






JUN 03 2014

Memorandum

May 28, 2014

TO:  Marco Foster, PE MS 47354 / 360-705-7824
THRU:  Matthew D. Preedy, PE NB82-230 / 206-805-2863
FROM: Paul E. Johnson, PE  NB82-230 / 206-805-2920

SUBJECT: 007999 – SR99 Bored Tunnel Alternative Design-Build Project
Federal-Aid No. BR-NH-STP-STPF-0099(111)
CO# 094 – State Sales Tax

Attached for HQ review and execution is Change Order No. 094, “State Sales Tax”.

DESCRIPTION:

This change order compensates the Design-Builder for Department of Revenue State Sales Tax Rule 170/171 determination.

EVOLUTION OF CHANGE:

During the RFP process and as stated in Contract sections 10.8.1 (rule 171) and 10.8.2 (rule 170) the Design-Builder was required to determine state sales tax percentages for rule 171/170 based on information provided in TR Appendix R-1 (right-of-way plans). During the RFP process WSDOT responded to a RFP question asking “How do we separate material cost for work through City versus WSDOT land?”. WSDOT’s response indicated rule 171 would apply to 2/3 of the project and rule 170 would apply to 1/3 of the project, but the Proposer should prepare their own estimate based upon their design. The Design-Builder used this information to develop a percentage breakout of 65% for rule 171 and 35% for rule 170.

After award of the Contract, WSDOT worked with the Design-Builder to finalize the Rule 170/171 percentages for the Contract, based on updated design information with the Department of Revenue agreeing with a percentage breakout of 70% for rule 171 and 30% for rule 170. The Design-Builder based their bid on the best information available at the time and is due compensation for the change in rule 170/171 percentages as determined by the Department of Revenue.

ENTITLEMENT:

This change order is issued pursuant to Contract Section 11.4.

PRICING THE CHANGE:

The Design-Builder developed percentage breakout of 35/65, and the Department of Revenue 30/70 percent split, results in a 5% increase to Rule 171. Applying the 9.5% State Sales tax rate, to the increased portion the Design-Builder is responsible for (5%), results in an additional \$1,059,489 in taxes to be paid by the Design-Builder.

PRICE:

WSDOT has agreed to compensate the Design-Builder for all issues with State Sales Tax rule 170/171 percentages as applied to the base bid amount as provided by and applied by the Contractor, in one new lump sum item; "CO #94 – State Sales Tax" in the agreed to amount of \$1,059,489.

CONTRACT TIME:

Contract time is not affected by this change.

APPROVALS:

- Paul E. Johnson, P.E., Contract Administrator approved the change May 8, 2014
- Anthony Sarhan, FHWA approved the change May 12, 2014
- Marco Foster, P.E. HQ Construction approved the change May 19, 2014
- Matt Preedy, P.E., Deputy Program Administrator approved the change May 22, 2014
- Diana McCreery AWW Business Group gave funding approval May 22, 2014

ATTACHMENTS TO THE MEMO:

- Change Order
- Change Order Checklist
- Engineer's cost estimate
- Email Approvals listed above

If you have any questions, please contact Paul E. Johnson at (206) 805-2920.

pej

cc: Project File

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION CHANGE ORDER

DATE: 05/22/14
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CONTRACT NO: 007999 FEDERAL AID NO: STP-BR-IM-0099 (
 CONTRACT TITLE: SR 99, BORED TUNNEL ALTERNATIVE - DESIGN BUILD PRO
 CHANGE ORDER NO: 94 STATE SALES TAX

PRIME CONTRACTOR: SW0080679 SEATTLE TUNNEL PARTNERS
999 THIRD AVE STE 2424
SEATTLE WA 98104-4044

Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

Change proposed by Contractor

ENDORSED BY: <hr/> CONTRACTOR 5/27/14 <hr/> DATE	SURETY CONSENT: <hr/> ATTORNEY IN FACT <hr/> DATE
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ORIGINAL CONTRACT AMOUNT: 1,089,700,002.00
 CURRENT CONTRACT AMOUNT: 1,100,790,385.06
 ESTIMATED NET CHANGE THIS ORDER: 1,059,489.00
 ESTIMATED CONTRACT TOTAL AFTER CHANGE: 1,101,849,874.06

