing purchase order
- Does not create a new purchase order
Change Order

- Per INDOT’s Change Order Policy, a change order is not required when both of the following conditions are met:

1. The overrun or underrun of an individual existing pay item does not result from a change in scope of the contract.
2. The monetary adjustment associated with the overrun or underrun of the existing contract pay item is less than $20,000.
Change Order

- The $20,000 limit is not cumulative.

- Thus it is possible for additional funding to be needed on a project even though no change orders have been generated.
Change Order Process

**CHANGE ORDER PROCESS**

- **Contractor** identifies potential changed condition (per 104.02) and submits notice of changed condition in writing to **PE/S**. (PE/S = Resident Project Representative)

- **PE/S** evaluates the contractor’s request with regards to entitlement, impact, and cost. **PE/S** also notifies ERC and AE of receipt of contractor’s notice.

  - If **PE/S** concurs that it is a changed condition, **PE/S** prepares a thorough, concise explanation and completes the rest of the change order.
    - Draft Change Order is forwarded to the AE and ERC. The Project Manager (and MPO if applicable) is notified of the change order.
    - Change Order is approved (signed) by the required parties. **PE/S** uploads signed change order and all backup documentation into SiteManager.
  - If **PE/S** does not concur, or if the contractor disagrees with any portion of the PE/S's determination or remedy of the changed condition...
    - Contractor "drops it"
    - Contractor proceeds to file a claim per 105.16.

**ERC** = LPAs Employee in Responsible Charge
**AE** = INDOT’s Area Engineer in Construction
**PE/S** = Project Engineer/Supervisor
**MPO** = Metropolitan Planning Organization

3/8/2016
Prior to beginning work or incurring expenses related to the request.

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3/8/2016
104.02 Changed Conditions

a) Differing site conditions

b) Suspensions of work ordered by the Engineer

c) Significant changes in the character of the work

d) Pre-established Remedies to Changed Conditions

(source: INDOT Standard Specifications)
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3/8/2016
The PE/S must review the potential changed condition by evaluating the circumstances against the following:

1) Entitlement
2) Impact
3) Cost

(Section 104.02(d) Pre-established Remedies to Changed Conditions)
1) **Entitlement:**

Is the Contractor contractually entitled to monetary or time adjustments for performance of the disputed work?

If there is no contractual entitlement, it is not necessary to evaluate the impact or cost aspects of the disputed work.
2) **Impact:**

Did the event that necessitated the disputed work impact the Contractor’s controlling operation or critical path?

3) **Cost:**

What is the magnitude of additional costs and time incurred by the Contractor due to performance of the disputed work?
The PE/S (RPR) is **highly** encouraged to include:

- Entitlement
- Impact
- Cost

in the change order explanation section.
The Change Order Explanation should be:

- Concise
- Easy for someone unfamiliar with the situation but reasonably familiar with construction to understand.
- A good test: If someone without a technical background can understand it, then it is likely a sufficient explanation.
Change Order – Explanation

Remember, how the explanation in the change order is worded determines how the message is received.
Change Order Process

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3/8/2016
If the contractor disagrees with:

- any portion of the PE/Ss determination of the submitted changed condition, or
- the PE/Ss remedy to the changed condition

and the contractor decides to further pursue compensation, the **contractor must submit written notice of intent to file a claim**, in accordance with Section 105.16(b). of the Standard Specifications.
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**Change Order Process**

1. **Funding**
2. **Federal-aid participation**
3. **non-participation**
4. **C.O. Reason Codes**

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*3/8/2016*
Other Related Items

- Funding
  - MPO (if applicable)
  - INDOT – Leftover Funds Policy

- Federal-aid
  - Participating
  - Non-participating

- Change Order Coding
Funding

- **All** stakeholders need to be involved during the development of a change order
  - PE/S, ERC, AE, PM, & MPO (if applicable)

- Funding needs to be discussed **prior** to change order approval (even if an advice of change is not being requested at the time of the change order).
Funding

- If the project is within an MPO, the MPO needs to be involved to ensure that funding is available or can be made available.

- Otherwise the LPA may incur 100% of the cost of the change, even though it is eligible for federal-aid participation.
Funding

- LPA Guidance Document 12-3.04

“Because the allocation of federal funds for each project is limited, change orders and claim costs may exceed the federal allocation. In this case, the LPA will be responsible for providing 100% of any additional funding required. Certain types of extra work may not be eligible for federal funding even if there are unused federal funds left on the project.”
Leftover Funds Policy

- 12-3.05 “The federal funds allocated to a project are intended to accomplish the original scope of the project as designed.”

