
CHANGE ORDERS AND FIELD OVERHEAD COSTS

Are You Recovering all of Your Costs?

INTRODUCTION

Change orders and modifications are common, if not inevitable, during the life of a construction contract. When changes to the contract occur, Field Office Overhead costs attributable to the changed work are recoverable, “**in order to make the contractor whole.**” (See appeal of *MCI*, discussed below).

In order to recover Field Office Overhead costs, contractors **must include** these costs in their change order requests to the Government. As simple as this sounds, many contractors overlook this procedure, and fail to include Field Office Overhead costs in their change orders. Consequently, they “give away” these costs. This post is intended to serve as a reminder that contractors should double check to ensure that they are recovering these, and other costs in their change orders.

FIELD OFFICE OVERHEAD

Field Office Overhead costs, also known as General Conditions, are “costs incurred at the job site incident to performing the work, such as the cost of [supervision], timekeeping and clerical work, engineering, utility costs, supplies, material handling, restoration and cleanup, etc.” FAR 31.105(d)(3). These are **indirect costs** because they cannot be identified with a specific construction activity, but support the project as a whole (and are attributable to a particular project, and not the contractor’s operation as a whole). Other **examples** of Field Office Overhead costs may include water, temporary housing, set-up and rental of an office trailer, travel to and from the company’s home office, as well as other identifiable costs that are attributable to the job site.

Contractors are commonly entitled to recover Field Office Overhead costs on changes that extend their as-planned time of performance on the contract. This includes costs for change orders that add to the scope of the contractor’s work, as well as changes or events that impact contract performance and that cause a compensable delay on the project.

Overhead costs may also arise from acceleration, suspension of work (either full or partial), and from terminations for convenience of the Owner (which result in demobilization and possibly remobilization costs). They may arise from impacts caused by differing site conditions, by defective plans and specifications, or by the number or the magnitude of “changes” in scope.

CHANGE ORDERS – ALLOWABLE COSTS

Field Office Overhead costs are allowable costs on a change order request, unless a specific contract provision prohibits them. In spite of their allowability, experience has taught us that **contractors commonly leave Field Office Overhead costs off of their change order requests**, for one reason or another. If these costs are left off of a change order request, and the corresponding change order or modification approving the request includes “release” language (typically stating the listed amount is a full and final payment for the changes described herein...), the contractor has “given up” these costs. Even if the change order or modification does not include a release, it is much more difficult and expensive to recover these costs later under the Changes clause of the FAR than to address the same costs via a change order request.

Other allowable costs that may be included in change order requests include profit, small tools, insurance, bond premium, telephone, and other special conditions that may apply. See for example, the Naval Facilities Engineering Command (NAVFAC) [Form 4330/43](#) - “Estimate for Contract Modification.”

Contractors can recover Field Office Overhead costs, even if these costs were not included in the original bid (or were underbid). In fact, this was the Board’s decision in *MCI Constructors, Inc.*, DCCAB No. D-924 (June 4, 1996). In *MCI*, the Board determined that MCI could recover extended Field Overhead costs resulting from a termination for convenience. The District of Columbia argued that these costs should not be allowed, because MCI underbid its costs for supervision, including costs for clerical work, project engineering, main office expediting, and engineering - all of which MCI had intended for its site supervisors to handle from the beginning.

The Board allowed MCI to recover these costs as Field Office Overhead, because MCI was entitled to its share of the costs **actually incurred** during a compensable delay period. See *MCI*. The Board reasoned that in allowing costs that were underbid did not give MCI “any undue recovery,” because MCI actually incurred supervision and administrative costs that “MCI would not have incurred but for the District’s constructive changes.” *Id.* One of the keys to recovering Field Office Overhead costs, especially those that were not bid or underbid, is to segregate all of these costs and apply them to change orders and delay claims. See Smith, Currie & Hancock, Thomas J. Kelleher, G. Scott Walters, and Inc. Books24x7. *Smith, Currie & Hancock’s Common Sense Construction Law: A Practical Guide for the Construction Professional, Fourth Edition*, p. 475. 4th ed. Hoboken, N.J.: Wiley, 2009.

AN EXAMPLE

The impact if recovering – or missing out on – Field Office Overhead costs is simply illustrated by the following example. Hypothetically, a contractor has revenues of \$50 million per year, 10% of which comes from changed work. That means that \$5 million in revenues comes from changed work. If that contractor’s Field Office Overhead rate is 8%, and the contractor does not

include this cost in its change orders, it is automatically losing \$400,000 per year! [\$5,000,000 x 0.08 = \$400,000].

CONCLUSION

Most contractors incur Field Office Overhead costs during the life of their projects (dependent upon the dollar value and duration of performance on the contract). With profit margins being around 5%, it can be vital for contractors to recover every possible cost on a project in order to **stay profitable**.

Therefore, when a delay or change to the scope of work occurs and a change order request is submitted, contractors should double check to ensure that all of their Field Office Overhead costs are being recovered – it is too costly to leave this up to an assumption or chance.

A professional consultant can help to analyze which costs are allocable to Field Office Overhead, and at what rate. Don't guess, be sure (and stay in business).

In the end, you will be glad you made the call; by the way, it's a FREE CALL.

EXCELL CONSULTING: “HERE TODAY FOR YOUR TOMORROW.”

Author's note: The information contained in this article is for general informational purposes only. This information does not constitute legal advice, is not intended to constitute legal advice, nor should it be relied upon as legal advice for your specific factual pattern or situation. – Taylor Benson, Esq., Asst General Counsel