

**CODING CONTRACT CHANGES**  
**Including Root Cause Codes, Avoidability Codes, Cost Recovery Codes,**  
**Premium Costs and Claim Settlement Costs with Examples**

The last pages of this memo contain the list of the codes which must be used in our contract change tracking systems to describe each Time Extension Issue, Supplemental Agreement Issue, Work Order or Field Supplemental Agreement on all types of Supplemental Agreements and Time Extensions. Note that premium cost values must also be assigned to all these items except Time Extensions. Next a few examples are shown resulting from discussions between Design and Construction. These examples are intended to clarify the definitions of the term “avoidable” and “premium cost”. An **avoidable contract change**, is a contract change which requires modification to a project feature or delay to a contract which should have been foreseen using standard design practices and appropriate project management activities.

*Note that avoidability codes refer only to the need for a contract change. The avoidability codes do not indicate that the work . . . or the costs associated with that work . . . were avoidable.*

**Examples of Avoidable and Unavoidable Contract Changes**

- (1) In house designer fails to include erosion control features at the end of a large drainage system outlet and severe erosion occurs. Stone is added by SA or the overrun of existing pay items in an amount large enough to trigger a SA to encumber funds before all unfunded contract overruns exceed 5% of the original contract amount.

**101 - Necessary pay item(s) not included in contract, 2 - Avoidable Production FDOT**, When new pay items are required there will be some non-premium costs as the feature was needed to begin with and was merely added. If the resulting cost is much higher than a normal bid would have been, then the excess costs are premium and no recovery action should be recommended.

. . . or . . .

**115 - Required Drainage Modification, 2 - Avoidable Production FDOT**, Here, existing pay items are used to address the work even though the designer did not anticipate it. The resulting overruns are large enough to trigger a SA to encumber funds before all unfunded contract overruns exceed 5% of the original contract amount. There are some non-premium costs as a needed feature was added... if the resulting cost is much higher than a normal bid would have been, then the excess costs are premium and no recovery action should be recommended.

- (2) A consultant traffic engineer fails to include the proper wiring for power source connections. The contractor requests instruction on where to locate the power source for the signal. The FDOT project administrator documents that the contractor is delayed 18 days while awaiting a response from the designer. The Contractor files a claim for delay damages in accord with the specification 5-12.

**118 – Improper or inadequate signing, signalization or pavement marking design or features, 1 - Avoidable Production Consultant**, There are some non-premium costs as the feature was needed to begin with but the power source connection cost is much higher than a normal bid would have been. The excess costs are premium as are the delay claim costs. Recovery from the Production Consultant should be recommended.

**Examples of Avoidable and Unavoidable Contract Changes . . . continued.**

- (3) A utility company mis-locates a 10" sanitary sewer line on its relocation plans creating delays and forcing the use of additional conflict drainage structures.

**106 - Utility WORK w/ no JPA: conflict, wrong size, wrong location, proposed or existing utilities, 5 - Avoidable 3<sup>rd</sup> Party**, the costs associated with the work and the delays will all be premium and recovery from the utility company should be recommended.

- (4) A city or county government agency requests additional work after the contract is let.

**007 - Work added to or deleted from 3rd party agreements, 5 - Avoidable 3<sup>rd</sup> Party**, if the city or county government agency WAS given a chance to review the plans and request the work prior to letting. No premium costs where full cost is paid by the city or county government agency and no recovery action should be recommended.

. . . or . . .

**007 - Work added to or deleted from 3rd party agreements, 2 - Avoidable Production FDOT**, if the city or county government agency WAS NOT given a chance to review the plans and request the work prior to letting. No premium costs where full cost is paid by the city or county government agency and no recovery action should be recommended.

- (5) A commitment for a driveway made by FDOT's right of way agent is not shown on the plans.

**008 - Contract Changes at Right of Way Office's request (litigation, court orders, negotiations etc), 2 - Avoidable Production FDOT**, the EXCESS costs associated with the construction of the driveway are premium. Only the unit costs in excess of the unit costs for similar driveways shown in the plans will be considered premium.

- (6) A commitment for a driveway made by a consultant right of way agent is not shown on the plans.

**008 - Contract Changes at Right of Way Office's request (litigation, court orders, negotiations etc), 1 - Avoidable Production Consultant**, the excess costs associated with the construction of the driveway are premium and recovery from the Production Consultant should be recommended. Only the unit costs in excess of the unit costs for similar driveways shown in the plans will be considered premium.

- (7) The value of property acquired by an Imminent Domain case is contested, the court ordered settlement stipulates a driveway at a location not shown in the In house produced plans.

