



RHarper Consulting Update

Now, Let's Talk About Those Change Orders

As we begin to see new projects and major rehabilitations start construction, its time to look not just at how great the pricing is from our contractors, but to also look at some of the more troublesome construction administration issues that we face. One of those sticky issues is -- change orders.

In most construction contracts the markup on change orders is buried in the body of the contract and typically consists of an arbitrary amount for overhead and profit (say 10% and 5% respectively). Unfortunately, over the years and particularly in recent economic times, contractors are availing themselves of more liberal terms and submitting change orders more aggressively in an effort to create an additional profit center. If a contractor identifies ambiguities, errors, or omissions in the construction documents during the bidding process, they may remain silent on these items, then submit change orders with the higher mark-ups.

As an aside, several contractors have recently mentioned they are seeing more problems with completeness and quality of drawings. While this is always a common complaint, these are presented with perhaps more veracity. The design community was impacted first and severely by the recession in real estate; design firms have had to reduce forces and shift to product lines outside their traditional specialties, and, as they have had to compete with lower fees in unfamiliar products and perhaps unfamiliar markets, it stands to reason that they are making more errors, more omissions, and construction administration has been particularly impacted.

Owners can proactively approach these challenges by incorporating the practices below in their design and bidding process:

- Revise change order mark-up language to provide :
 - Overhead and general conditions on change orders limited only to demonstrable, direct costs.
 - Profit on change order limited to the fee percentage on the overall project.
- Avoid fast track design processes where the contractor is pricing partially complete drawings. This process increases the risk for change orders and essentially leaves the owner without an effective defense to these type claims. If fast track is required, break the project into discrete trade packages that can be completed, reviewed and certified as complete by the contractor prior to bidding.
- Require any claim for additional general conditions as a result of a schedule delay be actual, demonstrable costs and subject to audit. In the alternative, a flat daily rate for time extensions should be determined and included in the contract language.
- Use third party peer reviews for all drawings and specifications prior to final pricing. The reviews should focus 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, are generally 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 perform costly rework to correct these design deficiencies.
- Include contract language in the bid documents requiring the contractor to certify they have reviewed the final bid documents for completeness and correctness, and that they will not base changes or claims on minor inconsistencies, errors and omissions in the documents.
- Require your design teams to maintain consistent staffing levels with dedicated principal involvement throughout the design and construction administration phases of the project.

Contractors are entitled to all reasonable costs associated with legitimate changes in the scope of the work or with delays in the work, that are no fault of the contractor. Most contractors are professional, service oriented and dedicated to providing high quality projects at the best value to the owner. Initiating a dialogue about how change orders will be addressed prior to bidding and agreeing on a fair and reasonable process will prevent disputes and claims while providing a finished project 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 a listed mediator and arbitrator and provides dispute resolution services for the construction and real estate industries.