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Why Change Orders Matter

Legal Update

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I recently settled a dispute with a construction client where the absence of formal written change orders was an issue. The parties disagreed on what was compensable, but this disagreement could have potentially been avoided if they had adhered to written change orders.

Most construction contracts, and sometimes even estimates or purchase orders, require that changes to the original scope of work be approved in writing. Despite the requirement, there are many instances where the parties do not follow this and do not properly document changes. As a result, costly disputes often arise.

Changes are often needed in the course of a construction project. And those changes typically include work that is either added or removed from the original scope of work. While that might sound like a unilateral request or decision, in practice, it is not.

In fact, a change order is a contract amendment. As *Construction Law Today* explains, “a Change Order is a bilateral agreement between parties to the contract – an owner and prime contractor, prime contractor and subcontractor, two or more subcontractors – to change the contract. A Change Order represents the mutual consensus between the parties on a change to the work, the price, the schedule, or some other term of the contract.”

Because a change order is a contract amendment, change orders should be written out and approved by all parties – which can take time, money and patience – something parties are often not happy about.

What Should be Included in a Change Order?

A change order is going to vary depending on the project and the parties involved. However, all change orders need to include detailed information, including:

1. A description of the requested change;
2. Itemized documentation of any costs;

3. A summary of the total costs of the proposed change;
4. Any impact on the project completion date.

Can a Party be Compensated Without a Change Order?

In the absence of a written change order, claims for additional compensation are not easily made. To receive compensation, contractors must prove the following:

1. That the extra work was not within the original scope of work;
2. That the additional work was done at the request of the owner or general contractor (GC);
3. The owner or GC represented that additional payment would be forthcoming;
4. The owner or GC waived the contract provision requiring changes to be made in writing, or otherwise acquiesced to the change by ignoring those provisions.

Best Practices

As you know, changes will inevitably happen at some point on your projects. You should have a contract in place that anticipates these changes and clearly delineates how parties are to respond with change orders when they arise. To every extent possible, change orders that detail the change in scope, price and project time should be documented in writing and signed off by all parties.

To schedule a consultation regarding your construction contract or regarding change orders, please call us today.