



Florida Department of Transportation

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CONSTRUCTION BULLETIN NO. 03-14
(FHWA Approved: 12/4/2014)

This Memo Has Expired

TO: DISTRICT CONSTRUCTION ENGINEERS

FROM: David A. Sadler, P.E., Director, Office of Construction

COPIES: Tom Byron, Rudy Powell, Bob Burleson, Nick Finch, Chad Thompson, Rafiq Darji

**SUBJECT: CONSTRUCTION PROJECT ADMINISTRATION MANUAL (CPAM)
CHANGES FOR CHAPTER 7 SECTIONS 3 and 4**

The CPAM needs to be updated to provide guidance on the use of state funded Contingency Supplemental Agreements, Initial Contingency Pay Items, Supplemental Agreements, and Unilateral Payment documents issued on federally funded, non-state highway system projects. The following changes to CPAM are effective the date of this Bulletin and will be incorporated into the next CPAM chapter/section revision.

7.3.1 Initiating Supplemental Agreements and Unilateral Payments

The District Operations staff will ensure that the terms of all **Supplemental Agreements and Unilateral Payments** are in the best interest of the Department and comply with procedures, specifications, and statutory requirements governing construction contract administration.

Before a Supplemental Agreements or Unilateral Payment can be issued against any Non-State Highway System, federally funded project being constructed by the Department for a Local Government, the Project Administrator shall ensure that the Design Project Manager has obtained a Maintenance Agreement between the Department and the Local Government (Refer to Financial Provisions for Joint Participation Agreements, Procedure 375-020-301). The Maintenance Agreement shall establish that the Local Government is responsible for additional project costs determined to be Federal Aid Non-Participating.

All **Supplemental Agreements and Unilateral Payments**, including those initiated in response to contract claims, will be supported and documented by an **Engineer's Estimate** and an **Entitlement Analysis** (see **Guidance Document 7-3-A**). Lump sum

items shall not be used without detailed itemization stating the quantities and unit prices the lump sum item was based on.

When a **Supplemental Agreement or Unilateral Payment** must be initiated on a project with consultant-prepared plans and contract documents, refer to **Procedure No. 375-020-010, Errors, Omissions, and Contractual Breaches by Professional Engineers on Department Contracts**.

7.4.5 Identifying the Need for a Contingency Supplemental Agreement or Work Order

Resident Level Responsibilities

The Project Administrator shall initiate a request for a **Contingency Supplemental Agreement, Form No. 700-010-79** in the event the Project Administrator anticipates additional work and the amount of such work exceeds the amount not committed against the **Initial Contingency Amount Pay Item**.

Before a **Contingency Supplemental Agreement, Form No. 700-010-79** can be issued against the contract, 50% of the **Initial Contingency Amount Pay Items** must be authorized for payment. Include with the request for **Contingency Supplemental Agreement** an **Initial Contingency Amount Pay Item** funds authorization summary.

Before a second or subsequent **Contingency Supplemental Agreement** can be issued against the project, 50% of the previous **Contingency Supplemental Agreement** for the project must be authorized for payment. Include with each request for additional **Contingency Supplemental Agreement**, a summary showing the minimum 50% funds authorization against the previous **Contingency Supplemental Agreement** has been made. As an exception; in the event a contract has local funds involved, and the local funding entity has placed the money on deposit with the Department, then the previous **Contingency Supplemental Agreement** must be in a status 10. However, the 50% authorization rule for **Work Orders** issued against previous **Contingency Supplemental Agreements** will not apply to **Contingency Supplemental Agreements** funded solely by those local funds.

Before a **Contingency Supplemental Agreement, Form No. 700-010-79** can be issued against any Non-State Highway System, federally funded project being constructed by the Department for a Local Government, the Project Administrator shall ensure that the Design Project Manager has obtained a Maintenance Agreement between the Department and the Local Government (Refer to **Financial Provisions for Joint Participation Agreements, Procedure 375-020-301**). The Maintenance Agreement shall establish that the Local Government is responsible for additional project costs determined to be Federal Aid Non-Participating.

7.4.7 Initial Contingency Amount Pay Item

District Level Responsibilities

An **Initial Contingency Amount Pay Item** has been established for funding additional work. An **Initial Contingency Amount Pay Item** is an alternate method of obtaining funds for performing additional work, as opposed to obtaining certification of availability of

funds and executing a **Contingency Supplemental Agreement**. To avoid obtaining certification of availability of funds and preparing and executing the initial **Contingency Supplemental Agreement**, and to provide a means to perform additional work as soon as the first day of a project, the Department has created an **Initial Contingency Amount Pay Item** that can be included in a contract prior to bid. The funds encumbered for this pay item will be available for **Work Orders** just as **Work Orders** are used on a **Contingency Supplemental Agreement**, but without the delay caused by obtaining certification of availability of funds and preparing and executing a **Contingency Supplemental Agreement**. When the funds made available by the **Initial Contingency Amount Pay Item** are expended, additional funds must be certified as available by the Office of Comptroller, and a **Contingency Supplemental Agreement Form No. 700-010-79** must be prepared and executed to provide additional contingency funds. An **Initial Contingency Amount Pay Item** quantity cannot overrun.