**008 - Contract Changes at Right of Way Office's request (litigation, court orders, negotiations etc), 2 - Avoidable Production FDOT**, if the settlement order was available before final plans review. Only the unit costs in excess of the unit costs for similar driveways shown in the plans will be considered premium.

. . . or . . .

**008 - Contract Changes at Right of Way Office's request (litigation, court orders, negotiations etc), 0 - Unavoidable**, if the settlement order was not available before final plans review. Only the unit costs in excess of the unit costs for similar driveways shown in the plans will be considered premium.

### **Examples of Avoidable and Unavoidable Contract Changes . . . continued.**

- (8) The contractor requests clarification of an apparent stationing conflict between the side street curb and gutter and the planned width for side street turnouts. The FDOT project administrator does not respond until after curb and gutter for the turnouts is constructed at the stationing shown in the plans which is too wide to tie into the side street curb and gutter placed by the county 2 weeks earlier. The turnout must be reconstructed and the project is delayed.

**130 - Indecision or delayed response by or on behalf of FDOT causing contract delay, 4 - Avoidable FDOT CEI**, the costs and time associated with the reconstruction of the turnout are premium and no recovery action should be recommended..

- (9) The contractor requests instruction from the Consultant CEI's chief inspector after encountering a telephone duct bank at a location not shown on the plans. The inspector mistakenly assumes the duct bank encountered is the duct bank shown as abandoned at a location close by on the plans. The inspector directs the contractor to remove a section of duct bank in conflict with a proposed drainage structure and the project is delayed while telephone cables within the damaged section of duct bank are spliced.

**502 - Inaccurate directions given to contractor by or on behalf of FDOT during construction, 3 - Avoidable Consultant CEI**, the delay costs associated with splicing the telephone cables and reconstructing the duct bank are premium and recovery from the Consultant CEI should be recommended.

### **Clarification on Premium Cost**

Note that premium costs are commonly associated with avoidable work and the excess costs of unavoidable work. The term premium costs is defined in CPAM. Section 7.3.4. As follows:

Premium Cost - Additional cost that would not have been incurred if the work had been included in the original contract. More specifically, the total cost of work that would not have been required at all but for an error or omission in the original contract or the excess cost of required work omitted from the original contract where cost is incurred that exceeds (a) 110% of that cost determined by the most applicable Statewide, County or County Group Pay Item Average Unit Costs from the CES/TRNS\*PORT (see following link <http://www3.dot.state.fl.us/Login/Default.asp>) Web Reports for the most recent twelve to twenty-four months, and (b) costs and mark-ups for equipment, labor, material and supplies, General Liability Insurance and Bond, and subcontracted work outlined in Standard Specifications, Section 4-3.

### **Example of the use of Settlement Cost Codes 860 through 863**

For example... The Project Administrator's Entitlement Analysis justifies 100% of the Engineers Estimate for drainage changes requested by the Engineer of Record (EOR). These changes correct a drainage calculation error, made by the EOR's drainage sub consultant, which seriously understated the collection area and resulting runoff from the design storm event. The fix lowers, by 3', the bottom elevation shown in the plans for a detention pond and its associated outlet structure. The fix also increases the diameter from 24" to 36" on the run of pipe from the pond outlet to an existing adjacent storm water drainage canal. The original \$3,528,623 contract includes pipe pay items for 24" dia. at 40\$/LF and 36" dia. at 65\$/LF, neither is a major item of work amounting to 5% of the original contract. The original contract also includes a pay item for 23,700 CY of regular excavation at \$8.00/CY. The regular excavation is a major item of work. The existing outlet structure S-58 was bid at \$4,000, this contractor has removed, modified, and reset a similar structure on an adjacent job for \$5,000.

## Examples of the use of Settlement Cost Codes 860 through 863 . . . continued

The Contractor responds within 48 hours to the Project Administrator's Wednesday morning request for a quote. By then the Project Administrator has worked up an Engineer's Estimate of \$81,350. The Contractor must remobilize the drainage subcontractor, which would not have been necessary if the work was included in the original contract so the \$6,000 remobilization costs are shown in the engineer's estimate as justifiable premium costs. The \$2,000 cost of removal and disposal and the \$4,000 cost of furnishing and installing the original 100' run of 24" concrete pipe is shown as premium although the contractor has already been paid for the furnish and install. The \$5,000 cost to modify and reset outlet structure S-58 is shown in the engineer's estimate as 100% premium cost. The 6500 cy of regular excavation is shown as non premium costs valued at 6,500 cy times the contract unit price of \$8/CY = \$52,000 per Spec. 12-14.

