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**Construction Contract Modifications:  
A Joint Study by the  
U.S. Army Corps of Engineers and  
Associated General Contractors of America**

**February 2021**

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**Introduction**

The timely settlement of contractual changes has always been a problematic area for the construction industry. Without the timely settlement of change orders and the associated resolution of issues, the project suffers. The constructor, subcontractors and suppliers who may have moved forward to resolve issues for the sake of maintaining schedule may not then be compensated in a timely or equitable fashion. An increased focus on the administration of the change process enhances communication and results in positive project outcomes.

The US Government Accountability Office initiated a study in September 2018 which culminated in report GAO-19-500, Federal Construction: Army Corps of Engineers and GSA Need to Improve Data on Contract Changes. The report found that while the majority of changes were settled in under 60 days, there was still a significant number that took longer. The Associated General Contractors of America (AGC) and the US Army Corps of Engineers (USACE) developed a collaborative approach to holistically review processes and data as the first step towards improvement.

**Study Approach**

The approach took two paths. First was an evaluation of the underlying data to better understand the concerns of industry against what was in the Government records. The second was the creation of dashboards to assure project specific information was available to leadership at all levels to reinforce what is checked is performed. Several issues became readily apparent: a volume issue, with over 2,000 new contracts and 12,000 settled changes issued by USACE every year, and inconsistencies between the Government data and Contractor data. Finally, there was no standardized upward reporting mechanism in place to provide actionable management of the process.

In order to evaluate the underlying data, change registers provided by several construction contractors were overlaid with the Government change logs. These change registers covered vertical building and public works projects built under both design-bid-build and design-build project delivery. Data elements were closely compared for:

- Change identification date
- Request for proposal issued date
- Proposal received date
- Modification signed date

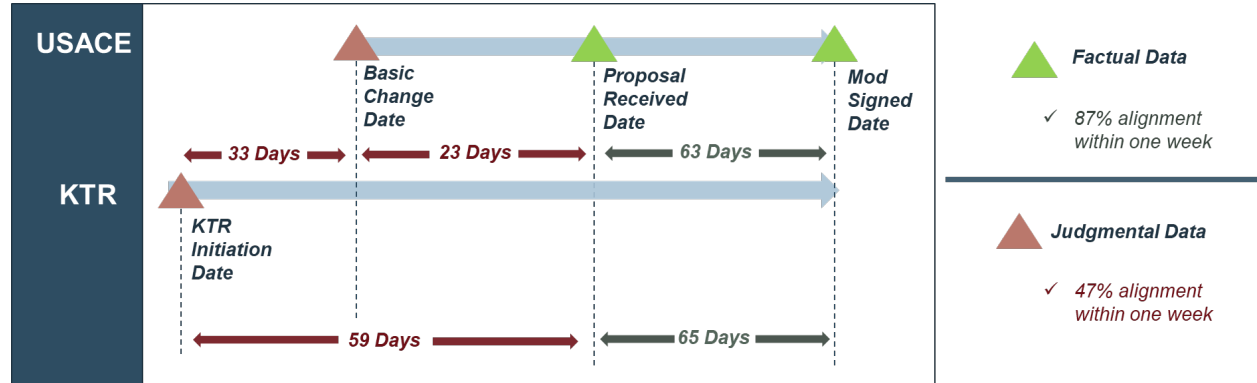
**Findings**

The dates in both systems for the request for proposal, proposal received, and modification signed were within a week of each other for over 90% of the changes reviewed. However, the identification or initiation date of a change in the two respective systems had on average a 30-day difference. This appeared to be the result of differing interpretations between the Government and the Contractor on when a change was initiated. The Contractor tended to log the

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change initiation date as soon as it was notified of the change via RFI response, submittal comment, or other mechanism. The Government tended to utilize the date a Request for Proposal was initiated or even the date the Contractor's proposal was submitted.



While the factual data elements tended to be in very good alignment, USACE and AGC noted the proposal dates recorded in both systems were misleading. Where proposals had been negotiated and then resubmitted (in some cases multiple times), both systems showed the date of the latest proposal, while the original proposal date had been over-written by the system. As a result, it was difficult to determine from either the Contractor data or the Government data what was the true time period it took for the Contractor to price the change and submit its initial proposal.

Recommendations to resolve these discrepancies are discussed further below but include alignment between both parties on what initiates a change, as well as better documentation on both sides of the original proposal submission date.

On a deeper, more fundamental level, the question quickly became why it takes so long to settle a change. On average, a general contractor was able to submit a proposal in approximately 30 days from a request for proposal. On average, the Government would then issue the modification within 90 days of proposal receipt, with a median of 55 days. Why the variation? What should be done to reduce the average to 60 days? The study uncovered several key challenges on both sides.

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Challenge Type	Description
Joint	Disagreement on merit issues
Joint	Government lacks sufficient funds to process modification in a timely manner
Government	Volume of RFI and changes exceeds staffing resources available
Government	Proposal data - too much or too little
Government	Volume of new contracts (2,000) and changes (12,000) every year
Contractor	Government requests for additional documentation and/or overly detailed
Contractor	Perceived lack of transparency by Government in change negotiations
Contractor	Contingency not allowed in changes

The primary issue raised by the Government is the quality of proposals and questionable merit of what is submitted by contractors. The Government maintains that a quality proposal has several features. First is a short narrative of the scope of work along with an explanation of why the work is a change (a merit justification). Second is an adequate breakdown of the costs such that the reviewer can perform due diligence to determine the quantum is fair and reasonable. An adequate breakdown allows the reviewer to verify the material, labor and equipment required for the change. Finally, a reasonable time analysis is necessary to demonstrate and support any time extension requests.