The **Initial Contingency Amount Pay Item** that has been set up is 999-25 for English unit projects and 2999-25 for Metric unit projects. The **Initial Contingency Amount Pay Item** will be based on the Department's estimate for the construction contract subject to the limitations in **CPAM Section 7.4.6.1**.

Per the **Work Program Instructions, Initial Contingency Amount Pay Items** should be shown as Federal-Aid non-participating in the Trns*port Proposal and Estimating System (PES). These pay items are to be used solely for **Work Orders** during project construction. The final participating vs. non-participating determination of funds associated with **Work Orders** issued against the **Initial Contingency Amount Pay Item** will be per **CPAM Section 7.4.9.7**. The designer must not associate any pay item notes or work items identified in the plans with these pay items.

The District Estimates Coordinator must enter an amount for this pay item in accordance with the limits established in **CPAM Section 7.4.6.1**. These pay items should be initiated at the same time that the contract duration is provided.

Initial Contingency Amount Pay Items shall not be included in Fast Response and/or Push-button Contracts.

*Before an **Initial Contingency Amount Pay Item** can be established on any Non-State Highway System, federally funded project to be constructed by the Department for a Local Government, the Design Project Manager shall obtain a Maintenance Agreement between the Department and the Local Government (Refer to **Financial Provisions for Joint Participation Agreements, Procedure 375-020-301**). The Maintenance Agreement shall establish that the Local Government is responsible for additional project costs determined to be Federal Aid Non-Participating.*

7.4.8 Contingency Supplemental Agreement

7.4.8.1 General

A **Contingency Supplemental Agreement, Form No. 700-010-79**, authorizing commitment of funds for an amount not to exceed the limits defined above shall be executed for the encumbered funds designated for additional work after the encumbrance has been certified by the Office of Comptroller. Only the Secretary of Transportation can delegate authority for approval and execution of **Contingency Supplemental**

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Agreements by the Department. The Secretary delegates the authority for Department approval of **Contingency Supplemental Agreements** and the authority for Department execution of **Contingency Supplemental Agreements**, in accordance with the limitations described in **CPAM Chapter 7.3.14**. A **Contingency Supplemental Agreement** shall not be executed until the DCE or designee has obtained funds approval for that **Contingency Supplemental Agreement** through the CFM system. **Work Orders** shall not be executed against the **Contingency Supplemental Agreement** until the **Contingency Supplemental Agreement** authorizing commitment of the funds has been executed.

Contractor execution of **Contingency Supplemental Agreements** shall be in accordance with **CPAM Chapter 7.3.14**.

In order to ensure that funds are readily available for additional work, a **Contingency Supplemental Agreement** for an additional amount not to exceed the limits defined in **CPAM Section 7.4.6** may be executed prior to executing **Work Orders** that deplete all funds committed by a previous **Contingency Supplemental Agreement or Initial Contingency Amount Pay Item** for that project. See **Contract Funds Management Funds Approval, Procedure No. 350-020-200** for restrictions.

All terms specified on the **Contingency Supplemental Agreement Form** shall apply; no additional terms or disclaimers concerning costs of additional work shall be accepted. The terms of the **Contingency Supplemental Agreement** shall not be modified. If an agreement for performance of additional work or a contract change cannot be obtained between the Department and the Contractor within the terms of the **Contingency Supplemental Agreement or Supplemental Agreement** then a **Unilateral Payment** shall be prepared and executed (refer to **CPAM Chapter 7.3**).

Contingency Supplemental Agreements shall not be issued against Fast Response and/or Push-button Contracts.

*Before a **Contingency Supplemental Agreement, Form No. 700-010-79** can be issued against any Non-State Highway System, federally funded project being constructed by the Department for a Local Government, the Project Administrator shall ensure that the Design Project Manager has obtained a Maintenance Agreement between the Department and the Local Government (Refer to **Financial Provisions for Joint Participation Agreements, Procedure 375-020-301**). The Maintenance Agreement shall establish that the Local Government is responsible for additional project costs determined to be Federal Aid Non-Participating.*

If you have any questions, please contact Alan Autry at (850) 414-4195.

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