The Contractor estimates the work will take 20 days. The contractor has been working a 5 day week so far. Based on production rates experienced on the job to date the Project Administrator estimates it will take 26 days. The contract is almost complete with 17 days left by the contractor estimate. When the Contractor's quote is delivered on Friday morning, the contract time has 77 days remaining and the contractor is on track to finish 60 days early collecting an incentive of \$3,000/day.

The contractor states the work can occur concurrently with the remaining critical path items of work, and that if we will agree to a fixed lump sum price based on his quote, then he will forgo any delay claims. The contractor is asking for \$9,000 in lost bonus compensation and 3 days extended overhead at \$1,200/day. By the formula in Spec 5-12, the contractor is due only \$850/day and only then when the cumulative delay extends beyond 10 days. Eight days of FDOT caused delay have occurred to date and the contractor has not been compensated for them. The contractor will accept the existing unit price for the 36" pipe and asks for \$5,000 to remove, modify and reset S-58. The contractor also asks for a 25% increase on the unit price of the regular excavation to \$10/CY. At 1:00 pm on Friday, the Resident Engineer Phones the contractor. The contractor refuses to settle for the Resident Engineer's offer of the \$83,150 engineer's estimate, which can be justified within the specifications and insists on the \$97,100 amount of his quote delivered that morning. The contractor reminds the Resident Engineer delay costs are already accruing and his offer of a lump sum price was prepared in haste to mitigate delay damages in a spirit of partnering which puts the contractor at considerable risk if he can't complete the work in 20 days.

The Resident Engineer considers that they are only \$15,750 apart and the contractor will be claiming \$4,200/day in delay damages with a likely entitlement of \$3850/day, he'll loose 2 days over the week end, and the contractor may be unwilling to settle for a lump sum fixed price on Monday. If not additional resources may be required by the CCEI to survey and monitor the excavation quantities Finally; the contractor may also be less than motivated to finish quickly where the sole remaining work and therefore any delay costs are on the department. The Resident Engineer calls the District Construction Engineer and briefs him on the situation at 1:30 pm on Friday.

- (1) At 3:30 pm the Department's Design, Construction and Legal staff agree it is in the Department's best interest to do the work for \$97,100 rather than drag out the negotiations or go to a Dispute review board even though this exceeds the engineer's estimate. The Project administrator is informed and gives the Contractor a speed letter informing him that we have accepted his offered quote. The resulting Supplemental Agreement would be coded with 2 issues.

A) The first would be a \$83,150 issue with Root Cause Reason Code 115 Required drainage modifications, with Avoidability coded Avoidable Production Consultant, with Cost Recovery coded Action Recommended, with Claim Extended Limits coded as Claim, and Premium cost shown as \$26,850. Note; the issue premium costs include \$4,000 for the unusable 24" pipe paid under the original contract and that fact should be noted in the space provided for comments or description.

**Examples of the use of Settlement Cost Codes 860 through 863 . . . continued**

- B) The second issue would be the settlement costs. A \$15,750 issue with Root Cause Reason Code “860 FDOT determined risk avoidance cost paid solely to avoid risk in failing to settle disputes”, with Avoidability coded Unavoidable, with Cost Recovery coded No Action Recommended, with Claim Extended Limits coded as Claim, and Premium cost shown as \$15,750.
- (2) But ... If the Department’s staff were unable to reach a settlement, the Contractor finished 57 days early and a DRB had resolved the issue for \$97,100. then the issues would be coded just as shown above except that the Root Cause Reason Code for the second issue would be “861, DRB recommended cost in excess of engineer’s estimate and entitlement analysis”
- (3) Similarly ... If the Department’s staff were unable to reach a settlement and the State Arbitration Board had resolved the issue for \$97,100 based on the circumstances in (2) above, then the issues would be coded just as shown above except that the Root Cause Reason Code for the second issue would be “862, Arbitration bd. recommended cost in excess of engineer’s estimate and entitlement analysis”.
- (4) Finally... If the Department’s staff were unable to reach a settlement and A judge had resolved the issue by Court Order for \$97,100, then the issues would be coded just as shown above except that the Root Cause Reason Code for the second issue would be “863, Court ordered costs in excess of engineer’s estimate and entitlement analysis”. Note that this will be the case even if the payment is made by a Contract Invoice Transmittal (CIT). CIT’s are tracked in the contract change tracking system with all the same codes used for SA’s.
- (5) Note that any pre or post judgment interest allowed the Contractor in cases (2) thru (4) above will be added to the claim settlement costs reported in the second issue.

