

# Facilities Planning

## Change Orders

A change order is used to officially make changes in a signed contract for capital construction, whereas an addendum is used to change plans and specifications before bids are received.

A change order may be required to accommodate a discovered job condition, to add or delete certain portions of the work, or otherwise change a condition or the amount of the contract. It may be issued without competitive bidding; however, no important change may be made which so varies the original plan or is of such importance as to constitute a new undertaking (Opinion of State Comptroller #60-505). This means that, under normal circumstances, a change order may NOT expand the scope of work, or represent a basic departure from work already included in the contract. An example of a typical exception would be where the specified removal of a roof revealed deteriorating roof deck. Correction of the condition of the roof deck by change order would be proper even though such correction was not originally specified.

The most common improper change order presented to the Office of Facilities Planning is one expending unencumbered funds. Most often this occurs near the end of a project and the proposed change order introduces types of work which was not included in the original plans and specifications. Change orders for such work will not be approved; however, had a "shopping list" of desirable items been included in the original plans and specifications as "add" alternates, change orders to effect such alternates would be approved.

Following are some specifics about change orders:

- All change orders must be approved by the Commissioner.
- One copy must be submitted to Facilities Planning.
- The change order shall be signed by the president of the board of education, the architect/engineer, and the contractor.
- The SED Project Control Number and the name of the SED Project Manager must appear on the change order.
- There must be sufficient detail and technical data to denote -
  - what is being done
  - why it is being done
  - the cost of the change order
  - the revised contract total

All approved change orders are part of the official plans and specifications for the project and must be carefully filed with the approved plans and specifications for the project. If there are any questions concerning change orders, particularly whether the intended work is appropriate for a change order and will be approved, contact your Project Manager.



# Hamburg Central School District Capital Project

## Report of Examination

Period Covered:

July 1, 2010 — March 26, 2014

2014M-129



Thomas P. DiNapoli

*example from Justin @ BWS*

million, the contracted cost of the additional work at the High School and Middle School was \$3.9 million and \$400,000, respectively. Therefore, the District entered into capital improvement contracts totaling \$6.6 million without taxpayer approval.

District officials stated that because the first phase of the Project cost less than the total amount of the proposition, they were unsure what to do with the remaining authorized Project appropriations. District officials told us that their architect advised them that the additions of the High School roof, and the site work and general construction at the High School and Middle School were within the project scope. We noted that the architect is compensated as a percentage of the Project's total cost. In effect, increases to the contractor costs result in increased compensation for the architect. As such, it is paramount that District officials monitor individuals or firms responsible for managing projects to ensure that costs are contained and that work is within the scope of the voter-approved projects.

At the end of our fieldwork, in March 2014, the District had completed the original 12 contracts for the Project. The three additional contracts were still in process and officials plan to add contracts, as needed, to exhaust the total allowed cost of the original proposition. As of the end of our fieldwork, the District had committed approximately \$33.3 million for the Project or approximately \$1.4 million less than was authorized by the proposition. Once the Project is complete, the District anticipates issuing permanent financing for the full amount of the approved proposition, approximately \$34.7 million.

### **Change Orders**

NYSED guidelines state that a change order is used to make official changes to a signed contract for capital construction.<sup>3</sup> A change order may be needed to accommodate a discovered job condition, to add or delete portions of work, or to otherwise change a condition or the amount of a contract. With any construction undertaking, a certain number of change orders are expected because a number of variables are not known at the start of the project. However, under normal circumstances, a change order may not expand the scope of the work, or represent a basic departure from work already included in the contract. If the cost of the project is less than anticipated, school district officials cannot simply authorize additional work to be completed that was not intended in the original plans approved by the voters. School district officials could include a list of other items in the original plans and specifications as alternatives, in the event that the cost of the original work is less than anticipated. Additionally, all change orders must be submitted to NYSED for approval by the Commissioner.

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<sup>3</sup> This can also entail reconstruction or renovations.

The Project's 13 capital construction contracts<sup>4</sup> had a total 70 change orders and 54 additions referred to as "allowance disbursement forms" (Allowances) which totaled \$938,150. District officials told us that an Allowance is built into capital construction contracts, as necessary, to purchase additional material that was unforeseen when the original bid specification was proposed.<sup>5</sup> Based on this definition, these Allowances are simply change orders and should be treated and approved as such. Allowances should not be used to circumvent the review and approval process that is required by NYSED.