- If the project bid prices are lower than the engineer’s estimate, those “extra” federal-aid funds revert back to the local program (rural) or MPO and should not be considered available for use by this LPA on this LPA’s project.
Leftover Funds Policy - Example

- Local rural bridge project.
Leftover Funds Policy - Example

- LPA initially awarded $1,000,000 for their project.
  - PE & RR costs totaled $100,000
  - RW & UT costs totaled $100,000
  - CE costs totaled $100,000
  - Remainder of the awarded amount, $700,000, left for CN.
Leftover Funds Policy - Example

- Engineer’s Estimate (for CN): $700,000
- Low responsible bidder: $600,000
- The difference or $100,000 is returned to the local program (as this was a rural project) for use on other rural projects within the rural program.
Meanwhile the LPA mistakenly thought the extra $100,000 was “theirs” because they were initially awarded $1,000,000 for the project.

The LPA decided they wanted to change the maintenance of traffic scheme from total closure to phased traffic. And that they could use this $100,000 to pay the additional costs for this change.
Conclusion:
The change in maintenance of traffic scheme would be allowed.

- However, it would not be eligible for federal-aid funding participation.

- The cost of the change would be funded 100% by the LPA.
Federal-aid Funding Eligibility

- **Participating vs. Non-participating**
  - All change orders need to be identified as either:
    - participating (eligible for federal-aid funds) or
    - non-participating (not eligible)
  - View **Construction Memo 12-03** for frequent federal non-participating items
    - Betterments
    - Utility delay claims
    - Adjustment of private facilities
    - Transportation of Salvageable items
Example of a Participating change order:

- A road reconstruction project.
- During the design phase a geotechnical investigation of an appropriate level is performed for project of this scope.
  - Nothing remarkable is discovered
  - Report recommends subgrade treatment prior to placing the pavement.
During construction, an area of soft, organic subgrade material is discovered beneath the road.

Since this was not identified during the design phase, no pay items exist in the contract for this work.

The typical remedy for this situation is to remove the unacceptable material and replace with B borrow or granular material.
**Federal-aid Funding Eligibility**

**Conclusion:**

- This would be considered as participating from a federal-aid standpoint.

- “Due diligence” was done prior to letting.

  - A geotechnical investigation of an appropriate level was done.

  - The area of soft subgrade material just happened to fall between soil borings.
Funding Eligibility

- Utility delay claims
  - Desirably all utilities are relocated prior to letting or very soon thereafter (before construction commences).
Funding Eligibility

- **Utility delay claims**
  - Utilities not fully relocated prior to letting = letting with utility exception.
  - This brings **RISK** to the project!!
    - if utility relocation takes longer than the time shown in the contract, any claim presented by the contractor to recover costs incurred due to delays caused by the utility not being relocated within the timeframe in the contract is the responsibility of the LPA to reimburse with 100% local funds.
  - Costs arising from utility delays are not eligible for federal-aid funding participation.
Change Order Coding

- Errors & Omissions
- Scope Changes
  - Changed Conditions
  - Failed Materials
  - Incentive/Disincentive
  - Final Quantity Adjustment
  - Standards/Specifications Change

* Reference Construction Memo 07-28, 14-05, and 14-13
Reason Code: Errors & Omissions

- Effective 11/5/14, all PE/S’s will be required to record errors and omissions change orders as being either recoverable or non-recoverable. (From Construction Memo 14-13)

- Recoverable: The designer may be responsible for extra costs involved on the project. (Additional information is available in Construction Memorandum 14-13.)

- Non-recoverable: The designer is not responsible for extra costs.
Reason Code: Errors & Omissions

- If it is believed that the reason for the change order is errors & omissions, the designer must be immediately contacted.

- This is so the designer may begin working on a solution and give the designer an opportunity to minimize the additional cost of the solution.
Example of an Errors & Omissions change order that is considered recoverable.

Original design had two lighting control cabinets to run a set of street lights. The corresponding wire (#10 & #12) was included in the design.
During final design, one of the lighting control cabinets was deleted. However, the wiring table was not updated to reflect larger wiring.

Thus the wiring bid upon by the contractor was not adequate to handle the additional load and needed to be up-sized.