**Currently Available Single Digit Description Codes for Contract Changes - Effective May 28, 2004**

Here is a complete list of the currently available contract change description codes. The “Avoidable and Unavoidable” contract change examples above used codes drawn from these lists.

**Avoidability Codes**

- 0 - Unavoidable: No Remedial Action Required
- 1 - Avoidable: Production Consultant\*
- 2 - Avoidable: Production FDOT\*
- 3 - Avoidable: Consultant CEI
- 4 - Avoidable: FDOT CEI
- 5 - Avoidable: 3<sup>rd</sup> party

**Cost Recovery Codes**

- Y - Initiated
- N - No Action Recommended
- C - Action Closed
- P - Recovery Pursued
- R - Action Recommended
- \$ - Closed/Recovery Received

**Claim/Extended Limits Codes**

- C - Claim settlement
- N - Neither
- E - Extend Project Limits

\* Note: Production includes Design, Design Project Manager, Survey, R/W, Environmental Office

## CONTRACT CHANGE ROOT CAUSE REASON CODES WITH DESCRIPTIONS

- 001 Subsurface material or feature not shown in plan
- 003 Harmonize project with adjacent projects or right of way
- 004 Design Standards, Specification or Policy change after contract letting
- 005 Utility adjustment delays w/ no Jt.Proj.Agmt. (should be premium Avoidable 3<sup>rd</sup> party)
- 007 Work added to or deleted from 3rd party agreements
- 008 Contract Changes at Right of Way Office's request (litigation, court orders, negotiations etc)
- 009 Permit related issues
- 010 Weather Related new work, repairs, overruns or contract changes due to weather
- 012 Deterioration of, or damage to, project after design (not weather related)
- 013 Test features not included prior to letting
- 015 Contract Changes to Utility Joint Project Agreement Work (should be no cost to FDOT)
- 016 Article 8-7.3.2(2) of Standard Specifications including Materials Acquisition
- 018 Impacts from special events or excessive traffic (ex. Delays & MOT for super bowl)
- 019 Conflicts between contractors, from overlapping project limits, pay items, schedules etc.
- 020 Increase in Steel Material Prices
- 101 Necessary pay item(s) not included in contract
- 103 Incorrect or insufficient subsoil information (included in plans but not accurate - not code 001)
- 104 Incorrect pay items for earthwork, embankment & excavation jobs on one contract.
- 105 Discrepancies between plan notes, plan details, pay items, standard indexes and specifications
- 106 Utility work w/ no JPA: conflict, wrong size, wrong location, proposed or existing
- 107 MOT: Modification of Maintenance of Traffic for pedestrians, boats, cars, bikes, etc.
- 108 Plans do not describe scope of work (use a more specific reason in lieu of this when possible)
- 112 Phasing or plan components not constructible as shown in plans
- 113 Modification to pavement design required
- 115 Required drainage modifications
- 116 Inadequate Right of Way to construct project as shown on plans
- 117 Access management issues
- 118 Improper or inadequate signing, signalization or pavement marking design or features
- 119 Revisions required related to major structural component changes
- 120 Hazardous materials encountered requiring contract changes
- 122 Bike, pedestrian, ADA or other public transit reqmt. not properly addressed: not MOT related
- 123 Landscaping issues not adequately addressed
- 126 Computation errors in pay item work amounts
- 128 Inaccurate or inadequate survey information used in plans preparation
- 130 Indecision or delayed response by or on behalf of FDOT causing contract delay
- 131 Architectural feature related issue (generally for building modifications)
- 208 No specification provided for item of work
- 300 Value Engineering Change Proposal (should be a negative amount)
- 325 Partnering (should be overrun only)
- 350 DRB Member Fees
- 502 Inaccurate directions given to contractor by or on behalf of FDOT during construction
- 503 Change resulting from engineering decision (use specific reason in lieu of this when possible)
- 700 Overrun of existing pay items: when overruns will exceed 5% of original contract amt
- 725 Defective materials (should be a negative SA or work order)
- 850 Contingency Supplemental Agreement (do not use this for individual work orders)
- 860 FDOT determined risk avoidance cost paid solely to avoid risk in failing to settle disputes
- 861 DRB recommended cost in excess of engineer's estimate and entitlement analysis
- 862 Arbitration Bd. recommended costs in excess of engineer's estimate and entitlement analysis
- 863 Court ordered costs in excess of engineer's estimate and entitlement analysis

For questions on these examples or the definition of avoidable contract changes please contact Randy Borgersen (SunCom 994-4168 E-mail CN982RB).

AKP/rb

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