

0040300, Alteration of Plans or of Character of Work
Comments From Industry Review

John Previte

Comment:

Missing colon, conjunction or phrasing. Three suggestions below.

4-3.2.2 Subcontracted Work: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited *to as provided for in 4-3.2.1 with the exception a 17.5% markup is allowed to the subcontractor(s) on the additional or unforeseen work and the Prime Contractor is allowed the choice of (d)(1) or (d)(2) as shown above in 4-3.2.1 except that the Average Overhead per day calculation is as follows:*

Suggestion #1:4-3.2.2 Subcontracted Work: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited *to as provided for in 4-3.2.1 with these exceptions: a 17.5% markup is allowed to the subcontractor(s) on the additional or unforeseen work, and the Prime Contractor is allowed the choice of (d)(1) or (d)(2) as shown above in 4-3.2.1 except that and the Average Overhead per day calculation is as follows:*

Suggestion #2:4-3.2.2 Subcontracted Work: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited *to as provided for in 4-3.2.1 with the exception that a 17.5% markup is allowed to the subcontractor(s) on the additional or unforeseen work and the Prime Contractor is allowed the choice of (d)(1) or (d)(2) as shown above in 4-3.2.1 except that the Average Overhead per day calculation is as follows:*

Suggestion #3:4-3.2.2 Subcontracted Work: For work performed by a subcontractor, compensation for the additional or unforeseen work shall be solely limited *to as provided for in 4-3.2.1 with three exceptions: 1) a 17.5% markup is allowed to the subcontractor(s) on the additional or unforeseen work, 2) and the Prime Contractor is allowed the choice of (d)(1) or (d)(2) as shown above in 4-3.2.1, and 3) except that the Average Overhead per day calculation is as follows:*

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Comment:

In section 4-3.2 starting on the fifth line from the bottom, dispute resolution has been struck-out as to remove this language. Further in the document these words are being added to the text. Why are they being struck out in the sentence?

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Comment:

I have reviewed this proposed specification change and identified a couple of potential issues. Written as proposed, 4-3.2.2 states that for work performed by a subcontractor, the subcontractor will be compensated in accordance with 4-3.2.1 and receive a 17.5% mark up on the extra work. Further, the prime contractor will be given a choice of either 4-3.2.1(d)(1) which equates to either the 10%/5% mark ups on the subcontracted work or a modified version of 4-3.2.1(d)(2). 4-3.2.1 is very clear that the prime contractors payment for markups is expressly limited to the greater of either 4-3.2.1(d)(1) or 4-3.2.1(d)(2). I believe we need to be consistent when applying the markups. Additionally, 4-3.2.2 written as proposed makes no distinction between: * extra work performed by a subcontractor which DOES NOT extend the duration of the project or cause a delay to controlling items of work AND * extra work which DOES extend the duration of the project or cause a delay to controlling items of work. Silence on this distinction in 4-3.2.2 may lead a Prime Contractor to believe they would be entitled to the choice between 4-3.2.1(d)(1) and the modified version of 4-3.2.1(d)(2) for all work performed by a subcontractor regardless of the impact to the project schedule. 4-3.2.1(d)(2) makes this distinction very clear. I believe it was your intent to rely upon this language which may be sufficient

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Comment:

In review of this specification I have some comments. Section 4-3.2.1(c) discusses “standby rate” and states “...50% of the “Rental Rate Blue Book” for the time the equipment is *directed* to standby and remain on the project site,...” (emphasis added). The old terminology was “idle equipment” and I believe that was clearer. Recently a contractor made the argument that the 50% rate is only when the Engineer *directs* him to leave the equipment on standby. Generally the Engineer does not actually direct it to remain on standby. This is different than the way we used to handle “idle equipment” which was for any idle equipment and there was no reference to it being directed to standby and remain on site. This should be clarified in the specification. Also, what happens if the equipment is rented? Is it 100% of the invoice? Or is it still paid at 50%? I don’t want to recommend edits because I’m not certain what the intent of Central Office is on this. However, I would like it to be considered/discussed during the time the specification is being updated.

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Comment:

How will the last sentence of this paragraph be addressed on Lump Sum projects? Shape and dress areas adjacent to the project right-of-way that were used as plant sites, materials storage areas or equipment yards when they are no longer needed for such purposes. Restore these areas in accordance with Section 7-11.1 and 7-11.2. Grass these areas when the Engineer directs. The Department will pay for directed grassing work under the appropriate Contract items.

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Comment:

Proposed Spec Change #0040300 – Alteration of Plans or Character of Work
4-3.2.2 the equation shows $Ds = As \times C$ I believe it should show $Ds = \frac{As \times C}{B}$

In other words, it doesn't show the division line with 'B' under the equation.

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Comments:

Comments shown below are in capital letters. 5-12.2 Pass-Through Claims: Pass-through claims against the Department by the Contractor's subcontractor shall comply with the provisions of this Article and be included within a written claim submitted by the Contractor. The provisions of this Article shall be included in the subcontract between the Contractor and subcontractor, and the subcontractor shall comply with the requirements of these provisions. Pass-through claims against the Department by the Contractor's subcontractor must be disclosed on the Contract's Dispute Review Board provisions.(MORE OF A QUESTION REGARDING THIS PREVIOUS SENTANCE- WILL THE DOT BE REQUIRED TO CHECK SUBCONTRACTS TO SEE IF THEY COMPLY WITH THIS ARTICLE?) Compliance with this Article is a condition precedent to the Contractor filing or bringing any pass-through claim in any circuit court, arbitration, Dispute Review Board or other claims resolution proceeding against the Department for the items and Fro (SPELLING - FOR) the sums or time set forth in the pass-through claim; and failure of the Contractor or its subcontractor to comply with the provisions of this Article shall constitute a full, complete, absolute, and irrevocable waiver of such pass-through claim. The failure to comply with these provisions and the resulting waiver of the pass-through claim against the Department will not be excused by the Contractor's bad faith, negligence, lack of

cooperation, error, or mistake. The Department shall be entitled to all defenses against the pass-through claim available to the Contractor against the subcontractor including provisions of the subcontract