NYSED requires that all change orders be signed by the Board President. We found that none of the 70 change orders, totaling \$661,582, were signed by the Board President.<sup>6</sup> This occurred because the Board passed a resolution in April 2012 allowing the Superintendent to approve change orders under \$20,000 and requiring that he report them to the Board on a monthly basis. However, the Board cannot circumvent NYSED requirements by passing such a resolution. In addition, the 54 Allowances, totaling \$276,568, were not signed by the Board President, nor were they approved by NYSED because District officials did not consider them to be change orders.

## Project Purchases

School districts can use capital project funds to purchase equipment, hardware, fixtures and technical systems related to the capital project. These items must be part of the scope of the capital project and should be included in the capital project proposition. These may include items such as door hardware, clocks, phones, fire alarms, public address (P/A) systems, hard drives and science classroom equipment, as detailed in the plan.

In addition, capital project purchases are subject to the same laws and regulations as any other purchases. Therefore, unless an exception applies, General Municipal Law requires the District to competitively bid purchase contracts exceeding \$20,000 and public works contracts involving expenditures exceeding \$35,000. When procurements are expected to exceed these dollar thresholds, the Board must publicly advertise and award the purchase competitively. Additionally, the District's policy requires that the Director of Administrative Services obtain three formal, written quotes for purchases of supplies and equipment in excess of \$4,000. The appropriate use of competition

<sup>4</sup> This does not include the two contracts for site work and general construction at the High School and Middle School, for which the contracts were being drafted near the end of our fieldwork. These contracts could have additional change orders.

<sup>5</sup> For example, if the District's bid specification stated that a certain number of feet of piping was to be replaced, and upon opening the wall, it was determined that more feet of piping than originally estimated was needed, an allowance disbursement form was used to purchase the additional piping.

<sup>6</sup> The 70 change orders were approved by NYSED.



We have respected, and will continue to respect (as we must) the overall nature and scope of the Project, as well as the promised \$34,700,000 maximum price tag for the Project. For that money, the District is endeavoring to deliver to its residents a Project that adheres to both the letter and the spirit of the original proposal, and we firmly believe that we are doing so.

See  
Note 2  
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### 3. Change Orders:

Paraphrasing from the SED (Facilities Planning) website: A change order may be required to accommodate a discovered job condition, to add or delete certain portions of the work, or otherwise change a condition or the amount of the contract. It may be issued without competitive bidding; however, no important change may be made which so varies the original plan or is of such importance as to constitute a new undertaking (Opinion of State Comptroller #60-505). This means that a change order may not materially vary the approved scope of work, or be used to exceed the voter-approved project budget. It also means change orders can be rejected if they are over \$20,000 which is the threshold for bidding public works projects. All change orders submitted to SED must be signed by the President of the Board of Education, the architect/engineer and the contractor.

We at the District believe that the members of the Board of Education were acting lawfully and reasonably (within their broad general authority as the managers of the District) in choosing to formally delegate to certain designated District officials their authority to approve modest change orders up to \$20,000 (i.e., items falling below the NYS public bid requirement threshold). Change orders are a fact of life in any large construction project, and the changes in question were modest. They did not expand the scope of the work or depart from the work included in the contract. And they did not require public bidding.

See  
Note 3  
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In the context of a \$34.7 million project, a \$20,000 change item amounts to only about 1/18 of one percent of the total. Even a number of such change orders would not amount to a material portion of the project. Given the relative infrequency of formal meetings of the Board of Education (especially during the busy summer construction season), such a reasonable delegation of authority is common, appropriate and even necessary to ensure that the Project remains on schedule and on budget. The Board of Education maintains general oversight of the Project, regularly reviews the progress of the work on the Project, and always retains the right to rescind any prior limited delegation of particular authority.

### 4. Project Purchases:

Regarding the finding of the purchase of projectors without competitively bidding, the District did endeavor to solicit three quotations for this purchase, however only one (1) vendor indicated the availability of the equipment as specified. The District will ensure future purchases in excess of \$20,000 will be competitively bid, or purchased through a state contract.

Sincerely,

Barbara S. Sporyz  
Assistant Superintendent of Administrative Services & Finance

cc: Dr. Richard E. Jetter, Superintendent of Schools  
Hamburg Central School District Board of Education