

Nov. 23, 2015

TO: Marco Foster, PE MS 47354 / 360-705-7824

THRU: Brian D. Nielsen, PE *BN* NB82-230 / 206-805-5426

FROM: Andrew P. Walter, PE *AW* NB82-230 / 206-805-5452

SUBJECT: 007999 – SR99 Bored Tunnel Alternative Design-Build Project  
Federal-Aid No. BR-NH-STP-STPF-0099(111)  
Change Order #128 – Labor PCO 230, 230B, 230D

Attached for HQ execution is Change Order #128 “Labor PCO 230, 230B, 230D”. This change order is being executed unilaterally. WSDOT sent the Design-Builder (D-B) this change order for signature via letter W-G-GEN-GEN-CR11-0004892-01, which indicated if the D-B did not sign by close of business November 20, 2015, WSDOT intends to execute it unilaterally, per Contract Section 11.2.5.

**DESCRIPTION:**

Based on the information provided by the Design-Builder (STP) to date, this change order provides full and final resolution for all cost and time impacts associated with the following:

- PCO #230 Picket Line in August and September 2013
- PCO #230B Foss - Barging Cost
- PCO #230D Directive – Muck Loading of Barges and Labor

The change order is based on WSDOT’s review of the information submitted to date by STP. WSDOT requested additional information regarding each of the above referenced change order requests. STP has not yet provided the requested information. As such, additional change orders may be executed in the event STP responds to WSDOT’s request for additional information and this information justifies additional compensation.

**EVOLUTION OF CHANGE:**

Two key elements in planning for construction of the Project were how to get the world’s largest TBM into place to start tunneling and how to dispose of the very large volume of tunnel muck that would be generated by the tunneling operations. The TBM launch pit for the Project was planned to be located adjacent to the Port of Seattle’s Terminal 46 (T46). Conceptually, this location offered a significant opportunity to allow delivery of the TBM by ship through the marine terminal directly adjacent to the Site and also the opportunity to allow barge transport of excavated material from the tunnel to a suitable disposal site, thereby minimizing trucking impacts on adjacent communities and increasing efficiency for the tunneling operation, a fact that was crucial to the schedule for the Project. In order to facilitate the conceptual plan for muck disposal by barge, WSDOT investigated the viability of providing Proposers on the Project, should they choose to use it, with access to

approximately 5 acres on the North end of T46. Because of the importance of this facility to the Port's operations, the Port insisted that any lease agreement for the property would need to be directly with WSDOT, a Project partner and the owner of the Project, rather than with the Design-Builder. As part of its Proposal, STP chose to use the T46 property.

The use of T46 for muck disposal is at the core of the issues leading to this change order. Most of the work on the terminal is traditionally performed by longshoremen. However, the Building Trades have long considered the "construction work" associated with a public works project to be within their jurisdiction regardless of its location on a Port property.

In writing the contract, WSDOT recognized this issue and consciously addressed this risk via Contract Section 2.3.8, Labor Harmony. The issue was also addressed in the lease for T46 with the Port of Seattle. Section 17.12 of the lease, Labor Unrest, states:

"Lessee agrees to join with the Port and use its best efforts in avoiding labor unrest, or in the event of a wildcat strike or other labor difficulty, to use its good offices in negotiating and bringing to a swift and satisfactory conclusion any kind of labor dispute that may affect the interests of the Port."

As part of its strategy to satisfy the requirements for Labor Harmony under the Contract, STP executed a Project Labor Agreement (PLA) with the Building Trades that would be involved in the Project. This PLA assigned all Work on the Project site, including the muck handling and barge loading on T46, to the Building Trades. The Longshoreman were not signatory to the PLA because, among other things, they are legally prevented from entering into such agreements.

STP met with Longshoreman representatives multiple times in 2011 and 2012 in an attempt to resolve the issue of muck handling on T46, with WSDOT representatives participating in some of these meetings.

STP also needed to put in place necessary agreements to allow delivery of the TBM to the site by ship. Typically, when bringing cargo through a facility such as the Port of Seattle, a Stevedoring agreement with the terminal operator is needed. For delivery of the TBM, STP needed to enter into a Stevedoring agreement with TTI, the T46 operator, to unload the TBM, which was scheduled to arrive by ship from Japan in spring 2013. It is WSDOT's understanding that STP began negotiating that agreement with TTI in November 2012. In February 2013, TTI proposed a contract addressing both Stevedoring and muck handling at T46, utilizing Longshoreman labor to perform muck handling work. This is the muck handling work that was assigned to the Building Trades under the PLA. STP asked that TTI separate these scopes. TTI refused.

