

# Compensation for Extra Work and Delay

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**Extra Work:** Any “work” which is required by the Engineer to be performed and which is **not otherwise covered or included** in the project by the existing Contract Documents, whether it be in the nature of additional work, altered work, deleted work, work due to differing site conditions, or otherwise. This term does not include a “delay”.

**Work:** All labor, materials and incidentals required to execute and complete the requirements of the Contract including superintendence, use of equipment and tools, and all services and responsibilities prescribed or implied.

**Controlling Work Items:** The activity or work item **on the critical path** having the least amount of total float. The controlling item of work will also be referred to as a Critical Activity.

**Delay:** Any unanticipated event, action, force or factor which extends the Contractor's time of performance of **any controlling work item** under the Contract. The term "delay" is intended to cover all such events, actions, forces or factors, whether styled "delay", "disruption", "interference", "impedance", "hindrance", or otherwise, which are beyond the control of and not caused by the Contractor, or the Contractor's subcontractors, materialmen, suppliers or other agents. This term does not include "extra work".

**Claims for  
Extra Work  
and/or Delay**



**Fact Pattern  
“X”**



**Additional  
Compensation  
and/or Time**

See 5-12.10(2)

## When there is a “unit price” (pay item):

For any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, include in the Contract unit price (or lump sum price) for the pay item or items the cost of all labor, equipment, materials, tools and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.

**9-2.1.1 Fuels:** The Department will, in the Contract Documents, provide an estimated quantity for fuel requirements for gasoline and diesel to cover the work specified in the Contract. Price adjustments will be made only for the amount of gasoline and diesel fuel estimated by the Department as required to complete the Contract. The requirement of each type of fuel for each pay item is estimated by multiplying the Department's standard fuel factor for that pay item by the quantity of that pay item. On Contracts with an original Contract Time in excess of 120 calendar days, the Department will make price adjustments on each applicable progress estimate to reflect increases or decreases in the price of gasoline and diesel from those in effect during the month in which bids were received. The Contractor will not be given the option of accepting or rejecting these adjustments. Price adjustments for these fuels will be made only when the current fuel price (CFP) varies by more than 5% from the price prevailing in the month when bids were received (BFP), and then only on the portion that exceeds 5%.

Price adjustments will be based on the monthly bulk average price for gas and diesel as derived by the Department. These average indexes shall be determined by averaging bulk fuel prices on the first day of each month as quoted by major oil companies that are reasonably expected to furnish fuel for projects in the State of Florida. Average price indexes

9-2.1

For any item of work contained in the proposal, except as might be specifically provided otherwise in the basis of payment clause for the item, include in the Contract unit price (or lump sum price) for the pay item or items the cost of all labor, equipment, materials, tools and incidentals required for the complete item of work, including all requirements of the Section specifying such item of work, except as specifically excluded from such payments.

Pb = Average price for fuel prevailing during the month “b” when bids were received on this Contract.

When fuel prices have increased between month of bid and month of this progress estimate:

$A_i = F_i (P_i - 1.05 P_b)$  during a period of increasing prices.

A<sub>i</sub> = Total dollar amount - positive or negative - of the cost adjustment for each kind of fuel used by the Contractor during the month “i.”

F<sub>i</sub> = Total gallons calculated as being used during the month.

P<sub>i</sub> = Average price for fuel prevailing during month “i.”

P<sub>b</sub> = Average price for fuel prevailing during the month “b” when bids were received on this Contract.

**Labor**  
**Equipment**  
**Tools**  
**Materials**  
**Incidentals**  
**Requirements**

**Unit Price**



## When there is a “unit price” (pay item):

### 9-3 Compensation for Altered Quantities.

**9-3.1 General:** When alteration in Plans or quantities of work not requiring a supplemental agreement as hereinbefore provided for are offered and performed, the Contractor shall accept payment in full at Contract unit bid prices for the actual quantities of work done, and no allowance will be made for increased expense, loss of expected reimbursement, or loss of anticipated profits suffered or claimed by the Contractor, resulting either directly from such alterations, or indirectly from unbalanced allocation among the Contract items of overhead expense on the part of the bidder and subsequent loss of expected reimbursement therefore, or from any other cause.

Compensation for alterations in Plans or quantities of work requiring supplemental agreements shall be stipulated in such agreement, except when the Contractor proceeds with the work without change of price being agreed upon, the Contractor shall be paid for such increased or decreased quantities at the Contract unit prices bid in the Proposal for the items of work. If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the work, the Contractor agrees to do the work in accordance with 4-3.2.



Entry into 4-3.2

by clear and convincing proof that the determination by the Engineer was without any reasonable basis.

**4-3.2 Increase, Decrease or Alteration in the Work:** The Engineer reserves the right to make alterations in the character of the work which involve a substantial change in the nature of the design or in the type of construction or which materially increases or decreases the cost or time of performance. Such alteration shall not constitute a breach of Contract, shall not invalidate the Contract or release the Surety.

Notwithstanding that the Contractor shall have no formal right whatsoever to any extra compensation or time extension deemed due by the Contractor for any cause unless and until the Contractor follows the procedures set forth in 5-12.2 for preservation, presentation and resolution of the claim, the Contractor may at any time, after having otherwise timely submitted a notice of intent to claim or preliminary time extension request pursuant to 5-12.2 and 8-7.3.2, submit to the Department a request for equitable adjustment of compensation or time or other dispute resolution proposal. The Contractor shall in any request for equitable adjustment of compensation, time, or other dispute resolution proposal certify under oath and in writing, in accordance with the formalities required by Florida law, that the request is made in good faith, that any supportive data submitted is accurate and complete to the Contractor's best knowledge and belief, and that the amount of the request accurately reflects what the Contractor in good faith believes to be the Department's responsibility. Such certification must be made by an officer or director of the Contractor with the authority to bind the Contractor. Any such certified statements of entitlement and costs shall be subject to the audit provisions set forth in 5-12.14. While the submittal or review of a duly certified request for equitable adjustment shall neither create, modify, nor activate any legal rights or obligations as to the Contractor or the

**Engineer's Estimate +  
Entitlement Analysis**

**or**

**4-3.2.1**

**4-3.2.1 Allowable Costs for Extra Work:** The Engineer may direct in writing that extra work be done and, at the Engineer's sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

1. Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen

additional work are included in the compensation already provided below and any time extension entitlement hereunder will be without additional monetary compensation. The Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.

**4-3.2.1 Allowable Costs for Extra Work:** The Engineer may direct in writing that extra work be done and, at the Engineer's sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement or in the following manner:

1. Labor and Burden: The Contractor will receive payment for actual costs of direct labor and burden for the additional or unforeseen work. Labor includes foremen

## **Three alternatives for payment:**

- 1. Pay items (already in the Contract)**
- 2. Mutual agreement (between FDOT and Contractor)**
- 3. Standard Specification 4-3.2**

**Type 1: Pure Extra Work**



## TYPE 1 - Pure Extra Work

**SCENARIO:** Engineer modifies several drainage structures located outside the roadway by increasing pipe size.

- This work is **not covered by existing pay items** for the increased pipe size.
- This work is **not a controlling item of work**.
- Work is performed by **subcontractor**.

