



Changes and Extras - Get Paid

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Change order work is inevitable on just about every construction project, but for subcontractors, getting paid for that work can be a challenge! Following these few simple suggestions will be dramatically increase the chances of subcontractors actually getting paid for change order work.

At Bid Stage

The first step in this process is to know what work is included in the subcontractor's base contract. Thoroughly review the plans and specifications that are being bid from and whenever possible, request and review the entire set of plans and specs.

When preparing the bid, list *on the bid itself* the specific plan sheets and specification sections that have been reviewed and are basing the bid on; and specifically state that any work contained on any other sheets or plan specs are **not** included in the bid. Provide a reasonably detailed description of the work being proposed to perform and the work being excluded. *Do not* rely on generic inclusions and exclusions.

Finally, require that, upon acceptance, the bid be incorporated in the subcontract agreement and form the basis of the subcontractor's scope of work.

At the Contract Negotiation Stage

Carefully review the terms of the subcontract agreement. Closely review the proposed scope of work, the plan sheets and specification sections which the general contractor is claiming forms the basis of the subcontract. Ensure that the plans and specs have not been revised since the bid was submitted or that additional sheets or spec sections have not been included in the subcontractor's scope. Again, require that the original proposal form the basis of the subcontractor's scope of work.

Virtually every subcontract agreement written today requires that the subcontractor obtain a written change order prior to performing additional work on the project. The reasons for this are obvious: the stated reason being cost control. However, for the unscrupulous general contractor, this requirement provides an opportunity to get changed or extra work performed on the jobsite for "free." Beware! These contract terms are not mere recitals but are routinely used by the general contractor to avoid paying for unsigned extra.

Many subcontracts also provide that only certain persons are authorized to request and approve change order work. If this is the case, the subcontractor should be aware that it may have to fight for payment of any change order not properly authorized. The subcontractor should notify its onsite workers of this contractual requirement.

Also the subcontractor should carefully review the contract for terms which require, whether expressly or by implication, that it is required to perform extra work without any assurance of payment by the general contractor - a type of “don’t worry, we’ll work this out later” term. Do not agree to such a term! Another contractual provision subcontractors should avoid is one which makes payment for extra work contingent on the general contractor successfully collecting for this work from the project owner. The most obvious examples of why this is a provision to avoid are those circumstances where the subcontractor’s work is a back-charge to another subcontractor, or the subcontractor’s work is required to correct a mistake directly attributable to the general contractor. If the general contractor is requiring a subcontractor to do extra work, the subcontractor must be sure the contract provides for payment for that work, regardless of whether the owner pays or not.

As a final note in this area, many subcontracts either provide for a specific percentage of profit and overhead for change orders, or hold the subcontractor to the same percentages as those contained in the contract between the owner and general contractor. In either circumstance, subcontractors should be aware of what these percentages are and ensure they are willing to abide by these terms as part of the subcontract agreement.

During Construction

After the subcontractor has carefully reviewed plans, submitted a detailed proposal, reviewed the subcontract agreement, and has its crew on the jobsite, it is now time for the subcontractor to set the expectations for the general contractor and field superintendent, preferably early on in the pre-construction meeting. The subcontractor should let them know that it will hold them to their own contractual requirements for written change orders and that it will perform no additional work without this prior written authorization and agreement.

Once the job starts, be assured that the jobsite superintendent will approach the subcontractor’s foreman and request that some specific item of work be performed. The subcontractor should first determine whether this is extra work – this is when its efforts in providing a detailed bid pay off. If it is determined that the requested work is outside the subcontractor’s scope, the subcontractor should advise the superintendent and verify that he wants the work performed. Then the subcontractor should determine its price for performing this work; keeping in mind any limitations on profit and overhead that may be contained in the subcontract agreement.

Next, the subcontractor should remind the general contractor’s field superintendent that his company procedure requires a written change order, and ask that he get his office to fax a written change order directive, either to the subcontractor’s office or to the jobsite trailer, and that subcontractor will be unable to perform this additional work prior to receiving the appropriate written authorization. The subcontractor should be sure to request a clearly defined scope of work. However, if time really is of the essence (as it so often is), and if there isn’t time to get a formal change order from the GC’s office, ask the superintendent to issue a written work authorization. If the superintendent cannot or will not do this, the subcontractor’s foreman should write out a work authorization for the field superintendent to sign. A multi-part carbonless memo is ideal for this purpose, just describe, in reasonable detail, the work to be performed, include the date and time of the request, and have the field superintendent sign his authorization. The memo does not have to be pretty, and no one is going to count off for grammar or spelling errors; just get the authorization in writing.

Then, as soon as possible, preferably within the next 24 hours, the subcontractor should get this field authorization to the GC’s office with a request that a formal change order be prepared and issued for this work. Do not let this request languish in the GC’s office; keep following up until a formal written change order is in hand. Subcontractor **MUST NOT** agree to wait until the end of the project to get the change orders sorted out - at this point the GC is in a superior negotiating position and getting full payment on the extra work performed is much less likely.

Unpaid changes and extras can turn a profitable project into a real drag. Subcontractors must be ready to spot, and get paid for, extra work in order to see a difference in the bottom line.

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