Approval Required: Region Olympia Service Center Local Agency

<input checked="" type="checkbox"/> APPROVAL RECOMMENDED <input type="checkbox"/> EXECUTED PROJECT ENGINEER 5/27/14 <hr/> DATE	EXECUTED: <i>mmf</i> STATE CONSTRUCTION ENGINEER 6-4-14 <hr/> DATE
<input checked="" type="checkbox"/> APPROVAL RECOMMENDED <input type="checkbox"/> EXECUTED REGIONAL ADMIN: BY: 5/28/2014 <hr/> DATE	OTHER APPROVAL WHEN REQUIRED <hr/> SIGNATURE DATE <hr/> REPRESENTING

**WASHINGTON STATE
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER**

DATE: 05/22/11
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CONTRACT NO: 007999

CHANGE ORDER NO: 94

All work, materials, and measurements to be in accordance with the provisions of the Standard Specifications and Special Provisions for the type of construction involved.

This contract is revised as follows:

The first paragraph above is deleted and replaced with:

All work, materials and measurements to be in accordance with the Contract Documents for this Project. Unless specifically modified herein, all provisions in the Contract Documents shall remain in full force and effect.

DESCRIPTION:

This change order provides full and final compensation and clears any and all issues associated with State Sales Tax rule 170/171 percentages as defined by section 10.8.1 and 10.8.2 as it applies to the base bid amount as provided by and applied by the Contractor.

Contract Section 10.8 is revised as follows:

On page 63, after line 14, insert the following header, paragraph, and three bullet points:

10.8.3 State Sales Tax Rule 170/171 Percentages

The work on this contract is to be performed upon lands whose ownership obligates the Contractor to pay State sales tax on portions of the project work and obligates the Contractor to collect State sales tax from the Contracting Agency on other portions of the project as follows:

The provisions of Section 10.8.1 apply to 70% of the project base bid.
The provisions of Section 10.8.2 apply to 30% of the project base bid.
All Change Orders Rule 170/171 percentages will be determined on a case by case basis.

This change order is issued pursuant to Contract Section 11.4.

PAYMENT:

Compensation for all issues associated with State Sales Tax rule 170/171 percentages as applied to the base bid amount as provided by and applied by the Contractor, by the new lump sum bid item, "CO #94 State Sales Tax" in the agreed to lump sum amount of \$1,059,489.

CONTRACT TIME:

The Design Builder and WSDOT agree that this Change Order has no impact to Contract Time, and as such, no extension of Contract Time will be granted as a result of this Change Order.

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DEPARTMENT OF TRANSPORTATION
CHANGE ORDER**

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CONTRACT NO: 007999				CHANGE ORDER NO: 94			
ITEM NO	GROUP NO	STD ITEM	ITEM DESCRIPTION	UNIT MEASURE	UNIT PRICE	EST QTY CHANGE	EST AM' CHANGI
1056	01		CO #94 - STATE SALES TAX	L.S.	1,059,489.00	1.00	1,059,489.0

1,059,489.0

1 **10.8.2 State Sales Tax: Work on State-Owned or Private Land**

2 State Department of Revenue Rule 170 and its related rules apply to this Section. TR
3 Appendix R-1 identifies those parts of the Project that require Work on State-owned or private land.

4 For Work performed on State-owned or private land, Design-Builder shall collect from WSDOT,
5 retail sales tax on the portion of its compensation allocable to such Work. WSDOT will
6 automatically add this sales tax to each payment to Design-Builder. For this reason, Design-
7 Builder represents that it has not included and shall not include such retail sales tax on Work
8 performed on State-owned or private land in the Total Proposal Price, Change Order requests, or
9 any other amounts included in the Total Compensation.

10 However, WSDOT will not add in sales tax Design-Builder or Subcontractor pays on the purchase
11 or rental of tools, machinery, equipment, or consumable supplies not integrated into the Project.
12 Regardless of whether the Work is performed on State-owned or private land, such sales taxes
13 shall be deemed included in the Total Compensation, and shall be accounted for in Change Order
14 pricing.

15 **10.8.3 State Sales Tax Rule 170/171 Percentages**⁰⁹⁴

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17 The work on this contract is to be performed upon lands whose ownership obligates the
18 Contractor to pay State sales tax on portions of the project work and obligates the
19 Contractor to collect State sales tax from the Contracting Agency on other portions of the project
20 as follows.⁰⁹⁴

21

- 22 • The provisions of Section 10.8.1 apply to 70 % of the project's base bid.
- 23 • The provisions of Section 10.8.2 apply to 30 % of the project's base bid.
- 24 • All Change Orders Rule 170/171 percentages will be determined on a case by case
25 based.⁰⁹⁴

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27 ⁰⁹⁴CO#094 – State Sales Tax