The #10 and #12 wire was deleted from the contract (for a credit to the contract). New #6 and #8 wire was added (at an additional cost to the contract).
The price provided by the contractor for the wire was as follows:

- 33,000 feet of #6 Wire @ $2.20 per foot.
- 23,000 feet of #8 Wire @ $1.93 per foot.

The average bid price for these items is:

- $1.49 per foot for #6 wire
- $1.27 per foot for #8 wire
It is up to the LPA to decide if they wish to pursue the designer for reimbursement. Keep in mind that from a federal-aid standpoint, the $38,610.00 is considered non-participating.
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3/8/2016
**Change Order**

**Contract Information**
- Contract No.: R-12345
- District: GREENFIELD DISTRICT
- AE: Carrow, Thomas (INACTIVE)
- Letting Date: 10/09/2013
- PE/S: John Doe
- Status: Pending

**Change Order Information**
- Change Order No.: 004
- EWA: Y or Force Acct: N
- Date Generated: 00/00/0000
- Date Approved: 00/00/0000
- Reason Code: CHANGED COND, Constructability Related
- Description: repair sink hole at muffler shop
- Original Contract Amount: $2,247,500.00
- Current Change Order Amount: $2,290.62
- Total Previous Approved Changes: $13,625.88
- Total Change To-Date: $15,916.50
- Modified Contract Amount: $2,263,416.50
- Percent: 0.102%
- Percent: 0.606%
- Percent: 0.708%

**Time Extension Information**
- Date Initiated: 00/00/0000
- Date Completed: 00/00/0000
- Original Contract Time
  - SS Completion Date: 00/00/0000 or SS Calendar/Work Days: 0
  - SP Date: 00/00/0000 or SP Days: 0
  - (SS = Standard Specification, SP = Special Provision)
- Time Element Description:
  - Current Time Extension: SS Days 0 SP Days 0
  - SP Days Value: $0.00
- Previous Time Approved:
  - SS Days by AE: ______ DCE: ______ SCE: ______ DDCM: ______
  - SS Days: ______
  - SP Days Value: ______
- Revised Contract Time
  - SS Completion Date: 00/00/0000 or SS Calendar/Work Days: 0
  - SS Date: 00/00/0000 or SP Days: 0
Change Order

Contract No: R-12345

INDIANA Department of Transportation

Construction Change Order and Time Extension Summary

Review and Approval Information

Required Approval Authority
AE: Yes  DCE: _______ SCE: _______  * DDCM: _______*
($ per Change Order)
(- LE $ 250K) (- LE $ 750K - ) (- LE $ 2 M -- ) (- GT $ 2 M -- )
(Days per Contract)
( 50 SS days ) ( 100 SS days ) ( 200 SS Days ) ( GT 200 SS days )

Verbal Approval Required?
Y / N If Y, by Aj Wortkoetter Date Issued __4/24/15__

Total Change To-Date>5%?
Y / N If Y, Copy to Program Budget Manager __________________________

Scope/Design Recommendation Required?
Y / N If Y, Referred to Project Manager(PM) __________________________
Date to PM __________ Date Returned __________

Approval Authority Concurs with PM?
Y / N If Y, Concurrence by __________ Date __4/24/15__
If N, Resolution: Approved __________ Disapproved __________
Resolved by __________ Date __________

LPA Signatures Required?
Y / N If Y, Date to LPA __4/27/15__ Date Returned __________

FHWA Signatures Required?
Y / N If Y, Date to FHWA __________ Date Returned __________

* Field Engineer Recommendation (Required for SCE or DDCM Approval)

Field Engineer __________________________ Date __4/24/15__

Comments: No additional time needed for this added change order

________________________________________________________________________

________________________________________________________________________
Change Order

Contract No: R-123455
Contract: R-123455
Project: 0000000
Change Order Nbr: 004
Change Order Description: Repair sink hole at muffler shop
Reason Code: CHANGED COND, Constructability Related

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<th>Item Code</th>
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<th>Unit Price</th>
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<th>Comment</th>
<th>Amount Change</th>
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<td>LS</td>
<td>2,290.820</td>
<td>1.000</td>
<td>C</td>
<td>2,280.62</td>
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</table>

Item Description: WALL
Supplemental Description 1: CONCRETE WALL Poured per the direction of Tom Carrow
Supplemental Description 2: TO REPAIR SINK HOLE NEAR MUFFLER SHOP

Total Value for Change Order 004 = $2,280.62

Whereas, the Standard Specifications for this contract provides for such work to be performed, the following change is recommended.

