

CHANGE ORDERS

A friend says that there are three things certain in life. Death, taxes, and Change Orders. Nearly every contract has a change order provision that states if you perform changes to the work without a signed change order, you will not get paid. Yet, many of the client matters we see involve claims for work performed by contractors without signed change orders. We know that there is pressure on contractors to “just do it” and settle up later. We understand that questions about the unknown costs of change orders are also an important part of the problem, as is the delay in approval or rejection of proposed change orders submitted. The need for better and more efficient change order processes is apparent. If any of you have suggestions which benefit all concerned, we would like to hear them. Below are some of our suggestions.

Perhaps a provision in the contract which permits an automatic extension of completion time to the contractor once the change order is submitted by the contractor may move owners and architects toward faster change order approval. Other possible approaches are to make a proposed change order “automatically” approved ten days after submitted unless responded to in writing, or to permit approval of a proposed change order by email to expedite the process. When pricing or time extension can be partially agreed upon, many contracts have a provision - generally in the Construction Change Directive section- where, if the parties cannot agree on the full amount of the proposed change, an undisputed time and expense are to be allowed and the disputed portions are reserved for later resolution through the claims procedures. A similar provision could be added to the contract for all proposed change orders, enabling the contractor to at least be paid undisputed amounts.

Most contracts state that owner shall or may adjust the contract time or contract sum in case of changes in the work. The claims procedures allows claims for increase time and

payment, but generally require notice within a short time period, and also require the contractor continue performance during a dispute.

Easy for us to say, but unless there is some provision in the contract which deals with payment for unsigned change orders, especially for larger changes, we would advise contractors not move forward with any work (other than minor changes) without fully executed change orders. If a contractor decides he must proceed with the work, the contractor should submit his claim prior to commencing the work to avoid an argument that by proceeding with the work, contractor waived its right to assert the claim. Along the same lines, the contractor should keep detailed documentation of his proposed pricing, and the costs associated with the actual work performed.