



Borrower Guidance for Change Orders

CHANGE ORDER SUBMISSION

After loan approval, any changes to the originally contemplated work must be addressed through the contract change order process. Any changes that result in additional costs should be necessary, reasonable and within the scope of the project. Change orders must be submitted to the Department of Environmental Protection (DEP) for technical review. In submitting change orders, you should pay particular attention to the following items:

1. **IMPORTANT!** Please submit change orders as they're created for project implementation. This will help for a timely review process. **Waiting to submit the majority of change orders at the end of the project may greatly delay final inspection and project close-out and can jeopardize fundability of the project.** Please notify the DEP project manager if you plan on submitting more than 5 change orders at one time or if the aggregate sum of all change orders is over 10% of the project costs.
2. It is highly recommended that the funding recipient's project engineer contact the DEP Project Manager to discuss the change order before submitting the final change order into the PENNVEST on-line system. This way, issues can be resolved between the project engineer and the DEP Project Manager before submittal. This will avoid multiple submittals of change orders into the PENNVEST on-line system.
3. The "Hardcopy Sent to DEP Date" field must be filled out when entering the change order to the PENNVEST on-line system or the change order will be rejected.
4. The detailed "necessity of change" field must be filled out on the DEP supplement form for each change order. The "Comments" field must be filled out with the "necessity of change" when entering the change order to the PENNVEST on-line system or the change order will be rejected.
5. Borrowers must submit one hard copy of each change order with supporting documentation to the DEP Project Manager in the appropriate DEP regional office. The supporting documentation including the Change Order Supplement Form should be submitted to DEP on or before the date entered in the "Hardcopy Sent to DEP Date" field on the PENNVEST on-line system to ensure the change order is not rejected by DEP for lack of technical documentation. If this hard copy documentation is not received by the DEP Project Manager within ten (10) business days, the change order request will be rejected on the PENNVEST on-line system.

6. The Contractor, Consulting Engineer, and the Borrower must all sign (execute) all change orders before they are submitted to DEP. The change order will not be reviewed without all three signatures. The supporting documentation including the Change Order Supplement Form must be included in the submission.
7. Only street restoration within the trench area directly associated with the PENNVEST-funded work being performed, including the trench itself and one foot on either side of the trench, will be eligible for funding. Any trench area widened beyond the one foot on either side of the trench will be non-PENNVEST funding. The ONLY exceptions will be cases where wider street restoration is required by state or federal law or regulation.
8. Borrowers should review the cost and pricing data submitted by the contractor and negotiate with the contractor to arrive at a fair and reasonable price. Borrowers should include all evidence of these negotiations.
9. The level of documentation required for a change order depends on the dollar amount and complexity of the change.
10. Documentation format is at the Borrower's discretion but should consider cost and complexity of the change. However, the documentation must contain adequate evidence to assure that the work was necessary and the costs reasonable. The basic elements that constitute adequate documentation include at least the following items:
 - a. A description of the changed work.
 - b. A statement of the necessity for the changed work.
 - c. Borrower's independent engineer's estimate of the cost and time to complete the changed work.
 - d. The contractor's proposal of the cost and time to complete the changed work.
 - e. Proof of negotiations of the cost and time difference between the estimate and the contractor's proposal.
 - f. Resolution of the cost and time conditions to complete the work defined in the change order.
11. A PENNVEST/DEP Change Order Supplement form, DEP Document Number 3850-FM-BCW0508, must accompany all submissions.
12. All time extension change orders must have documentation to support the validity and reasonableness of the time extension in order to be approved. The type of supporting documentation will depend upon the reason(s) for time extensions.
13. Final quantity adjustments must be processed as a final summary change order and should be discussed with the PENNVEST project specialist prior to submission for proper entry into the system. DEP will not review any final compensating/non-technical change orders.

CHANGE ORDER ELIGIBILITY

Examples of Approvable Change Orders

The following are examples of situations where a change order is appropriate:

1. Errors and Omissions - Errors and omissions in the plans and specifications, detected prior to construction and needed to facilitate proper operation of the facility that normally would have been included in the bid documents. If an error or omission is detected prior to its incorporation into construction, the change in cost of constructing the facility in accordance with a proper new design is generally allowable.
2. Design Improvements or Modifications - Changes to allow a more efficient operation of an existing adequate design. Justification should be provided as to why the original design did not provide the most cost-effective solution.
3. Deletions - Deletions that alter the scope, capacity, or treatment process of the project require prior written approval.
4. Unforeseen Site Conditions - These are defined either as: (1) unknown subsurface or latent physical conditions at the site of the work differing substantially from those identified in the bid documents or (2) unusual physical conditions at the site of the work differing substantially from those ordinarily encountered. Pre-design site investigations by the engineer may show different substructure conditions than actually encountered in the field during construction. Additional costs necessary to perform under unforeseen site conditions, including studies and additional costs of construction which would have been included had the conditions been accurately described in the bid documents, are considered allowable, provided that such requests are accompanied by a written discussion demonstrating that the conditions could not have been determined through reasonable pre-bid investigation by the contractor. The cost of re-planning, redesign, and time delay are typically eligible.
5. Premium Wages - Where premium wages are payable under the construction contract and the Borrower can demonstrate a critical need for payment of premium wages.
6. Time Extensions - Time extensions may be approved only if documentation is submitted to support the validity and the reasonableness of the time extension.
7. Temporary Facility – The costs for installation and use of a temporary facility are typically eligible where construction of the temporary facility is undertaken at the site of the existing facility and the installation of a temporary facility is needed to prevent the disruption of normal operation.

8. Overruns and Underruns - Bids for materials are often based on estimated quantities and unit prices. Actual quantities will usually differ. Significant over-runs or under-runs may warrant renegotiating unit prices.

Examples of Non-Approvable Change Orders

The following are examples of situations where a change order would not generally be approved, or where additional justification is warranted:

1. Errors and Omissions - When construction has proceeded to the point that the errors and omissions cannot be corrected without removing, remodeling or adding to a portion of the facility, the additional cost attributable to the errors or omissions is not eligible. The cost of any redesign or additional time necessitated by errors and omissions is generally not allowable.
2. Substitution - The additional cost of the substitution of non-bid items based on non-availability or delayed availability is generally the responsibility of the contractor or its supplier and is not allowable. Contracted items which cannot be successfully demonstrated to the Borrower as "equal" to those named in the specifications cannot be used in lieu of the named items or another equal. Under these circumstances, the contractor shall utilize the named item at the bid price.
3. Time Extensions - Time extensions should be granted only when the reason for the change is beyond the control of the recipient and the contractor (such as unusually adverse weather). If time extensions are approved which extend work beyond schedules contained in DEP permits and/or orders it is understood that a DEP approval is a work eligibility judgment, not a conflicting extension of the permit/order schedule.
4. Operation and Maintenance - The operation, maintenance, and routine repair of any existing facility or equipment during construction is the responsibility of the Borrower and is not allowable either as a part of the original contract or by change order.
5. Paving - Cost for paving in excess of the trench width plus two feet are not eligible except when required by state or federal requirements. (For example: Pennsylvania Department of Transportation full width paving for state highways.)
6. Changes in Scope – A change in scope is: (a) an increase or decrease in the scale of a project that results in either more or fewer people being served, (b) a change in process that uses a different method to accomplish the same result, or performing a different function within a project.

PENNVEST regulations deny eligibility unless the change: (a) is the result of new or revised State or federal requirements, (b) is necessary to protect structural or process integrity of the facility, (c) addresses an adverse condition identified during construction which could not have been foreseen, or (d) is necessary to relieve emergency conditions occurring during construction.

7. Damages - The costs for losses such as damage to equipment or completed work or personal injury are not fundable by change order and should be handled in accordance with the original contract and general legal principles.

ADDITIONAL RESOURCES

The link to the PENNVEST/DEP Change Order Supplement, DEP Document Number 3850-FM-BCW0508, can be found on the DEP Change Order webpage or in the DEP eLibrary at:

<http://www.elibrary.dep.state.pa.us/dsweb/View/Collection-12829>