**HOW PAID?** Paid under 4-3.2.2 and 4-3.2.1

- **Subcontractor:** Actual cost incurred by subcontractor for labor, materials & equipment used and 17.5% for indirects.
- **Prime:** Gets subcontractor **mark-up** (10% - 5%) and the actual **premium on bond** cost for additional work **OR** the **modified formula** under 4-3.2.2 whichever is greater.
- Sub gets up to actual premium due for the bond for extra work if sub is required by Prime to have bond.
- This is full and complete payment.
- No time granted since not a controlling item of work.

## TYPE 1 - Pure Extra Work (continued)

**SCENARIO:** Engineer modifies several drainage structures located outside the roadway by increasing pipe size.

- This work is **not covered by existing pay items** for the increased pipe size.
- This work is **not a controlling item of work.**
- Work is performed by **subcontractor.**

**9-3.1** “ If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the work, the Contractor agrees to do the work in accordance with 4-3.2.”

work if sub is required by Prime to have bond.

- This is full and complete payment.
- No time granted since not a controlling item of work.

and equipment  
for the formula  
additional work.  
and for extra

## **TYPE 1: Pure “Extra Work”**

**HOW PAID?** Paid under 4-3.2.2 and 4-3.2.1

- Sub’s actual cost incurred for labor, materials & equipment used for the extra work and 17.5% for indirects.
  - **4-3.2.2 (4-3.2.1 (1), (2), (3) and 4(a))**
- Sub gets up to actual paid bond premium if sub required by Prime to have bond.
  - **4-3.2.2**
  - Prime gets actual premium for bond.
    - **4-3.2.1(4)(a)(1)**
  - Prime gets subcontractor mark-up (10% - 5%).\*
    - **4-3.2.1(4)(a)(2)**
- This is full and complete payment.
  - **4-3.2, 4-3.5, and 5-12.6.1**
- No time granted since not a controlling item of work.
  - **8-7.3.2 “when a controlling item of work is delayed”**
- For the Prime, no days to apply the modified formula.
- Note that Prime performed none of the extra work. Therefore, 4-3.2.2 was applied to the Prime.

## TYPE 1: Pure “Extra Work”

**HOW PAID?** Paid under 4-3.2.2 and 4.3.2.1

- Sub’s actual cost for labor, materials & equipment used for the extra work plus the 17.5% for indirects.

- **4-3.2.2 (4-3.2.1 (1), (2), (3), and 4(a))**

- Prime gets subcontractor mark-up (10% - 5%).

- **4-3.2.2 (a)(2)**

- Prime gets 17.5% for insurance & bond.

- Sub requ
- Thi
- No

**4-3.2.2 “Compensation for the additional or unforeseen work performed by a subcontractor shall be limited solely to that provided for in 4-3.2.1 (1), (2), (3) and (4)(a). In addition, the Contractor compensation is expressly limited to the greater of the total provided in either 4-3.2.1(4)(a) or (4)(b), except that the Average Overhead Per-Day calculation is as follows:”**

(4)(a)(1) &  
(4)(a)(2)

## TYPE 1: Pure “Extra Work”

**HOW PAID?** Paid under 4-3.2.2 and 4-3.2.1

- Sub’s actual cost incurred for labor, materials & equipment used for the extra work + 17.5% indirects.

- 4-3.2.2 (4.3.2.1 (1), (2), (3), and 4(a))

- Prime gets subcontractor mark-up (10% - 5%).

- 4-3.2.1(4)(a)(2)

- Prime gets actual paid premium for bond.

- 4-3.2.1(4)(a)(1)

- Sub gets actual paid bond premium if sub required by bond

- This contract shall provide for a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work.
- No

## TYPE 1: Pure “Extra Work”

**HOW PAID?** Paid under 4-3.2.1 as Extra Work.

- Sub’s actual cost incurred for labor, materials & equipment used for the extra work + 17.5 indirects.

• 4-3.2.2 (4-3.2.1 (1), (2), (3), and 4(a))

- Prime gets subcontractor mark-up (10% - 5%).

  - 4-3.2.1(4)(a)(2)

- Prime gets actual paid % for insurance & bond.

  - 4-3.2.1(4)(a)(1)

- Sub gets up to actual paid bond premium if sub required by Prime bond.

  - “1. Bond: The Contractor will receive

- This is compensation for any premium for

  - acquiring a bond for such additional or

- No time unforeseen work at the original Contract

  - bond rate paid by the Contractor.”

de

## TYPE 1: Pure “Extra Work”

**HOW PAID?** Paid under 4-3.2.1 as Extra Work.

- Sub’s actual cost of labor and equipment used
  - 4-3.2.2
- Prime gets sub’s actual cost
  - 4-3.2.1(4)
- Prime gets actual cost of labor and equipment used
  - 4-3.2.1(4)(a)(1)
- Sub gets up to actual paid bond premium if sub required by Prime to have bond.
  - 4-3.2.2
- This is full & complete payment.
  - 4-3.2, 4-3.5, and 5-12.6.1
- No time granted since not a controlling item of work.
  - 8-7.3.2 “when a controlling item of work is delayed”

“The subcontractor may receive compensation for any premium for acquiring a bond for the additional or unforeseen work; provided . . .”

## TYPE 1: Pure “Extra Work”

### HOW PAID? Paid

- Sub’s actual cost for labor and equipment used for extra work.
  - 4-3.2.2 (4)
- Prime gets subcontractor’s actual cost for such additional work . . . .”
  - 4-3.2.1(4)
- Prime gets actual paid bond premium for bond.
  - 4-3.2.1(4)(a)(1)
- Sub gets up to actual paid bond premium if sub required by Prime to have bond.
  - 4-3.2.2
- This is full and complete payment.
  - 4-3.2, 4-3.5, and 5-12.6.1
- No time granted since not a controlling item of work.
  - 8-7.3.2 “when a controlling item of work is delayed . . . .”

“The monetary compensation provided for below constitutes full and complete payment for such additional work . . . .”

## TYPE 1: Pure “Extra Work”

“Extra work authorized in writing by the Engineer will be paid in accordance with the formula in 4-3.2. Such payment **will be the full extent of all monetary compensation entitlement** due to the Contractor for such extra work.”

- Sub gets full paid % for insurance & bond, if sub requires contractor to have insurance and bond.
  - 4-3.2.2
- This is full & complete payment.
  - 4-3.2, 4-3.5, and 5-12.6.1
- No time granted since not a controlling item of work.
  - 8-7.3.2 “when a controlling item of work is delayed . . . .”

