Authorization For Extra Or Changed Work

The contractor and his supervision should insist on written orders for work changes—as a safeguard and simply as good management.

The typical construction contract change clause contains a requirement that the contractor or subcontractor give written notice when he considers a particular item to be a change or extra. Unless this written notice is given within a specified time, the contractor or subcontractor may be barred from claiming additional compensation under the contract.

This written-notice requirement is one of the many pitfalls which await an unwary contractor.

Construction companies should give their project managers, superintendents, and foremen detailed instructions on what notices are required by the particular contract for the specific job on which they are working. Jobsite personnel must be instructed in the correct contractual method of reporting any changes, extras, and delays.

Contractors who establish a methodical system which consistently recognizes circumstances requiring written notification to the owner will not have to absorb the cost of changes because of procedural technicalities in the contract.

The notice provision, which a subcontractor should follow, may not be in his subcontract. Rather, it may be in the General Conditions, which are a part of the specifications and which are often incorporated into and made a part of the subcontract by reference.

Therefore, in preparing supervisory personnel for commencement of work on a new project, it is not enough to look at only a contract or subcontract. Every part of the subcontracts, general contract, general conditions, supplementary conditions, plans and specifications must be examined. A list must be made of every place in those documents where notice is required.

Written Order Is a Must

If the general contract requires that a change order be issued in writing by the owner, then the contractor should obtain a written order from the owner or his authorized representative.

If a subcontract requires a change order to be issued in writing by the general contractor prior to the performance of the work as changed, the subcontractor involved should be careful to follow the contract procedures of obtaining an appropriate written order from the general contractor or his authorized representative. This should be done prior to the performance of the changed work in order to avoid problems in subsequently obtaining payment for the performance of changed work.

Often, the general contractor does not follow the procedure set out in the contract for ordering changes and extra work. Instead of a written order in advance by an authorized representative, an oral order from the general contractor’s field superintendent may be issued.

Although the subcontractor’s foreman may be tempted to perform the extra work in expectation that the
It isn’t enough to review only a contract or subcontract; A notice provision could be elsewhere such as in general conditions—So read all documents

Subcontractor will be paid the reasonable value of the work, he should not perform extra work ordered orally.

The general contractor may dispute the fair value of the work performed, or he may reject the claim entirely because it was not authorized in advance in writing by the proper officer, as required by the contract.

The subcontractor should abide strictly by the procedure set out in the contract for complying with change orders if he wishes to preserve his right to compensate for extra work performed. Specifically, he should obtain written authorization for the changed work on a form that identifies itself as being an order for changed or extra work.

Many general contractors and subcontractors supply their field supervision with a supply of extra work authorization forms with instructions that their field personnel should not perform any extra or changed work without obtaining the signature of an authorized representative of the party ordering the extra or changed work.

Supply Crews With Forms

If the claim clearly indicates that the scope covers “authorization for extra or changed work” and it is signed by an authorized representative of the party ordering the work, the signed form is the legal basis entitling the contractor to extra compensation for the extra or changed work.

When a contractor receives oral instructions from a representative whom the contractor is not certain has the appropriate authority, it is a wise course of action to write the owner reporting the field instructions. State that these instructions require extra work for which the contractor, if required to perform, will claim an extra. The authorized representatives of the owner may then tell the contractor not to proceed with the work, in which case the contractor has no further problem; or the owner may acquiesce in these instructions either by affirmatively issuing a written change order or by silence or failure to repudiate the instructions.

This notice also fairly alerts the authorized representatives of the owner to the fact that the instructions were issued by operating personnel, which provides the owner with an opportunity to clarify, define, and rescind the instructions before costs are incurred. Writing a letter confirming oral and possibly unauthorized instructions not only preserves the contractor’s right to relief but also gives the owner an opportunity to avoid any misunderstandings before work is performed.
A written confirmation also avoids disputes as to the issuance and scope of the instructions.

In addition to protecting claims for additional compensation, the general contractor or subcontractor should give notices of claims for extensions of time needed to perform changed work within the specific time limit for completion included in the contract. If the general contractor or subcontractor runs past this limit, he may be liable for liquidated delay damages.

A general contractor or subcontractor is extremely vulnerable to liquidated damages because the money can be taken from his progress payments or retention.

Most general contractors and subcontractors are required by the contract to make a claim for an extension of time if the project is delayed for any excusable reason in order to avoid an assessment of liquidated damages. For example, if the owner verbally orders the contractor to do extra work, which will delay completion of the project, the contractor should claim an extension of time within the time limit after he receives the order. The contractor can protect himself by sending one letter to the owner containing two statements:

1. The contractor has been ordered to do extra work (state here the work ordered) for which he will incur extra costs. A claim for extra costs will be forwarded later (or can be made now if known).

2. The extra work may delay completion, and the contractor claims an extension of time to cover the extra work.

Thus, when a project is delayed, two claims are required—one for an extension of time and one for extra cost. A common error of contractors who perform extra work is to claim only an adjustment of the contract price and neglect to claim an extension of time.

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