In contrast, Contractors allege that the Government often requires a level of detail and pricing data in excess of what is necessary or reasonable to settle the change. In their view, even when the Contractor’s proposal submission was in line with the Independent Government Estimate (IGE) and provided reasonable pricing breakdown, the Government would request overly detailed supporting documentation that Contractors felt unreasonably prolonged the negotiation period.

In addition, the primary issue raised by the contractors focused on the time required to actually begin negotiations coupled with a lack of transparency in how the Government derived the IGE and the underlying assumptions on scope of work. Failing to align the scope of work within the Contractor’s proposal to the scope of the IGE often prolongs negotiations unnecessarily as both sides focus on the overall price instead of specific areas of misalignment.

Another major concern for contractors was the Government would often request full pricing backup to support all elements of a proposal, and the limited ability for contractors to fill gaps or holes in their pricing when firm pricing is not received from numerous subcontractors or consultants, which could subsequently delay proposal submission for weeks or months. An area of focus for contractors was working with the Government to develop reasonable and consistent

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practices for use where firm pricing cannot be established timely, and other methods to allow contractors to turn around proposals quickly in the absence of full pricing backup.

## **Recommended Best Practices**

Taken together, what AGC and USACE commonly see is a failure to effectively communicate beginning very soon after the contract was awarded. Jointly, AGC and USACE recommend the adoption of the following best practices that could improve this process:

1. Conduct an initial change order meeting at the beginning of the project. Discuss Government expectations of a change order proposal. Discuss the typical indirect cost mark-ups and submit the supporting documentation for bonds, insurance, overhead and typical labor costs. Establish a mutually acceptable method for filling gaps where firm pricing cannot be established or obtained. Establish an issue resolution ladder, realizing that not every change or issue needs to be elevated.
2. Conduct scope coordination meetings between the Government and Contractor utilizing a draft scope of work for complex, larger, and/or design-build changes, preferably before issuance of the RFP. The non-price information to be aligned in this meeting could include scope coordination matrices, detailed scope by trade, and anticipated quantities. Early validation of this information can facilitate scope alignment between the Contractor's proposal and the IGE, expediting negotiations.
3. The status of change orders and requests for information should be discussed at every progress meeting. The Contractor's change and RFI logs should be shared and discussed with the Government at least bi-monthly to identify and resolve any inconsistencies. Alignment of the change initiation date should occur at this time.
4. Monthly meetings that are focused solely on schedule. The meeting may be part of the monthly payment process to assure accurate schedule updates, but more importantly, both the contractor and the Government need to understand what is driving the schedule and the responsible party for delays on a monthly basis.
5. Pre-scheduled regular negotiation sessions to focus on resolution of quantum and merit issues. Prioritization and exchange of information should occur on a regular basis in order to keep the changes moving. The parties should communicate quantity and scope differences between the Contractor's proposal and the Government estimate, so these can be prioritized and resolved during negotiations.

## **USACE-AGC Actions**

Circling back to the beginning of this paper, the GAO study's sole recommendation was for USACE to establish a system to allow the upward reporting of change order status across all of the projects. In January 2020, an internal dashboard system was deployed to allow USACE leadership at all levels to monitor change order processing times and to identify issues that may require higher level engagement in this critical area.

Jointly, AGC and USACE have established goals to reduce the average change order processing time – from initiation of change to signed modification – as illustrated in the following table.

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**Joint Goals for Change Resolution (Undisputed Entitlement)**

<b>Change Category</b>	<b>Change Total Dollar Value</b>	<b>Duration*</b>
<b>Below Simplified Acquisition Threshold (SAT)</b>	<b>&lt; \$250,000</b>	<b>30-60 Days</b>
<b>Above SAT &amp; Below ACO Warrant</b>	<b>\$250,000 &lt; \$ &lt; \$500,000</b>	<b>60-90 Days</b>
<b>Above ACO Warrant &amp; Below Cost and Pricing Threshold</b>	<b>\$500,000 &lt; \$ &lt; \$2,000,000</b>	<b>90-120 Days</b>

In support of these joint goals, AGC and USACE are working together to develop a standard “Playbook” for change orders that both industry and the Government can utilize to align expectations, provide transparency into challenges and obstacles on both sides, and ultimately drive accountability for more timely resolution of change orders.

Key elements of the playbook will include:

- Flowcharts illustrating change procedures on both sides with explanation of each step, to allow both the Government and Contractors to understand challenges each other face to timely resolution of changes
- Guidance on calculation of allowable overhead per the Federal Acquisition Regulations
- Information describing USACE weighted guidelines calculation for profit on changes
- Example proposal forms compliant with DFARS clause 252.236-7000 including level of detail necessary for adequate backup
- A definition of a Request for Equitable Adjustment (REA), and guidance as to when either an REA or an unsolicited proposal is appropriate
- Suggested key information to share between the Contractor and Government to facilitate scope alignment between the Contractor’s proposal and IGE
- Examples of good and bad proposals