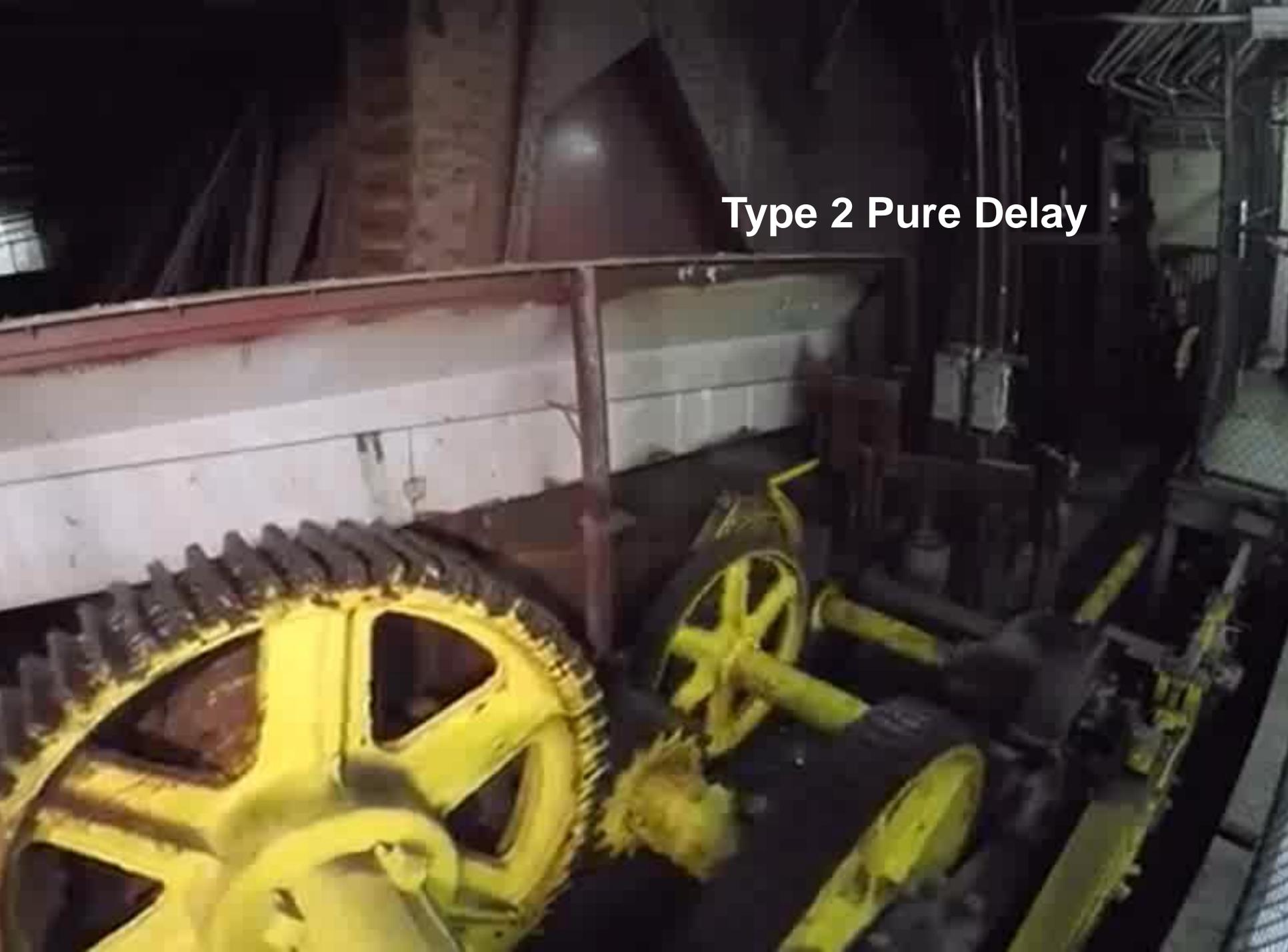
## TYPE 1: Pure “Extra Work”

**5-12.6.1** “Compensation for Extra Work: Notwithstanding anything to the contrary contained in the Contract Documents, the Contractor shall not be entitled to any compensation beyond that provided for in 4-3.2.”

sub required by Prime to have in place and bond.

- **4-3.2.2**
- This is full & complete payment.
  - **4-3.2, 4-3.5, and 5-12.6.1**
- No time granted since not a controlling item of work.
  - **8-7.3.2 “when a controlling item of work is delayed . . . .”**

**Type 2 Pure Delay**



## TYPE 2 - Pure Delay SCENARIO “A” (no concurrent delay)

- Contractor issues RFI on bridge rehab job questioning the adequacy of existing gears due to possible signs of metal fatigue.
- The mechanical work is the **controlling item of work**, and FDOT directs Contractor to **stop work** until FDOT can investigate the issue.
- **14 days later** FDOT directs Contractor to resume work, with no remedial measures or changes.
- Contractor reallocates most resources (the mitigation requirement) – but, not all resources.
- This is 1<sup>st</sup> FDOT caused delay on job.

**“stop work”**

**“resume work”**



## TYPE 2 Pure “Delay” (no concurrent delay)

### HOW PAID:

- **8-7.3.2** Contractor gets a 14 day time extension since it is a controlling item of work.
- **4-3.2** If not **extra work** go to 5-12.6.2.1
- **5-12.6.2.1** Contractor gets “actual idle **labor** (including supervisory personnel) and **equipment** and **indirect costs, expenses, and profit** thereon, as provided for in **4-3.2.1(4)** and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.”  
*(not an estimate)*
- **4-3.2.1(4)** Contractor gets the greater of the formula:  
**(4)(b)** (8%) per day for (14 – 10 = 4 days) or **(4)(a)** 17.5% on the actual idle labor and equipment (materials left out per 5-12.6.2.1).
- **5-12.6.2** This is “the Contractor’s sole monetary remedy for any delay . . . .”

## TYPE 2 Pure “Delay” (no concurrent delay)

### HOW PAID:

- **8-7.3.2** Contractor gets a 14 day time extension since it is a controlling item of work.
- **4-3.2** If no extra work go to 5-12.6.2.1
- **5-12.6.2.1** Contractor gets “actual idle labor and equipment and materials, expenses, and profit thereon, and interest incurred on Contract
- **4-3.2.1(4)** (8%) per actual id 12.6.2.1).
- **5-12.6.2** for any d

“Whenever the Engineer **suspends** the Contractor’s operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer **will** grant a time extension for any delay to a **controlling item of work** due to such suspension.”

## TYPE 2 Pure “Delay” (no concurrent delay)

### HOW PAID:

- **8-7.3.2** Contractor gets a 14 day time extension since it is a controlling item of work.
- **4-3.2** If not **extra work** go to 5-12.6.2.1
- **5-12.6.2.1** Contractor gets “actual idle **labor** and **equipment** and **indirect costs**, expenses, and profit thereon, as provided for in **4-3.2.1(4)** and solely for costs incurred beyond reasonable mitigation thereof the Contractor may recover.”
- **4-3.2.1** Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect **delay** to a controlling work item . . . except only as provided for under 5-12.6.2.1.”
- **5-12.6.2.1** Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect **delay** to a controlling work item . . . except only as provided for under 5-12.6.2.1.”

## TYPE 2 Pure “Delay” (no concurrent delay)

### HOW PAID:

- **8-7.3.2** Contractor gets a 14 day time extension since it is a controlling item of work.
- **4-3.2** If not **extra work** go to 5-12.6.2.1
- **5-12.6.2.1** Contractor gets “actual idle labor . . . and **equipment** and **indirect costs**, expenses, and profit thereon, as provided for in **4-3.2.1(4)** and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” (not an estimate)
- **4-3.2.1(4)** Contractor gets the **profit** of the formula (8%)

- **5-12.6.2.1** “For any delay claim, the Contractor shall be entitled to monetary compensation for the **actual idle labor (including supervisory personnel) and equipment, and indirect costs, expenses, and profit thereon**, as provided for in **4-3.2.1(4)** and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.”