On April 2, 2013, the ship carrying the TBM arrived in Elliott Bay. Under the terms of the agreement between STP and the shipping company, the ship carrying the TBM was free to leave Seattle with the TBM on board if the ship was not docked within 7 days of its arrival. This would result in an unquantifiable delay to the Project. TTI would not permit the ship to dock unless and until STP signed the contract for both Stevedoring and muck handling activities. On April 5, 2013, faced with the prospect of the ship leaving with the TBM on board, WSDOT encouraged STP to sign the agreement with TTI including both unloading of the TBM and muck handling. STP signed the contract with TTI, which allowed the TBM delivery to the site to proceed. While this action by STP solved the immediate issue of timely delivery of the TBM, the TTI agreement created a conflict with the PLA for the muck handling work on T46.

This conflict led to a picket impacting STP's access to T46 in August 2013, thereby preventing STP from proceeding with construction of the tunnel. The issue of jurisdiction for the muck handling work was eventually adjudicated by the National Labor Relations Board (NLRB). The NLRB concluded that the work was within the jurisdiction of the Building Trades.

A picket line was formed on August 20, 2013, at the entrance to the T46 facility. At that time, tunneling was underway, and STP was using T46 for muck storage and truck loading, since at that time, all tunnel spoils needed to be removed by truck. The picket line was removed on September 17, 2013. Although the picket line was characterized as informational, STP did not attempt to cross it for fear of escalating the dispute. The matter was ultimately resolved when STP developed a procedure with Foss Maritime, the company that provides and operates the muck barges, to allow Longshoreman workers to perform line handling during barge loading operations at T46. STP incurred time and cost impacts as a result of this disruption to tunneling while the picket line was in place, and extra costs due to use of longshoremen for barge loading for the remaining duration of tunneling. STP submitted these costs in change order requests PCO #230, PCO #230B and PCO #230D. In addition, STP submitted change order requests under PCO #230A – STP/TTI Settlement Agreement, and PCO #230C – STP Building Trades Line Handling Resolution. PCO #230A and PCO #230C were resolved previously by Change Orders 109 and 111, respectively. All five issues stem from the same labor dispute.

**ENTITLEMENT:**

WSDOT had a vested interest in the outcome of this labor dispute because of its partnership with the Port. The Port is contributing more than \$260 million to the AWV program. Failure to resolve the labor issues had the potential to not only significantly delay the project if the ship had left Seattle with the TBM on board, but it also could potentially create impacts to the overall operation of the Port. Under these circumstances, WSDOT made the decision to engage with STP, the unions, and the Port in trying to manage and solve the issues around muck handling on T46. As a result of this engagement, WSDOT took on responsibility for certain costs and schedule impacts. Therefore, STP is entitled to additional compensation for direct and delay costs related to this issue, as detailed above.

**PRICE:**

WSDOT has agreed to compensate the Design-Builder for cost associated with PCO #230, #230B and #230D which includes direct labor costs during the time pickets were present, changes in its agreements with Foss Maritime and extended overhead for 28 compensable days of delay.

This Change Order includes compensation for 24 days of delay during the picket line period, when STP could have operated the TBM but was prevented from doing so by the picket line. Under PCO #230D, STP requested 7 days of compensable delay. WSDOT determined that STP is entitled to compensation for 4 days of delay in November 2013 due to the WSDOT directive regarding barging at T46.

The allowable costs described above results in a change order amount of \$6,841,548.

**CONTRACT TIME:**

This Change Order extends the Completion Deadlines by 36 days. STP requested a total of 39 days under PCOs #230, ILWU Picket (32 days), and #230D, WSDOT Directive –Muck Loading of Barges and Labor (7 days).

PCO #230 addresses the delay due to the picket line, which started on August 20, 2013. At that time, STP was unable to mine because it was in the midst of clearing the cutter head and chamber, which had clogged while mining through the headwall of the launch pit. STP requested an extension of 32 days of Contract Time, from Aug. 23, 2013, to Sept. 22, 2013. WSDOT determined that STP is entitled to the extension of 32 days because the delay was beyond the control of STP, and thus is an Excusable Delay.

With regard to PCO #230D, STP requested an extension of 7 days of Contract Time, for delays in October and November 2013. However, STP was not delayed by the directive until after Nov. 14, 2013, because STP was unable to transport muck with barges during that time. WSDOT has determined that STP is entitled to an extension of 4 days for delays due to the WSDOT directive regarding barging.

**APPROVALS:**

- Chris D. Brown, P.E., Contract Administrator gave approval to proceed on Nov. 12, 2015
- Brian D. Nielsen, P.E., Deputy Program Administrator approved the change Nov. 10, 2015
- Marco Foster, P.E. HQ Construction approved the change Nov. 16, 2015
- Anthony Sarhan, FHWA gave change concurrence Nov. 17, 2015
- Diana McCreery, Program Management gave funding concurrence Nov. 16, 2015.

