



Nancy Kopp, Treasurer  
Martin O'Malley, Governor  
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# Board of Public Works

**Nancy K. Kopp, Treasurer**      **Martin O'Malley, Governor**      **Peter Franchot, Comptroller**

Advisory No.: 1995-1

Date Issued: December 15, 2011

Subject: Procurement - Contract Modifications - Approval Procedures

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## 6<sup>th</sup> Revision

**Purpose:** To guide procurement agencies on implementing Board of Public Works policy concerning review, approval, and reporting of contracts, contract modifications, and renewal options.

**Background:** The Board of Public Works reviews and approves (or disapproves) the award of procurement contracts that exceed the delegated amount. Agencies request Board approval through Items submitted on the appropriate Action Agenda. Agencies report delegated actions on the Procurement Agency Activity Reports (PAARs). COMAR 21.02.01.05.

**Guidelines:** Concerning Board review, approval, and reporting of contracts, contract modifications, and renewal options:

1. A request to approve a contract must be brought to the Board on an Action Agenda when the aggregate value of the initial term and all option periods specified in the initial contract exceeds \$200,000.

**EXCEPTION:** A request to approve a contract must be brought to the Board on an Action Agenda when the aggregate value of the initial term and all option periods specified in the initial contract exceeds \$50,000 for:

- Capital equipment
- Sole-source contracts (other than sole source contracts for which authority has been delegated to the Department of Budget & Management and which are \$100,000 or less)
- Competitively-procured contracts if only one bid or proposal is received

**NOTE:** The amount that determines whether an item is brought to the Board as an Action Agenda Item or on a PAAR is the combined value of the initial term plus all options periods. For example, a three-year contract with a one-year renewal option valued at \$60,000 annually must be submitted on an Action Agenda because the aggregate value of the contract including options exceeds \$200,000.





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The Action Agenda Item must prominently include the:

- (a) Cost of the initial term,
  - (b) Number, length, and cost of any renewal options; and
  - (c) Aggregate contract cost including renewal options.
2. An agency seeking to exercise an option to renew a contract term which renewal term exceeds \$200,000 must obtain Board of Public Works approval before exercising the option. An agency seeking to exercise an option to renew a contract term which renewal term is \$200,000 or less may report the exercise of the option on its PAAR. An option may not be retroactively exercised once a contract has expired (see Procurement Advisory 1998-3: Guideline III).
  3. Any modification to a delegated contract that causes the overall value of the contract to exceed \$200,000 (or appropriate lesser amount for capital equipment, sole source, or competitive procurements when a single bid or proposal was received) must be brought to the Board on an Action Agenda for approval. Further modifications to such contracts are subject to the standard guidelines (3 through 8, below).
  4. **Any proposed modification, notwithstanding the value of the modification, that would materially change the scope of a contract previously approved by the Board or a control agency must be brought to the Board on an Action Agenda for approval.**

**As a general rule, goods or services that are outside the scope of a contract must be procured through one of the source selection methods prescribed in COMAR Title 21 (for example, sole source; competitive sealed bids/proposals) rather than by modifying the existing contract. To determine whether a proposed modification is outside the scope of the existing contract, consider whether the modification could have affected the competition at the time the original solicitation issued.**

**Procurement officers and contract managers should seek guidance from the Office of the Attorney General when deciding if proposed work may be accomplished through a contract modification or requires a new contract action.**

5. A contract modification that individually increases or decreases the contract value by more than \$50,000 must be submitted to the Board on an Action Agenda for approval.





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6. A contract modification that changes a cost component of a contract by more than \$50,000 must be submitted to the Board on an Action Agenda for approval, even if the overall modification is less than \$50,000. An example is when components or tasks are modified or deleted, and the associated funds are shifted to increase other components or tasks or offset other contract expenditures.
7. Modifications to extend a contract term are permitted only if extended before the term expires when:
  - (a) The purpose is to:
    - (1) Complete work under a task order issued before the contract expires; or
    - (2) Provide the State agency time to complete the new procurement, to resolve a protest, or to facilitate a successful transition between contractors; or
  - (b) There are unspent funds remaining, an agency may extend a contract but not add funds **for a total period no longer than one-third of the base term of the original contract (e.g., eight-month extension on a two-year contract) if the:**
    - (1) Original contract contains a provision authorizing the no-cost extension;
    - (2) Approved Action Agenda Item stated that the contract contained a provision authorizing a no-cost extension; and
    - (3) Scope of work under the extension is the same as the original contract.

Board regulations concerning the approval of Action Agenda Items or the reporting on PAARs must be complied with.

8. The Action Agenda Item seeking approval of a contract modification or option renewal must include:
  - (a) Date and agenda item when the Board approved the original contract;
  - (b) Amount of and procurement method used for the original contract
  - (c) Description of the modification;
  - (d) Reason for the modification, e.g., using-agency change, design omission or error, unforeseen site conditions, contractor claim;
  - (e) Reason for the renewal, e.g., pricing, market conditions, compliance performance;
  - (f) Amount of modification;





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- (g) Percentage change from the original contract value represented by the modification;
  - (h) Cumulative percentage change of all modifications; and
  - (i) Percentage of MBE participation to date (MBE compliance).
9. A contract modification or option renewal valued at less than the amount requiring Board approval but that exceeds \$25,000 must be reported on the agency's PAAR. The agency must include on its PAAR:
- (a) Date and agenda item when the Board approved the original contract
  - (b) Amount of and procurement method used for the original contract
  - (c) Description of the modification
  - (d) Reason for the modification, e.g., using-agency change, design omission or error, unforeseen site conditions, contractor claim
  - (e) Amount of modification
  - (f) Percentage change from the original contract value represented by the modification
  - (g) Cumulative percentage change of all modifications, and
  - (h) If reporting the exercise of a renewal option, indicate the period of performance of the original contract, any previous option periods, and the current option period. Explain any increase in the cost of the option period over the cost of the initial contract period.

Questions on this Advisory may be addressed to:

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