## TYPE 2 Pure “Delay” (no concurrent delay)

- **4-3.2.1(4)** “. . . the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, **that when combined together are equal to or less than ten calendar days . . . .**”

the Contractor is not responsible for any delay periods incurred beyond reasonable mitigation thereof the Contractor could not have reasonably anticipated or undertaken.” (not an estimate)

- **4-3.2.1(4)** Contractor gets the greater of the formula: **(4)(b)** (8%) per day for (14 – 10 = 4 days) or **(4)(a)** 17.5% on the actual idle labor and equipment (materials left out per 5-12.6.2.1).
- **5-12.6.2** This is “the Contractor’s sole monetary remedy for any delay . . . .”

\* 10 days deducted even if non-compensable time.

## TYPE 2 Pure “Delay” (no concurrent delay)

### HOW PAID:

- **8-7.3.2** is a contract . . . the additional compensation set forth in 5-12.6.2.1 shall be the Contractor’s **sole monetary remedy** for any delay other than to perform extra work caused by the Department . . .”
- **4-3.2** If Contractor could have undertaken.” (not an estimate)
- **5-12.6.2** equipment thereon, incurred by Contractor could have undertaken.” (not an estimate)
- **4-3.2.1(4)** Contractor gets the greater of the formula: **(4)(b)** (8%) delay for (14 – 10 = 4 days) or **(4)(a)** 17.5% on the actual labor and equipment (materials left out per 5-12.6.2.1).
- **5-12.6.2** This is “the Contractor’s sole monetary remedy for any delay . . .”

## TYPE 2 - Pure “Delay” SCENARIO “B” (concurrent delay)

- Contractor issues RFI on bridge rehab/roadway reconstruction job questioning adequacy of existing gears due to possible signs of metal fatigue.
- The mechanical work is a **controlling item of work**, and FDOT directs contractor to **stop work** until FDOT can investigate the issue.
- However, for the entire time period relevant to this example, a **concurrent Contractor delay** occurring on controlling roadway work due to limerock supply problem.
- 14 days later, FDOT directs Contractor to **resume work**, with no remedial measures or changes.
- Contractor reallocates most bridge resources – but, not all resources.
- This is the **1<sup>st</sup>** FDOT caused delay on job.

**“stop work”**

**“resume work”**



- **TYPE 2 ---- Pure “Delay” (concurrent delay)**
- **HOW PAID:**
- **8-7.3.2** Contractor gets a 14 day time extension since it is a controlling item of work.
- **4-3.2** If not extra work, go to 5-12.6.2.1 (see last paragraph).
- No right to “indirect costs for any days of concurrent delay.” **(4-3.2.1(4))**
- **4-3.2.1(4)** Contractor does **NOT** get the greater of the formula (8%) per day for (14 – 10 = 4 days) or (4)(a) 17.5% on the actual idle labor and equipment (materials left out per 5-12.6.2.1) due to Contractor’s concurrent delay.
- **5-12.6.2.1** Contractor gets “actual idle labor (including supervisory personnel) and equipment and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” (not an estimate).
- **5-12.6.2** This is “the Contractor’s sole monetary remedy for any delay . . . .”

- **TYPE 2 ---- Pure “Delay” (concurrent delay)**
- **HOW PAID:**
- **8-7.3.2** Contractor gets a 14 day time extension since it is a controlling item of work.
- **4-3.2** For extra work, go to 5-12.6.2.1 (see last paragraph).
- No right to direct costs for any days of concurrent delay.” (4-3.2.1)
- **4-3.2.1** Contractor **NOT** get the greater of the formula (8%) per day for  $(14 - 10 = 4)$  days @ 17.5% on the actual idle labor and equipment concurrent with the delay.”
- **5-12.6.2.1** Contractor’s operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer **will grant** a time extension for any delay to a **controlling item of work** due to such suspension.”
- **5-12.6.2.1** ...”

- **TYPE 2 ---- Pure “Delay” (concurrent delay)**
- **HOW PAID:**
- **8-7.3.2** Contractor gets a 14 day time extension since it is a controlling item of work.
- **4-3.2** If not extra work, go to 5-12.6.2.1 (see last paragraph).
- No right to “indirect costs for any days of concurrent delay.” (5-12.6.2.1(d))
- **4-3.2.1** Contractor does **NOT** get the greater of the formula (8%) per day for (14 – 10) = 4 days (4)(a) 17.5% on the actual idle labor and equipment.

**“Contractor shall have no right to any monetary compensation or damages whatsoever for any direct or indirect delay to a controlling work item arising out of or in any way related to the circumstances leading up to or resulting from additional work (but not relating to the actual performance of the additional work, which is paid for as otherwise provided herein), except only as provided for under 5-12.6.2.1.”**

- **5-12.6.2.1** indirect costs for any days of concurrent delay.
- **3.2.1** mitigation costs for any days of concurrent delay.
- **5-12.6.2.1** ...

“Further, for (a) and (b) above, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the **Contractor shall be entitled to a time extension** for each day that a controlling work item is delayed by the Department but shall have **no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay.**”

delay. (4)

- **4-3.2.1(4)** Contractor does **NOT** get the greater of the formula (8%) per day for  $(14 - 10 = 4 \text{ days})$  or (4)(a) 17.5% on the actual idle labor and equipment (materials left out per 5-12.6.2.1) due to Contractor's concurrent delay.
- **5-12.6.2.1** Contractor gets “actual idle **labor** (including supervisory personnel) and **equipment** and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and **solely** for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” (not an estimate).
- **5-12.6.2** This is “the Contractor's sole monetary remedy for any delay . . . .”

- **TYPE 2 ---- Pure “Delay” (concurrent delay)**

- **HOW PAID:**

- **8.7.3.1 5-12.6.2.1** “For any delay claim, the Contractor shall be entitled to monetary compensation for the **actual idle labor** (including supervisory personnel) **and equipment**, and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.”

equipment (material, machinery, and equipment) due to Contractor's concurrent delay. See 4-3.2.1(d)(2) (means d1 and d2).

- **5-12.6.2.1** Contractor gets “actual idle **labor** (including supervisory personnel) and **equipment** and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” (not an estimate).
- **5-12.6.2** This is “the Contractor’s sole monetary remedy for any delay . . . .”

- **TYPE 2 ---- Pure “Delay” (concurrent delay)**

- **HOW PAID:**

- **8.7.3.2** Contractor gets a 14 day time extension since it is a controlling item of work.

- **4-3.2**

- No r  
delay

- **4-3.2**

- day fo  
equipm  
concurrent delay

“the additional compensation set forth in 5-12.6.2.1 shall be the Contractor’s **sole monetary remedy** for any delay other than to perform extra work caused by the Department . . . .”

- **5-12.6.2.1**

- Contractor gets “actual idle **labor** (including supervisory personnel) **equipment** and indirect costs, expenses, and profit thereon. . . . provided for in 4-3.2.1(4) and **solely** for costs incurred beyond that reasonable mitigation thereof the Contractor could have undertaken.” (not an estimate).

- **5-12.6.2**

- This is “the Contractor’s sole monetary remedy for any delay . . . .”

