

April 26, 2016

SUBJECT:

**Capital Improvement Project
Contingency Allowance Policy**

ORIGINATING DEPARTMENT:

**Department of Public Works
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POLICY:

To establish, define, and apply a percentage (%) contingency allowance amount to public works projects from inception to completion.

BACKGROUND:

Any Capital Improvement Project must have contingencies built into a project for each phase to account for unknowns; a contingency value diminishes from project inception which can be as high as 25%, then is reduced during the design phase downward to a percentage not less than 5% at the time of construction. Contingencies mitigate unknowns a.k.a. "risk" and the value is to be altered depending upon project type, complexity and geographic region, known issues, as well as the unknowns are taken into consideration, while concurrently not overly restricting limited capital funds.

Project Phases vs. Contingency Range:

<u>Project Phase</u>	<u>Contingency Range</u>
Inception – "Preliminary" – Opinion of Cost (OPC)	25% ~ 15%
Design (OPC upon completion of design/permitting)	15% ~ 10%
Construction (% of final OPC)	15% ~ 5%

Inception and Design contingencies are automatic and the responsibility of the end user department or the engineer/architect under contract to apply.

Construction Contingencies are to be included in the request to award bid for Board of County Commissioners approval. The construction contingency will be separate from the project bid amount. The Board of County Commissioners will approve said action at a regularly scheduled meeting. This contingency serves as a means to avoid delay damage claims from a contractor, as well as maintain a budgetary equilibrium. This action allows for field adjustments for unforeseen issues that may be discovered once construction commences and have escaped detection through best design practices.

Risks are, at best, only mitigated during the design phase by means of applying science (testing); unfortunately testing can only establish what exists at the exact location that the test was performed. To this end, a balance or equilibrium must be achieved with testing and contingencies that realize the completion of a project without construction (contractual) or budgetary delays.

CONTRACTURAL LANGUAGE AND PROCEDURE:

CONTINGENCY ALLOWANCE DEFINITION: “Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.”

CONTINGENCY ALLOWANCES: “A contingency allowance may be awarded as part of the Bid Award, as determined by Owner. This allowance is included for the purpose of covering work not specified in the contract documents that may be required as a result of unforeseen circumstances, or additional work as a result of a change in project scope. The contingency allowance cannot be expended without the approval and authorization of the owner and the engineer and will require the issuance of a Change Order (CO) or a Contingency Allowance Adjustment (CAA) form, which are located on the County’s intranet. The contractor shall not proceed on any additional work to be covered by contingencies until authorized in writing by the County. After completion of the work and acceptance of the project by the owner, any unexpended contingency allowance remaining shall be returned to the owner through the execution of a formal Deductive Change Order.”

CHANGE ORDER: A change order is a written order signed by both the contractor and the county, directing the contractor to make a change on a specific project.

Change orders may:

1. Facilitate additional work not included in a contract’s original scope of work, or
2. Facilitate additional work that was discovered during subsurface construction, or
3. Time extension, or
4. Weather related time extension, or
5. Change procedures and requirements are governed by contract terms and contract law, or
6. Facilitate justification of the final quantities, whereby no additional funds are required since the net sum of overruns and underrun either result in a net change equal to zero or a lessor value.

PROCEDURE:

Contingency allowance is added to a construction contract which is subsequently approved by the Board of County Commissioners; County staff is authorized to use said contingencies when and if the normal process of bid item overruns and under runs are projected to be exceeded or conditions encountered in the field necessitate modifications to the work needed to be performed; the contract construction plans and/or specifications; the following procedure establishes the means of checks and balances that is in place during construction to utilize contingency funds.

CONTRACTURAL LANGUAGE AND PROCEDURE (continued):

Step 1: The contractor or County discovers an issue that may necessitate an increase or create a need for additional pay item amounts. Initially this matter is discussed and verbally agreed that an issue exists in the field.

Step 2: Should it be mutually agreed that a work change directive or field order be warranted; a request for cost with supporting documentation to the contractor, or the contractor notices the County in written form accompanied by completed contract support documents that summarizes the net pay item modifications, if no unit costs are included in the original bid for the work modification items.

Step 2a: If the net change is zero or does not affect the contingency account, approval is recommended by inspection staff and submitted to the project manager for review, concurrence and approval.

Step 2b: If the net change does affect the contingency account, a Contingency Allowance Authorization (CAA) is developed, reviewed and approved by the project construction engineering inspector or engineer of record, then forwarded to the contractor for concurrence and execution, then the documentation is forwarded to the project manager for execution with concurrence by the Division Director and Department Director or their designee. Said CAA form is executed, amended as/if needed until fully approved by all. If the cost of the CAA is less than 30% of the original contingency amount established for the project or \$25,000, whichever is higher, the CAA is approved by the Department Director. If not, it is placed on the Board of County Commissioners' agenda for Board approval.

Step 3: After the CAA is completed, County staff shall place the CAA on the Board of County Commissioners (BOCC) meeting agenda for acknowledgement by the BOCC.

FOOTNOTES & REFERENCES TO RELATED AR's: