

CHANGE REQUEST COVER SHEET

Change Request Number: 09-22

Date Received: 12/10/2008

Title: Removal of COTR Change Order Authority from AMS

Name: Jeffrey Baker

Phone: 202-493-5723

Policy OR Guidance: Guidance

Section/Text Location Affected: AMS Procurement Guidance T3.8.7 and T3.10.1

Summary of Change: Removal of COTR Change Order Authority from AMS

Reason for Change: To reduce risk to FAA, and as it has been confirmed with operations that this authority has and will not be utilized, the ability for the COTR to issue a change order and modify a construction contract is being removed.

Development, Review, and/or Concurrence: AJA-43, AJA-431, ARC

Target Audience: FAA Acquisition Workforce

Potential Links within FAST for the Change: None

Briefing Planned: No

ASAG Responsibilities: None

Potential Links within FAST for the Change: None

Links for New/Modified Forms (or) Documents (LINK 1)

Links for New/Modified Forms (or) Documents (LINK 2)

Links for New/Modified Forms (or) Documents (LINK 3)

SECTIONS EDITED:

Procurement Guidance:

T3.8.7 Construction Contracting (Revision 2, January 2009) [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.8.7 Construction Contracting (Revision 2, January 2009)

Construction Contracting

Section 9 : Post-Award [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.10.1 Contract Administration [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

Procurement Guidance:

T3.10.1 Contract Administration

Contract Administration

Section 3 : Assignment of Contracting Officer's Technical Representative [\[Old Content\]](#)[\[New Content\]](#) [\[RedLine Content\]](#)

SECTIONS EDITED:

T3.8.7 Construction Contracting (Revision 1, April 2008)

Old Content: Procurement Guidance:

T3.8.7 Construction Contracting (Revision 1, April 2008) New Content: Procurement Guidance:

T3.8.7 Construction Contracting (Revision 2, January 2009) Red Line Content:
Procurement Guidance:

T3.8.7 Construction Contracting (Revision ~~1~~², ~~April~~^{January} ~~2008~~²⁰⁰⁹)

Section 9 : Post-Award

Old Content: Procurement Guidance:

T3.8.7 Construction Contracting (Revision 2, January 2009)

Construction Contracting

Section 9 : Post-Award

a. *Assignment of Inspection and Contract Administration.*

(1) Due to the locations and complexity of most construction projects, COs often accomplish their administrative and inspection functions through utilization of Contracting Officer's Technical Representatives (COTR), or Resident Engineers (RE). These personnel are normally present at the job site each day, and are in the best position to observe day-to-day activities and performance. COTRs and REs on site perform such delegated duties as daily performance inspections, Department of Labor wage rate

interviews with contractor personnel, provide minor clarifications of specifications and drawings, and insure contractor compliance with all safety and labor requirements on site. The duties of these individuals must be clearly annotated by the CO in a designation letter. A copy of the designation letter is provided to the COTRs, REs, and the contractor. See AMS Procurement Guidance T3.10.1 for sample designation letter.

(2) Only the CO, or person delegated specific authority to execute contract modifications, may authorize a change to the original contract. Due to the nature of construction contracts, the CO may find it beneficial for the COTR or RE to have a delegation of change order authority, subject to:

(a) Personnel seeking such a delegation must comply with the training requirements outlined for a Level 1 certificate of appointment/warrant in AMS Procurement Guidance T3.1.4 prior to receiving field change order authority.

(b) The COTR or RE must first be issued a delegation of contracting authority from the COCO for change order authority. Change order authority is limited to \$25,000 per action.

(c) The CO must authorize the use of the delegation for each project through the COTR or RE designation letter. Before authorizing such authority, the CO should consider the likelihood of minor changes within the statement of work, the need for minor changes due to emergencies, and the complexity of the project. Other changes such as changes to the intent of the contract and those, for which equitable adjustment cannot be quickly determined to be fair and reasonable, should only be initiated by the CO.

(d) In instances where field change order authority will be delegated, the CO should include a clause in the contract outlining the delegation dollar limit, and scope of authority.

b. *Notice to Proceed (NTP)*. The NTP is issued to give notice to the contractor when on-site work can be started, when the project is to be completed based upon the performance time in the contract, and any other information deemed pertinent by the CO. Prior to its issuance, the CO must ensure all required submittals have been delivered to and approved by the FAA, that all required insurance and bonding documents have been submitted and are acceptable, and other coordination or applicable documentation has been completed.

c. *Preconstruction Conference*. The CO may conduct a preconstruction conference (to discuss matters such as applicable labor standards, the authority of various personnel, safety, and environmental considerations) prior to the start of a construction or demolition contract. Preconstruction conferences are not a requirement for each project. When deciding on a conference, the CO should weigh the administrative costs, time, and possible travel expenses for all parties involved, against the complexity of the requirement, the impact of the requirement on entities involved with the site, and the past performance and technical knowledge of the contractor. For a preconstruction conference agenda and checklist, see AMS Procurement Form Templates.

d. *Use and Possession Prior to Completion.* Beneficial occupancy occurs when the Government takes possession of, or puts to use, a completed or partially completed part of the work. It does not constitute acceptance of the facility as constructed. The clause "Use and Possession Prior to Completion" addresses some of the issues associated with beneficial occupancy. If it is foreseen prior to contract inception that beneficial occupancy will become an issue, or if it becomes an issue during contract performance, the CO should consider negotiating contract terms which cover relevant issues for that contract, e.g., date of warranty, builder's risk coverage, coordination with the contractor, etc. Legal counsel should be consulted on the legal ramifications of beneficial occupancy. Phased (partial) acceptance can be used as an alternative to beneficial occupancy, if the need can be identified sufficiently in advance to structure the contract accordingly, and it is determined in the best interests of the parties.

e. *Airport Coordination.* Local airport authorities and/or other Federal agencies may have requirements and regulations outside of those imposed by the FAA that a contractor is required to adhere to when completing a construction project on an airport. These additional requirements may include additional security, insurance, and safety requirements. It is the responsibility of the contractor to coordinate with other authorities or agencies prior to performance to ensure they satisfy any applicable local regulations.

f. *Property Protection.* The FAA must ensure that the contractor understands that throughout the performance of the contract, care must be taken by the contractor to protect FAA and/or other property that may be affected during construction.

g. *Prime Contractor Performance.* The use of subcontractors by a prime contractor during the performance of a construction contract is inevitable and at times presents a savings to the FAA through the contract. For example, the prime contractor may lack the internal capability to provide specific trades required to meet all the terms and conditions of the contract. The CO should assure adequate interest in and supervision of work involved in projects. The contractor shall be required to perform a significant part of the contract with its own work force and express this requirement in terms of a percentage of the total work.

(1) The prime contractor must perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees on site.

(2) Construction by special trade contractors: The prime contractor must perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees on site.

h. *Contractor's Daily Log.* For any construction contract of \$2,000 or more, the contractor is required to submit to the CO a "Daily Log" of activity on the site. The logs must include the workers used by classification, construction equipment moved on and off the site, materials and equipment delivered to the site, inspections and tests performed, and total cumulative hours worked.

i. *Suspension of Work.* The COTR or RE should notify the CO when a suspension order is necessary to prevent the contractor from proceeding with work that will have to be removed or

changed. Only the CO can order a suspension of work; when possible, the CO should use partial, rather than, total suspension orders.

j. *Warranties*. The CO should obtain information about any warranties from the contractor. This information should include effective dates and names, addresses, and contacts. A list of warranty or guarantee expiration dates is made and retained, and copies are provided to the user.

New Content: Procurement Guidance:

T3.8.7 Construction Contracting (Revision 2, January 2009)

Construction Contracting

Section 9 : Post-Award

a. *Assignment of Inspection and Contract Administration.*

(1) Due to the locations and complexity of most construction projects, COs often accomplish their administrative and inspection functions through utilization of Contracting Officer's Technical Representatives (COTR), or Resident Engineers (RE). These personnel are normally present at the job site each day, and are in the best position to observe day-to-day activities and performance. COTRs and REs on site perform such delegated duties as daily performance inspections, Department of Labor wage rate interviews with contractor personnel, provide minor clarifications of specifications and drawings, and insure contractor compliance with all safety and labor requirements on site. The duties of these individuals must be clearly annotated by the CO in a designation letter. A copy of the designation letter is provided to the COTRs, REs, and the contractor. See AMS Procurement Guidance T3.10.1 for sample designation letter.

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T3.10.1 Contract Administration (Revision 15, October 2008)

Old Content: Procurement Guidance:

T3.10.1 Contract Administration (Revision 15, October 2008) New Content: Procurement Guidance:

T3.10.1 Contract Administration Red Line Content: Procurement Guidance:

T3.10.1 Contract Administration ~~(Revision 15, October 2008)~~

Section 3 : Assignment of Contracting Officer's Technical Representative

Old Content: Procurement Guidance:

T3.10.1 Contract Administration

Contract Administration

Section 3 : Assignment of Contracting Officer's Technical Representative

a. *Designating a Technical Representative.* The CO may designate an individual to act as his/her technical representative to facilitate contract administration. Requiring organizations should ensure that the person recommended as COTR has qualifications and expertise appropriate for the nature of the contract and duties to be delegated. The CO appoints a technical representative by written memorandum describing specific delegated authority and

responsibilities. The memorandum is provided by the CO to the technical representative at the time the assignment is made or changed in any way. See Appendices to this guidance for sample delegation memoranda. Also see AMS COTR Handbook for additional information about COTR duties, competencies, and training.

b. *Required Training.*

(1) *Initial Training.* At least 24 hours of training on basic COTR responsibilities is a prerequisite for performing technical representative duties. A designated COTR must complete this basic training within three months of the date of the CO's appointment memorandum. If a COTR does not complete training within the prescribed timeframe, then the CO terminates the delegation and designates an alternate person. See Appendix 6 for information about COTR training courses.

(2) *Refresher Training (Continuous Learning).* COTRs must complete 40 continuous learning points of refresher training every two years. Continuous learning may include courses, workshops, conferences, seminars or other types of instruction or activities on recent procurement practices, policies, or other specialized topics relevant to delegated COTR duties (see Appendix 6 for more information about continuous learning). Refresher training must be completed by the biannual anniversary date of initial training or last refresher training.

(3) *Documentation.* The COTR must provide documentation showing completion of basic and biannual refresher training to the CO.

(4) *Waivers.* In rare situations, the CO may grant a waiver to training:

(a) When an urgent need arises and no trained individual is available for appointment as COTR, the CO may temporarily appoint a COTR. Temporary appointments are limited to three months and the delegation memorandum must show the expiration date.

(b) When circumstances beyond a COTR's control prevent completion of refresher training within the prescribed timeframe, the CO may grant a time extension of up to three months. The extension must be in writing and state a date by which the COTR must complete refresher training.

c. *Authority of the Technical Representative.*

(1) *Authority.* A duly-assigned technical representative is authorized to perform the actions delegated by the CO in a memorandum of delegation. When determining the support needed from a technical representative, the CO should consider the specific requirements and needs of the contract and clearly specify the authority that he/she is granting to the technical representative in a written memorandum of delegation. One memorandum of delegation for all situations may not be appropriate because contractual

situations are distinct and have varying needs. The sample delegation memoranda in the Appendices may be modified to reflect the specific needs of the contract and CO.

(2) *Field Change Authority.* A field change is a contract modification initiated by a technical representative who has been *delegated contracting authority by the COCO*, and acting within the limited scope of his/her authority. The CO may authorize his/her technical representative who has delegated contracting authority from the COCO to make field changes (see AMS Procurement Guidance T3.8.7, Construction Contracting for more information about construction contracting and requirements for delegated authority for field changes). The CO must carefully set limitations on the authority of the technical representative by defining the following:

- (a) Monetary limits;
- (b) Time extension limits;
- (c) Requirements for any advance approval from the CO or program office;
- (d) Authority to negotiate amount of change;
- (e) Any documentation requirements;
- (f) Responsibility for preparing and awarding modifications in Prism; and
- (g) Anything else deemed necessary.

d. *Changing the Technical Representative.* To change the technical representative on a contract, the CO must revoke the previous delegation and issue a succeeding delegation to another representative. Both of these memoranda are in writing and issued concurrently.

e. *Notifying the Contractor.* The CO furnishes copies of all delegation, revocation, and redelegation memoranda to the Contractor so that they are aware of the technical representative and his or her authority and responsibilities.

New Content: Procurement Guidance:

T3.10.1 Contract Administration

Contract Administration

Section 3 : Assignment of Contracting Officer's Technical Representative

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(2) *Refresher Training (Continuous Learning).* COTRs must complete 40 continuous learning points of refresher training every two years. Continuous learning may include courses, workshops, conferences, seminars or other types of instruction or activities on recent procurement practices, policies, or other specialized topics relevant to delegated COTR duties (see Appendix 6 for more information about continuous learning). Refresher training must be completed by the biannual anniversary date of initial training or last refresher training.

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