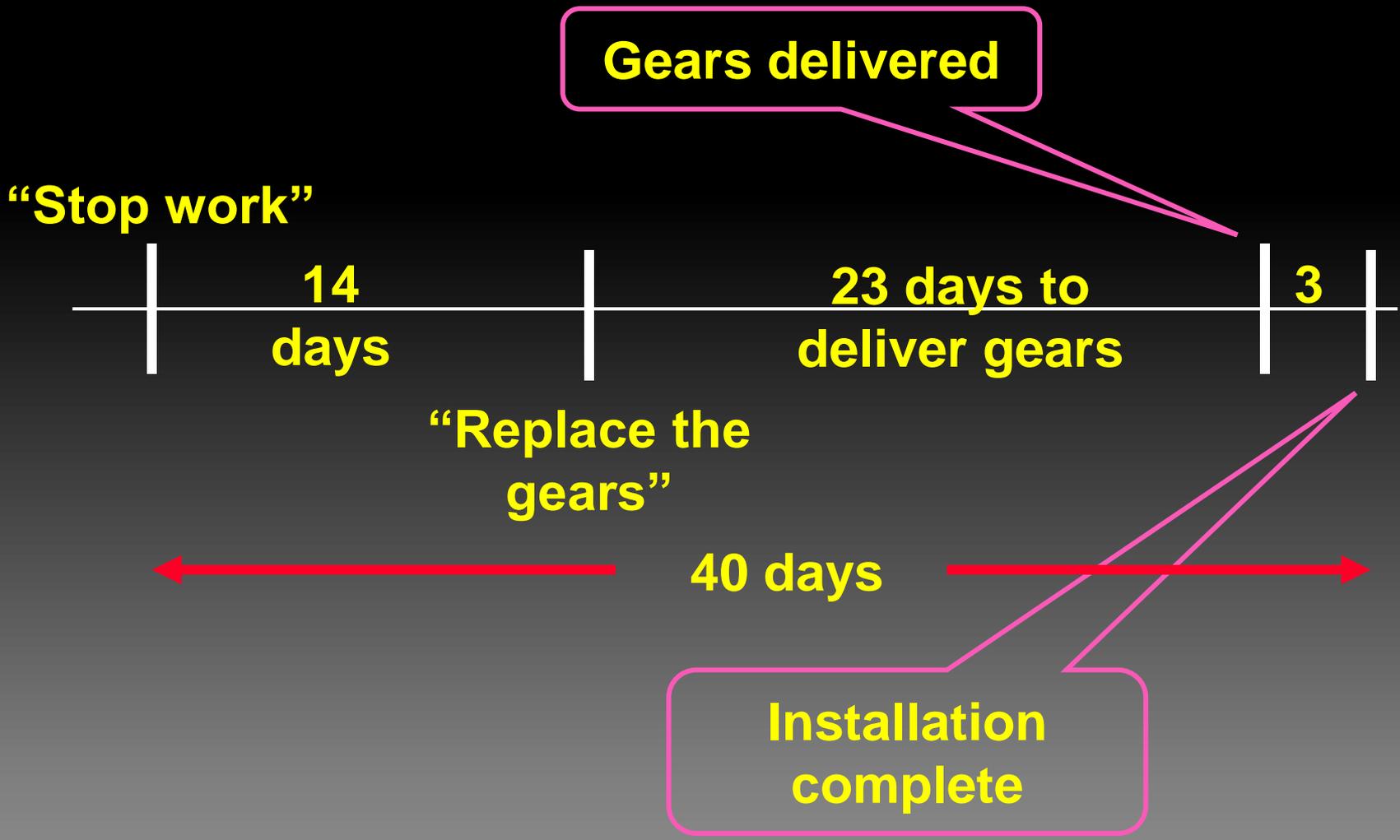
A close-up photograph of a green-painted steel beam. The beam is heavily corroded, with a large, dark, circular hole in the center. The edge of the hole is jagged and rusted. The beam is surrounded by other steel components, including a diagonal brace and a horizontal beam, all connected by numerous bolts. The overall appearance is one of significant structural damage and decay.

**Type 3  
Extra Work and Delay**

10/31/2014

## TYPE 3 - Combination “Extra Work and Delay” SCENARIO A (no concurrent delay)

- Contractor issues RFI on bridge rehab job questioning adequacy of existing gears due to possible signs of metal fatigue.
- The mechanical work is a **controlling item of work**.
- FDOT directs contractor to **stop work** until FDOT can investigate issue.
- Contractor reallocates most resources (mitigates) – but, not all resources.
- **14** days later, FDOT directs Contractor to **replace** the gears.
- Takes **23** days to **deliver** new gears and **3** days to **install**
- This is the 1<sup>st</sup> FDOT caused delay on job.



# TYPE 3 - Combination “Extra Work and Delay”

## HOW COMPENSATED:

### Time:

- 14 days granted per **8-7.3.2** for controlling item of work suspended by FDOT.
- 23 days granted per **8-7.3.2** for delay to controlling item of work.
- 3 day time extension granted per **4-3.2** and **8-7.3.1** for extra work that is controlling and extends completion.
- Contractor gets **total 40 day time extension** (14 + 23 + 3 = 40 days).

# TYPE 3 - Combination “Extra Work and Delay”

## HOW COMPENSATED:

### Time:

- 14 days granted per 8-7.3.2 for controlling item of work suspended by FILOT.
- 23 days granted per 8-7.3.2 for delay to controlling item of work.

**8-7.3.2** “Whenever the Engineer suspends the Contractor’s operations, as provided in 8-6, for reasons other than the fault of the Contractor, the Engineer will grant a time extension for any delay to a controlling item of work due to such suspension.” (14 + (2) and

# TYPE 3 - Combination “Extra Work and Delay”

## HOW COMPENSATED:

### Time:

- **14** days granted per **8-7.3.2** for controlling item of work suspended by FDOT.
- **23** days granted per **8-7.3.2** for delay to controlling item of work.

**8-7.3.2** “The Department may grant an extension of Contract Time when a controlling item of work is delayed by factors not reasonably anticipated or foreseeable at the time of bid.”

- Contractor gets **total 40 day time extension** (14 + 23 + 3 = 40 days).

# TYPE 3 - Combination “Extra Work and Delay”

## HOW COMPENSATED:

### Time:

- 14 days of work
- 23 days of work
- 4-3.2 “The Contractor shall be entitled to a time extension only to the extent that the performance of any portion of the additional work is a controlling work item . . .”
- 3 day time extension granted per 4-3.2 and 8-7.3.1 for extra work that is controlling and extends completion.
- Contractor gets **total 40 day time extension** (14 + 23 + 3 = 40 days).

# TYPE 3 - Combination “Extra Work and Delay”

## HOW COMPENSATED:

Time

**8-7.3.1** “The Department may grant an extension of Contract Time when it increases the Contract amount due to overruns in original Contract items, adds new work items, or provides for unforeseen work.”

- **14** days of Contract Time for extra work.
- **23** days of Contract Time for extra work controlling and extending completion.
- **3** day time extension granted per **4-3.2** and **8-7.3.1** for extra work that is controlling and extends completion.
- Contractor gets **total 40 day time extension** (14 + 23 + 3 = 40 days).

