

**Supplemental Specification  
2017 Standard Specification Book**

**SECTION 00777M**

**CHANGE MANAGEMENT**

**Delete Article 1.4 and replace with the following:**

- A. Burdened Wages - Includes wage plus payroll taxes, retirement benefits, health benefits, worker's compensation, life insurance, pensions and other fringe benefits.
- B. Claim – A request for compensation, time adjustment or both for a disputed change that has been escalated to the Department's Region Director and remains unresolved.
- C. Design Change – A revision to the contract issued by the Department directing the Contractor to proceed with new or revised work including an intended payment methodology for the new or revised work
- D. Direct Cost - The costs of materials, labor, equipment and all directly involved efforts or expenses for the cost object.
- E. Exception - A waiver of one or more contract requirements that may include instructions or interpretations
  - 1. Exceptions do not involve adjustment to the contract value or time duration.
- F. Excusable Delay – A critical delay that is beyond the Contractor's control, not the fault or responsibility of the Contractor, or could not have been foreseen by the Contractor, for which a time extension will be granted.
  - 1. Compensable Delay – An excusable delay caused by the Department's action or inaction, or under the Department's control, including delays resulting from change orders, lack of site access, and delayed shop drawing approval. Differing site conditions and third-party utility work delays caused by conditions beyond the control of the Contractor will be a compensable delay.

2. Non-compensable Delay – Unforeseen and unanticipated excusable delay caused by force majeure or delays not the fault of the Contractor or Department.
  - a) Concurrent Delay – A non-compensable delay that occurs when both the Contractor and the Department independently delay work on critical path activities during approximately the same time period.
  
- G. Field Indirect Cost - All costs which are required for completion of the installation, but are not directly attributable to the cost object are considered indirect costs, such as overhead, field supervision and vehicles
  
- H. Force Majeure – An unforeseeable event or circumstance that is beyond the control and without the fault or negligence of the Contractor. The Contractor by the exercise of reasonable diligence was unable to prevent, which by way of illustration can include, but is not limited to the following:
  1. Tornados, earthquakes, 50-year floods, fire or other physical natural disaster;
  2. Riot, war, invasion, act of foreign enemies, hostilities, acts of terrorism, civil war or rebellion.
  3. Any epidemic or quarantine restrictions occurring within the vicinity of the Project.
  4. A blockade or freight embargoes.
  5. Strikes or industrial disputes by labor not employed by the affected party, its subcontractors or its suppliers and which affect an essential portion of the works but excluding any industrial dispute which is specific to the performance of this agreement.
  
- I. Non-excusable Delay – A delay that is within the Contractor’s control, is the fault or responsibility of the Contractor, or can be reasonably foreseen by the Contractor and for which there is no monetary compensation or time extension.
  1. Examples of such delay-causing events are normal weather or the failure by the Contractor to assign sufficient resources to the work.
  
- J. Potential Change Order (PCO) – A potential risk that may result in a request for equitable adjustment in cost or time if said risk is realized.
  
- K. Request for Change Order (RCO) – A request by the Contractor to change the contract in response to unforeseeable conditions, design changes, and change directives.

- L. Significant Change in the Character of Work - Work that differs materially in kind, quantity, or nature from that involved or included in the original contract.
  - 1. Alteration or change can be significant changes to the character of work or by their effect cause other work to become significantly different in character.
  
- M. Value Engineering Change Proposal (VECP) - A proposed substitution of material or change to the work that may potentially result in cost or time savings and preserve essential functions and characteristics of the facility such as: service life, economy of operation, ease of maintenance, desired capacity, and safety.

**Delete Article 1.12 and replace with the following:**

### **1.12 EXCUSABLE DELAYS**

- A. This Article defines the process for determining the following:
  - 1. Contract time extensions for compensable and non-compensable delays.
  - 2. Associated delay costs for compensable delays.
  
- B. The Department will grant additional time, or time and compensation for compensable delays.
  - 1. Time will be added to the contract based on a mutually agreed to schedule impact analysis showing lost time attributable to the delay-causing event
  
- C. The Department will grant additional time for non-compensable delays.
  - 1. Time will be added to the contract based on a mutually agreed to schedule impact analysis showing time impacts attributable to the delay-causing event.
  - 2. The Department will not grant additional compensation for idled direct costs, field indirect costs, extended home overhead or loss of profit for non-compensable delays.
  
- D. Provide written notification to the Engineer within ten calendar days of the occurrence of an event justifying the request for a time extension, as applicable.
  - 1. Take all reasonable steps to minimize the impact of the delay once a delay-causing event is identified. Failure to do so may result in the rejection of all or part of the delay claim.
  - 2. Delays incurred during the ten days prior to notification may be compensable or excusable.