**ATTACHMENTS TO THE MEMO:**

- Change Order
- Change Order Checklist
- Engineer's Estimate
- Approvals and Concurrences listed above
- Change Order Transmittal Letter and Attachments (excluding the transmitted Change Order)

If you have any questions, please contact Andy Walter at (206) 805-5452.

cc: Project File

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DEPARTMENT OF TRANSPORTATION  
CHANGE ORDER**

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CONTRACT NO: 007999 FEDERAL AID NO: STP-BR-IM-0099 (11  
CONTRACT TITLE: SR 99, BORED TUNNEL ALTERNATIVE - DESIGN BUILD PRO  
CHANGE ORDER NO: 128 LABOR PCO230, 230B, 230D

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  
(X) Change proposed by Contractor

ENDORSED BY:  _____ CONTRACTOR  _____ DATE	SURETY CONSENT:  _____ ATTORNEY IN FACT  _____ DATE
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ORIGINAL CONTRACT AMOUNT: 1,089,700,002.00  
CURRENT CONTRACT AMOUNT: 1,116,084,649.98  
ESTIMATED NET CHANGE THIS ORDER: 6,841,548.00  
ESTIMATED CONTRACT TOTAL AFTER CHANGE: 1,122,926,197.98

Approval Required: ( ) Region ( ) Olympia Service Center ( ) Local Agency

<input checked="" type="checkbox"/> APPROVAL RECOMMENDED Andrew P. Walter PROJECT ENGINEER 11/23/15 DATE	<input type="checkbox"/> EXECUTED _____ STATE CONSTRUCTION ENGINEER Nov 23, 2015 DATE
<input checked="" type="checkbox"/> APPROVAL RECOMMENDED REGIONAL ADMIN: Brian Nuh BY: 11/23/15 DATE	OTHER APPROVAL WHEN REQUIRED Anthony Sarkan (NP) SIGNATURE FHWA REPRESENTING 11/23/15 DATE 11/23/15 11/23/15

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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 compensates the Design-Builder (D-B) for all direct and indirect costs associated with PCO 230 - ILWU Picket, PCO 230B Foss Utilization of ILWU Labor for Line Handling, and PCO 230D Directive-Unapproved Barging Restrictions, and is based on the information provided to date by the D-B.

This Change Order is a final settlement for PCOs 230, 230A, 230B, 230C, and 230D based on the information submitted by the D-B to date. Should the D-B provide the additional information requested by WSDOT in letters W-C-GEN-GEN-CR11-0004858-01 dated October 30, 2015, W-G-GEN-GEN-CR11-0004835-01 dated October 22, 2015 and W-G-GEN-GEN-CR11-0004859-01 dated October 30, 2015 and the information is found to establish entitlement for additional compensation and/or time under the Contract, WSDOT will address such entitlement by a separate change order.

**DESIGN-BUILD CONTRACT:**

Contract Section 4.2, as previously revised by Change Orders 8, 43 and 106, is revised as follows:

On page 10, lines 5 through 7, the first sentence is revised to read:

Design-Builder shall achieve Substantial completion within 1,644 days after the effective date of NTP2, shall achieve Physical Completion within 120 days after Substantial Completion, and shall achieve Final Completion within 120 days after Physical Completion.

**MEASUREMENT:**

No specific unit of measure shall apply to the new lump sum Bid Items "Picket Line PCO# 230", "Foss/ILWU PCO #230B", and "Barging Directive PCO #230D".

**PAYMENT:**

"Picket Line PCO #230" in the agreed to lump sum amount of \$1,653,753 shall be full and final payment for all cost associated with PCO #230.

"Foss/ILWU PCO #230B" in the agreed to lump sum amount of \$4,792,912 shall be full and final payment for all cost associated with PCO #230B.

"Barging Directive PCO #230D" in the agreed to lump sum amount of \$394,883

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shall be full and final payment for all costs associated PCO #230D

CONTRACT TIME:

The Design-Builder and WSDOT agree that this Change Order extends Contract Time by thirty-six (36) days, comprised of thirty-two (32) days for PCO #230 and four (4) days for PCO #230D.

MISCELLANEOUS:

The Design-Builder (D-B) certifies the amount of time and/or compensation requested in its Serial Letters 0507, 0510, 0528, 0529 and 0568 and includes all known and anticipated impacts or amounts, direct, indirect and consequential, which may be incurred as a result of the event or matter giving rise to this change and that the Design-Builder has no reason to believe and does not believe that the factual basis for this Change Order is falsely represented.

WSDOT's execution and payment of this change order shall not be considered acceptance of the D-B's position concerning additional entitlement and extension of contract time concerning any future information requested by WSDOT.

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ITEM NO	GROUP NO	STD ITEM	ITEM DESCRIPTION	UNIT MEASURE	UNIT PRICE	EST QTY CHANGE	EST AMT CHANGE

<del>1114</del> <sup>125</sup> 01	<del>12</del> 12		PICKET LINE PCO #230	L.S.	0.00	0.00	1,653,753.00
<del>1115</del> <sup>124</sup> 01	<del>12</del> 12		FOSS/ILWU PCO #230B	L.S.	0.00	0.00	4,792,912.00
<del>1116</del> <sup>127</sup> 01	<del>12</del> 12		BARGING DIRECTIVE PCO #230D	L.S.	0.00	0.00	394,883.00

*OK*  
*11/23/15*

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6,841,548.00  
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