## Additional Costs for the 14 days of delay:

- **4-3.2** If not extra work go to 5-12.6.2.1
- **5-12.6.2.1** Contractor gets “actual idle **labor** (including supervisory personnel) and **equipment** and **indirect costs, expenses, and profit thereon**, as provided for in **4-3.2.1(4)** and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” (not an estimate)
- **4-3.2.1(4)** Contractor gets the greater of the formula **(4)(b)** (8%) per day for (14 – 10 = 4 days) or **(4)(a)** 17.5% on the actual idle labor and equipment (“materials” left out per 5-12.6.2.1).

10 days deducted

## Additional Costs for the 23 days of delay:

- **4-3.2** If not extra work go to 5-12.6.2.1
- **5-12.6.2.1** Contractor gets “actual idle **labor** (including supervisory personnel) and **equipment** and **indirect costs, expenses, and profit thereon**, as provided for in **4-3.2.1(4)** and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” (not an estimate)
- **4-3.2.1(4)** Contractor gets the greater of the formula (8% per day for 23 days) or (4)(a) 17.5% on the actual idle labor and equipment (materials left out per 5-12.6.2.1). 10 days deducted only once

## Additional Costs for the 3 days of extra work:

- **Working: 4.3.2.1** Contractor gets:
  - (1) Labor and burden
  - (2) Materials and supplies
  - (3) Equipment
  - (4) Indirect costs, expenses, and profit
- **4.3.2.1(4)** Contractor gets the greater of the formula (8%) per day for 3 days or **4.3.2.1(4)(a)** 17.5% on the actual labor, materials, and equipment.
- **Idle: 5-12.6.2.1** Contractor gets “actual idle labor (including supervisory personnel) and **equipment** and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” (*not an estimate*)
- Compensation for actual paid bond premium depends on whether **4(a)** or **4(b)** is selected by the Contractor.

Those idle workers not performing the extra work

## Additional Costs for the 3 days of extra work:

- **Working: 4.3.2.1** Contractor gets:
  - (1) Labor and burden
  - (2) Materials and supplies
  - (3) Equipment
  - (4) Indirect costs, expenses, and profit
- **4.3.2.2** Contractor gets the greater of the formula (8%) per day for 3 days or **4.3.2.1(4)(a)** 17.5% on the actual idle labor, materials, and equipment.
- **Idle: 5-** Contractor gets “actual idle labor and equipment direct costs, expenses, and profit thereon for in 4-3.2.1(4) and solely for costs

Those idle workers not performing the extra work

**4-3.2.1** “The Engineer may direct in writing that extra work be done and, at the Engineer’s sole discretion, the Contractor will be paid pursuant to an agreed Supplemental Agreement **or** in the following manner:”

**5-12.6.2.2 Compensation for Indirect Impacts of Delay:** When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is less than the number of calendar days for which entitlement to a time extension is granted for a controlling work item caused solely

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for

mental agreements, and days of suspended work.

$$D = \frac{A \times C}{B}$$

Where: A = Original Contract Amount  
B = Original Contract Time  
C = 8%  
D = Average Overhead Per Day

**5-12.6.2.2 Compensation for Indirect Impacts of Delay:** When the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, greater than ten calendar days the Department will compensate the Contractor for jobsite overhead and other indirect impacts of delay, such indirect impacts including but not being limited to unabsorbed and extended home office overhead, according to the formula set forth below and solely as to such number of calendar days of entitlement that are in excess of ten calendar days. No other jobsite overhead and other indirect impacts of delay shall be compensable under any circumstances whatsoever, nor shall the Contractor be entitled under any circumstances to receive compensation for jobsite overhead and other indirect impacts of delay beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No compensation, whatsoever, will be provided to the Contractor for any jobsite overhead and other indirect impacts of delay for any number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the

otherwise ultimately determined in favor of the Contractor to be, more than ten calendar days and the Contractor also fully assumes all responsibility and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when added together are equal to or less than ten calendar days and for which either monetary compensation is otherwise provided for or more calendar days of time extension entitlement for each day exceeding ten calendar days. All calculations under this provision shall exclude days, days used for performing additional work, days of non-work days, mental agreements, and days of suspended work.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount  
B = Original Contract Time  
C = 8%  
D = Average Overhead Per Day

beyond the amount provided for herein. Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect impacts for any days of concurrent delay. No

## 4-3.2.1

17.5%

(d) Indirect Costs, Expenses, Profit: indirect costs, expenses, and profit of the Contractor, including overhead of any kind, whether jobsite, field office, district office, home office, or otherwise, is expressed limited to or (2) below:

(1) Solely a mark-up of 17.5% on the price (c), above.

(i) Bond: The Contractor will receive a premium for acquiring a bond for such additional work, however, that such payment for additional work is due to delay of a controlling work item caused solely by the Contractor, and the Contractor has actually provided a bond for such additional work.

(ii) Unforeseen work in such amount as to be paid to the Contractor for such work.

(iii) The Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Contractor, but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, however, shall be paid to the Contractor for any jobsite overhead and other indirect costs when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Contractor is less than the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Contractor is otherwise ultimately determined in favor of the Contractor to be.

(2) Solely a mark-up of 17.5% on the price as to such number of calendar days as to such number of cumulative calendar days.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount  
B = Original Contract Time  
C = 8%  
D = Average Overhead Per Day

Cumulative Calendar Days is defined as the cumulative total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the cumulative total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be.

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, however, shall be paid to the Contractor for any jobsite overhead and other indirect costs when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Contractor is less than the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Contractor is otherwise ultimately determined in favor of the Contractor to be.

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation,

however, shall be paid to the Contractor for any jobsite overhead and other indirect costs when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Contractor is less than the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Contractor is otherwise ultimately determined in favor of the Contractor to be, provided for in 4-3.2.1 (a), (b), (c) and (d)(1), with the exception of, in the

8%

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount

B = Original Contract Time

C = 8%

D = Average Overhead Per Day

Cumulative Calendar Days is defined as the combined total number of calendar days granted as time extensions due to either extra work, excluding overruns to existing contract items, that extend the duration of the project or delay of a controlling work item caused solely by the Department, or the combined total number of calendar days for which a claim of entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined to be in favor of the Contractor.

Further, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay. No compensation, whatsoever, will be paid to the Contractor for any jobsite overhead and other indirect impacts when the total number of calendar days granted for time extension due to delay of a controlling work item caused solely by the Department is, or the total number of calendar days for which entitlement to a time extension due to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when combined together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, Holidays, and Special Events.

1. Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original Contract bond rate paid by the Contractor. No compensation for bond premium will be allowed for additional or unforeseen work paid by the Department via initial contingency pay item.

2. The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

b. Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount  
B = Original Contract Time  
C = 8%  
D = Average Overhead Per Day

## Year 2017 Spec Book

Further, for (a) or (b) above, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay.

to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when combined together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, Holidays, and Special Events.