General or Standard Change Order Explanation

16" of footer installed at muffler shop to repair sink hole, concrete footer was poured at the direction of area engineer Tom Carrow to fix sink hole. Sink hole was located at Sta. 19+43 left and ended at Sta. 19+59 left. This work was completed per the direction of Tom Carrow before I took over this job. Looking back at daily reports and past conversations with Tom Carrow I am in agreement with milestone pricing for the work. This change order was created using time and materials the attached files show milestones costs for this additional work. No additional time will be added to this contract for the work completed in this change order.

Change Order Explanation for Specific Line Item

It is the intent of the parties that this change order is full and complete compensation for the work described above.

Notification and consent to this change order is hereby acknowledged.

Contractor: _______________________________ Signed By: _______________________________

Date: _______________________________
Change Order

Contract No: R-12345
Change Order No: 004

INDIANA Department of Transportation

Date: 04/23/2015
Page: 4

APPROVED FOR LOCAL PUBLIC AGENCY

(SIGNATURE) (TITLE) (DATE)

(SIGNATURE) (TITLE) (DATE)

SUBMITTED FOR CONSIDERATION

PE/S _________________

APPROVED FOR INDIANA DEPARTMENT OF TRANSPORTATION

<table>
<thead>
<tr>
<th>Approval Level</th>
<th>Name of Approver</th>
<th>Date</th>
<th>Status</th>
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<tbody>
<tr>
<td>Project Engineer/Supervisor</td>
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</table>
Change Order

- (See Construction Memo 14-05 and section 2.19 of the General Instructions for Field Employees available on INDOT’s website for more detailed information.)
Additional Funding Request

- Additional funds for a contract are requested by the PE/S. The PE/S completes and submits an Advice of Change (AC) request.

- The AC request is submitted to the respective District Construction Office Administrative Assistant.
The AC request is forwarded onto INDOT’s Project Finance Division.
Additional Funding Request

- INDOT’s Project Finance Division reviews the request and, if it is a request for participating federal-aid funds, an email is sent to the respective MPO inquiring if they will participate in the additional funding request and if so, in what amount.

- If it is for non-participating funds, or if the MPO declines to participate, INDOT processes the request and invoices the LPA for 100% of the requested amount.
Sample form that the PE/S completes and submits to the respective District Construction Office.
Typical email sent from INDOT to the MPO

- The ________ District Construction Office has submitted an Advice-of-Change on the above DES number for FY__. Please let me know if the MPO will federally participate and for what amounts.

- Total Amount Submitted: $___________

- Comments: CHANGE ORDERS 1 & 2. PE <Name of PE/S>. APPROVED BY <INDOT Official Approving the Change Order>

- Please respond within 3 business days.
Typical Responses received from the MPO

1. The ______MPO will participate in the advice-of-change listed below at a ______ match or __________ (dollar figure).
   
   or

2. The ______MPO will not participate in the advice-of-change listed below.
Additional Funding Request

- The maximum amount of federal-aid funds allocated to the project is dependent upon the current TIP allocation.

- The MPO is not required to participate in any additional project costs above the initial award amount.
Once a response has been received from the MPO,
- the additional funding request is entered into INDOT’s financial system,
- FMIS request is made, and
- the additional funds are added to the contract.
There are 3 typical types of funding used on an LPA project.

- Federal / Local Split
  - Such as 80% federal / 20% local or some other funding split

- 100% local

- 100% local non-participating
## Purchase Order

**INDOT Construction**  
**Indiana Department of Transportation**

**Vendor**: 0000050982 REMIT001  
**Remit to**: MILESTONE CONTRACTORS LP  
**Address**: PO BOX 421459  
**Location**: INDIANAPOLIS IN 46242-1459

**Ship To**: Department Of Transportation  
**Address**: Contract Admin Division  
**Location**: 100 N SENATE AVE RM N725  
**Location**: INDIANAPOLIS IN 46204

**Bill To**: Transportation Dept Of Transportation  
**Address**: Accounting  
**Location**: 100 N SENATE AVE RM N749  
**Location**: INDIANAPOLIS IN 46204

**Vendor Name**: MILESTONE CONTRACTORS LP  
**Address**: 5950 S BELMONT  
**Location**: INDIANAPOLIS IN 46217

**Buyer**: Name: Bennett,Tammy-800  
**eMail**: TBENNIT@indot.in.gov

### Purchase Order Instructions & Comments

Pavement Other on Greenfield District (FR-000568 CN)(FR-0014195 CN)

