



RHarper Consulting Update

Some Thoughts About Change Orders

Change orders are one of the most incendiary topics you can raise with owners, contractors and architects. Depending upon your perspective, change orders can be tools of the devil, manna from heaven, or just another fight to referee. Here are some suggestions, primarily from an owner's perspective, on how to make those change orders a little less painful.

Markup

In most construction contracts, the markup on change orders is buried in the body of the contract and typically consists of an amount for overhead and profit, let's say 10% and 5% respectively. Unfortunately, over the years and particularly in recent economic stressful times, contractors are being much more aggressive about those changes in an effort to create an additional profit center. Contractors may well identify ambiguities, errors, or omissions in the construction documents during the bidding process and keep silent on them, so they can submit change orders with higher markups later.

Design

Contractors continually cite problems with the completeness and quality of drawings; however, common practice today, at least in the private sector, gets the contractor involved on some level during the design process. While this certainly doesn't eliminate the argument of incompleteness or ambiguity in the construction documents, it does help you argue that the contractor has an understanding of the design intent if not the specifics.

Solutions

Owners can proactively approach these challenges by incorporating several standard practices in their design, bidding and contracting processes:

- Revise the change order markup language to ensure that overhead and general conditions on change orders will be limited only to demonstrable, direct costs verifiable by audit.
- Profit on change order should be limited to the fee percentage on the overall project.
- Negotiate a change order threshold where the first \$500,000 of change orders is submitted without markup for the Contractor.
- Establish an allowance for subsurface or other concealed conditions that are anticipated in the Project. These changes can then be addressed as a Cost of the Work thus minimizing the exposure for additional markup.
- Avoid fast track design processes where the contractor is providing pricing on partially complete drawings. This process provides substantial risk for change orders and essentially leaves the owner without a practical defense against the contractor's claims. If fast track is required, break the project into finite trade packages that can be completed, reviewed and certified as complete by the contractor prior to bidding.
- Require any claim for additional general conditions from a schedule delay to be actual, demonstrable costs and verifiable by audit. As an alternative, a flat daily rate for time extensions should be determined and included in the contract language.
- Submit all drawings and specifications to third-party peer reviews focused on completeness, coordination, and code compliance - these are the areas that typically account for the majority of change orders. Owner-directed changes, while higher profile, generally represent only a fraction of the costs associated with bringing the project into compliance with code and resolving coordination conflicts in the field, where subcontractors have to complete costly rework to correct these design deficiencies.
- Include contract language in the bid documents requiring contractors to certify that they have reviewed the bid documents for completeness and correctness, and they will not avail themselves of minor inconsistencies, errors and omissions in the documents to submit changes or pursue claims.

Contractors are entitled to all reasonable and fair costs associated with a legitimate change in the scope of the work, or costs associated with delays in the work that are no fault of the contractor. Most contractors are professional, service-oriented, and determined to provide high quality projects at the best value. Initiating a dialogue about how change orders will be addressed prior to bidding and establishing a fair and reasonable process will prevent numerous disputes and claims while providing a finished project on time and at the best value.

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RHarper Consulting Group provides development consulting, program management, and owner representation services focused on the senior living and mixed use sectors. In addition, Mr. Harper is also a listed mediator and arbitrator providing dispute resolution services for the construction and real estate industries.



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