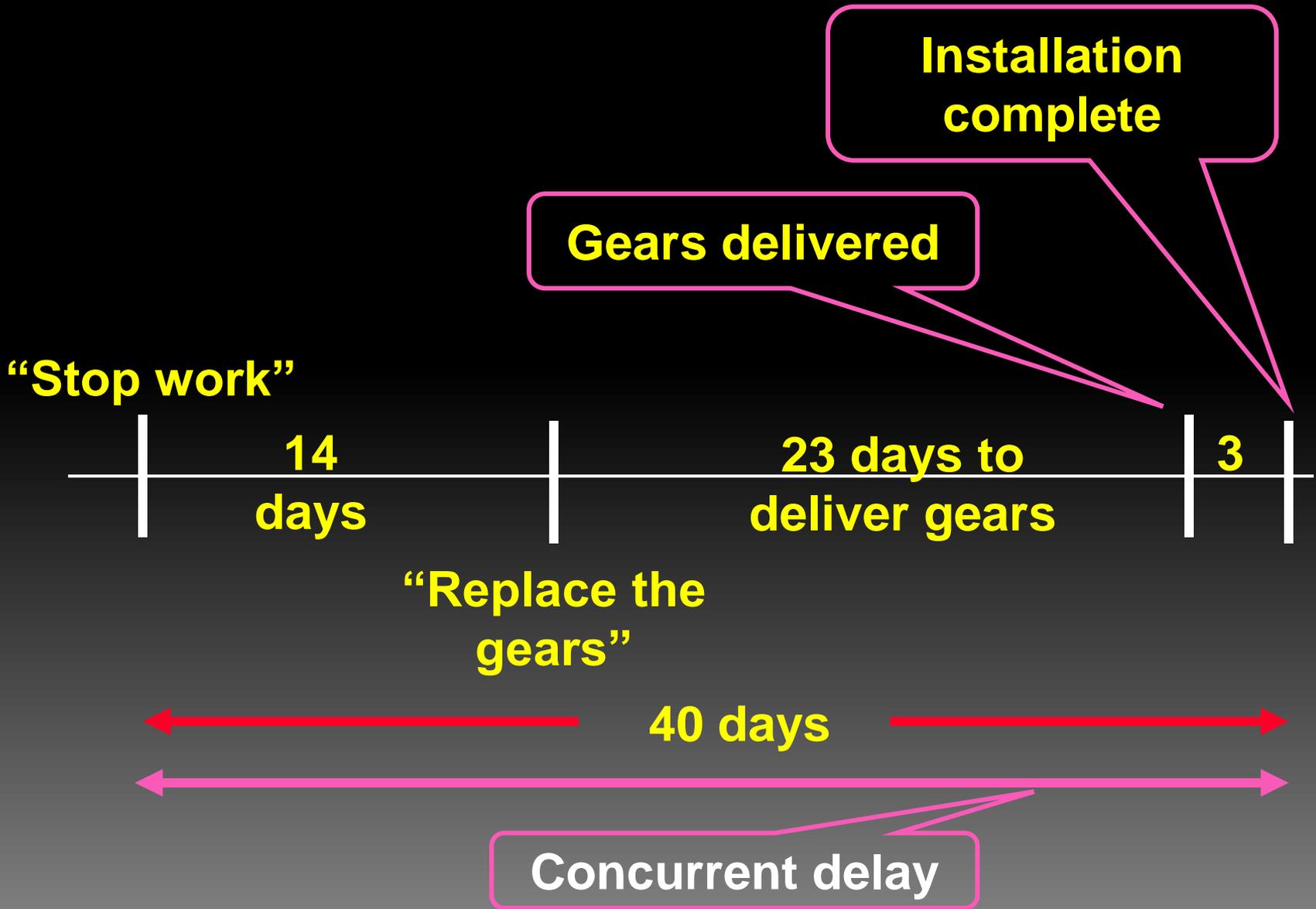
Further, for (a) or (b) above, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay.

Type 3 - Extra Work and Delay  
with concurrent delay



## TYPE 3 - Combination “Extra Work and Delay”

- **SCENARIO “B” (with a concurrent delay)**
- Contractor issues RFI on bridge rehab job questioning adequacy of existing gears due to possible signs of metal fatigue.
- The mechanical work is the **controlling item of work**.
- FDOT directs contractor to **stop work** until FDOT can investigate issue.
- **Concurrent Contractor delay** occurring on controlling roadway work due to limerock supply problem.
- Contractor reallocates most bridge resources (mitigates) – but, not all resources.
- **14** days later, FDOT directs Contractor to **replace** the gears.
- Takes **23** days to **deliver** new gears and **3** days to **install**
- This is the 1<sup>st</sup> FDOT caused delay on job.



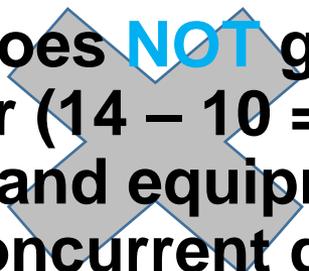
## TYPE 3 - Combination “Extra Work and Delay” SCENARIO B (with a concurrent delay)

### HOW COMPENSATED:

#### Time:

- 14 days granted per **8-7.3.2** for controlling item of work suspended by FDOT.
- 23 days granted per **8-7.3.2** for delay to controlling item of work.
- 3 day time extension granted per **4-3.2** and **8-7.3.1** for extra work that is controlling and extends completion.
- Contractor gets **total 40 day time extension** (14 + 23 + 3 = 40 days).

## Additional Costs for the 14 days of delay:

- **4-3.2** If not **extra work** go to **5-12.6.2.1**
- No right to “indirect costs for any days of concurrent delay.” **(4-3.2.1(4))** 
- **5-12.6.2.1** Contractor gets “actual idle **labor** (including supervisory personnel) and **equipment** and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” 
- **4-3.2.1(4)** Contractor does **NOT** get the greater of the formula (8%) per day for (14 – 10 = 4 days) or (4)(a) 17.5% on the actual idle labor and equipment (materials left out per 5-12.6.2.1) due to concurrent delay. 
- **5-12.6.2** This is “the Contractor’s sole monetary remedy for any delay . . .”

## Additional Costs for the 23 days of delay: SCENARIO B (with a concurrent delay)

- **4-3.2** If not **extra work** go to **5-12.6.2.1**
- No right to “indirect costs for any days of concurrent delay.” **(4-3.2.1(4))**
- **5-12.6.2.1** Contractor gets “actual idle **labor** and **equipment** and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.” (not an estimate)
- **4-3.2.1(4)** Contractor does **NOT** get the greater of the formula (8% per day for 23 days) or (4)(a) 17.5% on the actual idle labor and equipment (materials left out per 5-12.6.2.1) due to Contractor’s concurrent delay.
- **5-12.6.2** This is “the Contractor’s sole monetary remedy for any delay . . . .”

1. Bond: The Contractor will receive compensation for any premium for acquiring a bond for such additional or unforeseen work at the original Contract bond rate paid by the Contractor. No compensation for bond premium will be allowed for additional or unforeseen work paid by the Department via initial contingency pay item.

2. The Contractor will be allowed a markup of 10% on the first \$50,000 and a markup of 5% on any amount over \$50,000 on any subcontract directly related to the additional or unforeseen work. Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, and the Contractor must elect the markup for any eligible first tier subcontractor to do so.

b. Solely the formula set forth below and only as applied solely as to such number of calendar days of entitlement that are in excess of ten cumulative calendar days as defined below.

