Legal Corner

Get It In Writing

By Stephen A. Hilger, Esq.

A wall and ceiling contractor friend of mine once impressed upon me the need of getting changes to workscope in writing. He and his company had performed some additional work on a project where the drywall work alone was valued in the multi-million dollar range. Naturally, he expected to be paid for the extra work. Both the general contractor and the owner refused his request.

He was finally able to set up a meeting with both the general contractor and the owner. At the meeting, the owner and general contractor performed their own table pounding and staunchly refused to pay while the wall and ceiling contractor sat back and listened. When the pounding was over, the wall and ceiling contractor pulled out of a bag a scrap of drywall on which was written the change initialed by the general contractor’s field superintendent. The owner then immediately instructed an embarrassed general contractor to cut a check. That piece of drywall is now framed and hanging in the office of the wall and ceiling contractor.

While this story has a happy ending, not all of them do. In today’s business climate, it is becoming ever more necessary to document job conditions in writing. Some examples of what you should consider reducing to writing include:

1. Work scope changes. Many contracts contain the “no pay without change order” language. While a formal written change order is not required in all cases, the existence of one may put to rest any argument about getting paid. If the contractor will not give you the change order and the work clearly involves a scope change, send the contractor a letter to that effect.

2. Schedule information. Send the general contractor notices of starts and stops of work. This will help you with any acceleration, disruption, compression and loss of efficiency claims. If you can and the general contractor is willing, get the general contractor to sign off on your as-planned labor and keep accurate records of your actual labor. Also, put the general contractor on written notice of any interference to your work.

3. Job conditions. For example, if the substrate or the work of any prior trade is not fully acceptable, write the general contractor a confirming letter.

Start documenting these items and you will be light years ahead if disputes start. The documentation can range from a formal letter to a handwritten field speed memo to notes scribbled on the back of drywall. Either way, you will be protecting yourself and your bottom line.

About the Author

Stephen A. Hilger, Esq., practices law with the firm of Rhoades, McKee, Boar, Goodrich and Titta in Grand Rapids, Michigan. His experience is in litigation, primarily construction litigation with a heavy emphasis in the drywall and stucco industry. He has represented and continues to represent several AWCI members.

In today’s business climate, it is necessary to document job conditions in writing.

38 June 1991/Construction Dimensions