3. Maintain daily records of labor, station locations, and equipment costs for operations affected.
  - a. Obtain the Engineer's acceptance with these records on a daily basis.
4. Prepare and submit weekly written reports to the Engineer that contain:
  - a. Number of delay days.
  - b. Summary of all delayed operations, and operations that will be delayed, and the cause for delay.
  - c. Itemize all extra costs incurred:
    - 1) Document how the extra costs relate to the delay and how they are calculated and measured.
    - 2) Identify all affected project employees for whom costs are being compiled.
    - 3) Use actual internal cost records kept in the usual course of business to justify added costs.
      - a) Comply with generally accepted accounting principles.
5. Meet with the Engineer weekly to compare the previous week's daily records with those maintained by the Engineer.
  - a. Resolve any disagreement over weekly delay costs with the Engineer.
  - b. Provide written notice within ten calendar days documenting the disagreement between Department's calculations of weekly delay costs.
  - c. Failure to provide notification is interpreted as acceptance that Department records are accurate.

E. Unusually Severe Weather

1. A delay due to unusually severe weather may be considered a non-compensable delay when the Contractor provides documentation that the weather conditions:
  - a. Were unusually severe for the project site and the affected time period;
  - b. Could not reasonably have been anticipated; and
  - c. Had an adverse effect on the scheduled construction.
2. Demonstrate that the severity or the number of days of unusually severe weather at the project location warrants entitlement to a time extension.
  - a. Establish that weather was unusually severe by comparing weather data (such as precipitation, temperature, or snowfall) for the affected time period with historical weather data for the same time period.

- 1) Refer to the Daily Values at the Prism Climate Group website to download historical temperature and precipitation values for the project location. Refer to <http://www.udot.utah.gov/go/standardsreferences>
3. Use historical weather data from at least the previous 5 years and no more than 10 years to:
    - a. Demonstrate that the unusually severe weather experienced at the project site limited the ability to perform work.
    - b. Demonstrate that the work was on the project's critical path and that the critical path was affected.
      - 1) Non-critical path work will not be considered a non-compensable delay for unusually severe weather.
- F. Compensable Delay costs will be determined as follows:
1. Direct Costs – Actual certified costs of the workforce and equipment idled by the delayed activity.
  2. Field Indirect Costs – Actual certified cost increases for job-site supervision and field office operating costs or other costs not directly associated with a particular work activity for the period of delay.
  3. Home Office Overhead – The markup allowed on all change orders includes the cost of home office overheads associated with that change in the project scope of work.
    - a. Demonstrate the following to be entitled to alleged additional compensation for under-absorbed home office overhead costs:
      - 1) Under absorption actually occurred, meaning there was less revenue overall in relationship to home office costs and that no replacement work was obtained.
      - 2) The under absorption was a direct result of the project.
      - 3) Specific replacement work could have been reasonably obtained were it not for the alleged delay.
    - b. Provide the following information supporting the claim for additional costs:
      - 1) The previous five years audited financial statements that include as a minimum the following information:
        - a) Summaries of actual home office overhead costs.
        - b) Total revenues generated annually sorted by each project worked on during the year.
        - c) The amount of gain/loss earned for each active project during each year.

- c. The amount will be calculated as shown below if additional payment for home office overheads is justified:
  - 1) Unabsorbed home office overhead will not be reimbursed for the first ten calendar days of the delay-causing event.
  - 2) Home office overhead costs will be calculated from the eleventh calendar day of the delay-causing event through the events end if the project is between 0 and 90 percent complete.
  - 3) The following formula will be used to calculate home office overhead costs:
 
$$E = D [0.03(A)/C]$$
 Where:
    - 0.03 = Allowed markup for home office overheads
    - A = Original contract value
    - C = Total contract duration in calendar days including approved time extensions
    - D = The agreed upon number of calendar days the project is delayed due to the delay-causing event minus ten
    - E = Total reimbursable amount for unabsorbed home office overhead
  - 4) Home office overhead will be reimbursed if the delay occurs after the project is 90 percent complete.
- d. The Department does not compensate for the following:
  - 1) Profit.
  - 2) Loss of profit.
  - 3) Labor inefficiencies.
  - 4) Consequential damages, including but not limited to, loss of bonding capacity, loss of bidding opportunities, and insolvency.
  - 5) Any indirect costs or expenses.
  - 6) Attorney's fees, claims preparation expenses, or litigation costs.
- 4. The total reimbursable cost for a compensable delay is the sum of the daily agreed to costs for direct costs, field indirect costs, and unabsorbed home office overhead costs as computed according to this article for the duration of the delay.
  - a. No other costs will be reimbursed.

**Delete Article 1.13 A and replace with the following:**

- A. This Article defines cost associated with changes due to differing site conditions, unforeseen condition or events (such as force majeure and foreign or domestic tariffs), and new work that may result in a request for additional compensation or time.

**Delete Article 1.13 F4 and replace with the following:**

- 4. A 15 percent markup will be paid on labor, material and equipment expenses.
  - a. This markup compensates the Contractor for other direct expenses including bonds, small tools, home office overheads, profits, and incidental costs associated with the revised work.