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount  
B = Original Contract Time  
C = 8%  
D = Average Overhead Per Day

## Year 2017 Spec Book

Further, for (a) or (b) above, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay.

to delay of a controlling work item caused solely by the Department is otherwise ultimately determined in favor of the Contractor to be, equal to or less than ten calendar days and the Contractor also fully assumes all monetary risk of any and all partial or single calendar day delay periods, due to delay of a controlling work item caused solely by the Department, that when combined together are equal to or less than ten calendar days and regardless of whether monetary compensation is otherwise provided for hereunder for one or more calendar days of time extension entitlement for each calendar day exceeding ten calendar days. All calculations under this provision shall exclude weather days, Holidays, and Special Events.

Further, for (a) or (b) above, in the event there are concurrent delays to one or more controlling work items, one or more being caused by the Department and one or more being caused by the Contractor, the Contractor shall be entitled to a time extension for each day that a controlling work item is delayed by the Department but shall have no right to nor receive any monetary compensation for any indirect costs for any days of concurrent delay.

## Additional Costs for the 3 days of extra work: SCENARIO B (with a concurrent delay)

- No right to “indirect costs for any days of concurrent delay.”
- Working: 4.3.2.1 Contractor gets:
  - (1) actual direct labor and burden
  - (2) actual cost for materials and supplies
  - (3) Equipment
  - (4) Indirect costs, expenses, and profit
- 4.3.2.1(4) Contractor does **NOT** get the greater of the formula (8%) per day for 3 days or 4.3.2.1(4)(a) 17.5% on the actual idle labor, materials, and equipment due to concurrent delay.
- Idle Workers: 5-12.6.2.1 Contractor gets “actual idle labor (including supervisory personnel) and equipment and indirect costs, expenses, and profit thereon, as provided for in 4-3.2.1(4) and solely for costs incurred beyond what reasonable mitigation thereof the Contractor could have undertaken.”
- 5-12.6.1 “. . . Contractor shall not be entitled to any compensation beyond that provided in 4-3.2.”



Type 4 – Sub-Sub

## TYPE 4 - Pure Extra Work

Prime plus a Subcontractor with a Sub-sub all performing the extra work:

### SCENARIO:

- Engineer modifies several drainage structures located outside the roadway by increasing pipe size.
- **No existing pay item** for the new pipe size.
- This work is **not a controlling item of work.**
- Work is performed by the Prime & Subcontractor with the assistance of Sub's **Sub-subcontractor.**

**9-3.1** If no Contract unit price is provided in the Contract, and the parties cannot agree as to a price for the work, the Contractor agrees to do the work in accordance with 4-3.2.

- Engineer modifies several drainage structures located outside the roadway by increasing pipe size.
- **No existing pay item** for the new pipe size.
- This work is **not a controlling item of work.**
- Work is performed by the Prime & Subcontractor with the assistance of Sub's **Sub-subcontractor.**

## **TYPE 4: Pure extra work with Prime, Sub, & Sub-sub:**

### **Direct Costs:**

- **If there is a unit price use 4-3.1 and 9-3.1 for complete payment.**
- **If there is no unit price, **DIRECT COSTS** are paid as follows:**
- **Prime Contractor's direct costs are paid under 4-3.2.1(1), (2) and (3)**
- **Subcontractor's direct costs are paid under 4-3.2.2 4-3.2.1 (1), (2), and (3)**
- **Sub-subcontractor's direct costs are paid under 4-3.2.2 4-3.2.1 (1), (2), and (3)**

**TYPE 4: Pure extra work with Prime, Sub, & Sub-sub:**  
**Prime Contractor's INDIRECT COSTS are paid as follows:**

- Prime is paid indirects (related to prime's work):
  - 4-3.2.1(4)** – The greater of 4(a) or 4(b):
    - 4-3.2.1(4)(a)** 17.5% of prime's (1), (2), & (3)  
--- Plus ---
    - Markup:** Contractor's compensation related to Sub's work:  
**4-3.2.1(4)(a)(2)** 10% of Sub's cost on \$50K then 5%  
--- Plus ---
    - Bond:** Prime's actual **bond premium** on the Subs costs incurred by Prime. **4-3.2.1(4)(a)(1)**  
(Note: Sub's cost will include the Sub-subcontractor's cost)  
--- OR ---
  - **4-3.2.1(4)(b)** – 8% formula (days times 8% calculation).  
(Note: no time granted so the 8% formula is not applicable)

17.5%

8%

**The 8% formula  
(average overhead per day)**

$$D = \frac{A \times C}{B}$$

Where A = Original Contract Amount  
B = Original Contract Time  
C = 8%  
D = Average Overhead Per Day

**Driven by time.**

**4(b) is omitted**

(the 8% is omitted)

**4-3.2.2 Subcontracted Work:** Compensation for the additional or unforeseen work performed by a subcontractor shall be limited solely to that provided for in 4-3.2.1 (1), (2), (3) and (4)(a). In addition, the Contractor compensation is expressly limited to the greater of the total provided in either 4-3.2.1(4)(a) or (4)(b), except that the Average Overhead Per-Day calculation is as follows:

**This applies only when the Contractor has not performed any of the work. (this example, Contractor has performed some of the work.)**

## TYPE 4: Pure extra work with Prime, Sub, & Sub-sub:

- **How Subcontractor is paid for INDIRECT COSTS:**
- Sub is paid indirects related to Sub's work.
- **4-3.2.2** – states use **4-3.2.1(4)(a)**:
- **17.5%** of Sub's (1) labor, (2) material, and (3) equipment
- **Plus** actual **Bond Premium** for the extra work if sub was required by Prime to acquire a bond. **4-3.2.2**

(Use the bond premium specifically for subcontractors under 4-3.2.2)

**and**

- **Plus: Markup** under **4-3.2.1(4)(a)(2)** related to the Sub-Subcontractor's work.

(For this example, don't apply the second sentence of 4-3.2.2 because this sentence is for situations where the Contractor did not perform any of the extra work. In this example, the Contractor performed some of the extra work and has already been compensated.)

## **TYPE 4: Pure “Extra Work” by Prime, Sub, and Sub-sub** **How Sub-Subcontractor is Paid for Indirect Costs:**

- **Sub-sub is paid indirects related to Sub-sub’s work.**
- **4-3.2.2 – states use 4-3.2.1(4)(a) for the indirects:**
  - **17.5% of Sub-sub’s (1) labor, (2) material, and (3) equipment.**
  - **No 10% - 5% mark-up for Sub-sub: Mark-up is limited to the Prime and first tier Sub. 4-3.2.1(4)(a)(2)**
- **Plus actual bond premium for the extra work if sub-sub was required to acquire a bond. 4-3.2.2**

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- **Plus** a  
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**4-3.2.1(4)(a)(2)** “Any such subcontractor mark-up will be allowed only by the prime Contractor and a first tier subcontractor, . . . .”

## Notes:

1. If there is a pay item, the pay item provides full compensation for extra work unless there is a significant change.
2. Subcontractor who performs all or part of the extra work never gets the 8% formula.
3. 8% formula applies only when time is granted.
4. 2<sup>nd</sup> Tier subcontractors and below never get a mark-up.
5. When there is a concurrent delay, there is no entitlement to indirects.
6. Regardless of the type claim, the Contractor has a duty to preserve its claim under 5-12. (4-3.2 paragraph 2)



State Construction Office has a spreadsheet that is available to calculate these costs:

See form # 700-050-59