### Item No | Description | Purchase Order Line Details | Qty Ordered | Qty Recd | UOM | Unit Price | Extended Amt
---|---|---|---|---|---|---|---
1- 1 | 20% LPA 80% FEDERAL | | 1.0000 | | EA | 4,768,685.8700 | 4,768,685.87
2- 1 | 80% Federal 20% Local. CHANGE ORDERS 2 3 5 7 10 13 14 15 16 18 & 20 | | 1.0000 | | EA | 451,260.2600 | 451,260.26
3- 1 | 80% Federal 20% Local. Change Orders 21 23 24 26 27 28 29 30 31 32 33 & 36 | | 1.0000 | | EA | 65,244.4300 | 65,244.43
4- 1 | 100% Local. Change Orders 25 35 & 37. PE | | 1.0000 | | EA | 9,687.0000 | 9,687.09

Deliveries acceptable only between 8:00 AM and 3:00 PM, Monday through Friday, excluding State Holidays.
Additional Funding Request

An Advice of Change request should only be submitted when:

1. Approximately 75%-85% of the original project funding has been expended.

or

2. If the change order involves a non-participating item and a non-participating purchase order does not exist on the project.
There will be over-runs and under-runs of several items on the contract. Remember the quantities on the schedule of pay items are an ESTIMATE. The designer makes their best attempt to get these as accurate as they can, however field conditions and other unknowns make it nearly impossible to get the quantities for all items 100% accurate.
Unnecessary Funding Request

- Example showing unnecessary (CN) funding request.

- A few assumptions:
  - The amount of the lowest responsible bidder is $1,000,000.
  - The entire project is within an MPO and is federal-aid participating at an 80-20 split.
    - Thus the MPO puts up $800,000,
    - the LPA matches it with $200,000, and
    - INDOT creates a CN Purchase Order for $1,000,000.
### Example

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<tr>
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<th>Available Balance</th>
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<tr>
<td>Payment 1 to Contractor</td>
<td>$300,000</td>
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<tr>
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</tr>
<tr>
<td>Initial Bid</td>
<td>$1,000,000</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>Payment 1 to Contractor</td>
<td>$300,000</td>
<td>$700,000</td>
</tr>
<tr>
<td>Payment 2 to Contractor</td>
<td>$150,000</td>
<td>$550,000</td>
</tr>
<tr>
<td>Activity</td>
<td>Amount</td>
<td>Available Balance</td>
</tr>
<tr>
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<td>$550,000</td>
</tr>
<tr>
<td>Change Order #1</td>
<td>$100,000</td>
<td>$450,000</td>
</tr>
</tbody>
</table>
### Example

<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
<th>Available Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Bid</td>
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<tr>
<td>Change Order #1</td>
<td>$100,000</td>
<td>$450,000</td>
</tr>
<tr>
<td>Advice of Change No. 1</td>
<td>$100,000</td>
<td>$550,000</td>
</tr>
</tbody>
</table>

Note: For this example, we’ll assume the MPO has agreed to participate in the AC at an 80-20 match. Thus the MPO provides $80,000 and the LPA provides $20,000.
<table>
<thead>
<tr>
<th>Activity</th>
<th>Amount</th>
<th>Available Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Bid</td>
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<td>Change Order #1</td>
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<tr>
<td><strong>Advice of Change No. 1</strong></td>
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<td>$550,000</td>
</tr>
<tr>
<td>Payment 3 to Contractor</td>
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<td>$300,000</td>
</tr>
<tr>
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<tr>
<td>Payment 3 to Contractor</td>
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</tr>
<tr>
<td>Change Order #2</td>
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</tr>
<tr>
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</tr>
<tr>
<td>Change Order #2</td>
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<tr>
<td>Payment 4 to Contractor</td>
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<td>$215,000</td>
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<tr>
<td>Activity</td>
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<tr>
<td>Payment 4 to Contractor</td>
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<td>$215,000</td>
</tr>
<tr>
<td>Final Payment to Contractor</td>
<td>$110,000</td>
<td>$105,000</td>
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</tbody>
</table>
Unnecessary Funding Request

By the PE/S requesting $100,000 to cover participating change order #1 too early in the life of the project, it unnecessarily tied up:

- $80,000 of MPO’s federal-aid allocation
- $20,000 of the LPA’s funds

And resulted in that funding not being available for other projects (MPO) or other needs (LPA).