



Welcome to the Subcontractors Academy!

Brought To You By:

City of Austin Contract Management Department

In partnership with



Goals:

1. Ensure all interested subcontractors have access to information, resources and tools they need to be successful in their City contracts.
2. Provide subcontractors an opportunity to network with, and learn alongside, government contracting officials to gain a better understanding of the City processes, roles, and responsibilities associated with City government contracting.



Contract Management Department

Subcontractors Academy

The Trouble With Change Orders

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July 23, 2014

Which one is the Perfect Project?

A)

Ahhh!!!!...
On Time,
On Budget,
No Change Orders....
Love this project!!!



B)

Keep those
Change
Orders
coming...





Change Orders

Change Orders (CO)

Written agreements entered into between the Contractor and Owner authorizing an addition, deletion, or revision to the contract, issued on or after the Execution Date of the Agreement.

Contract

The written agreement between the Contracting Agency and the Contractor.

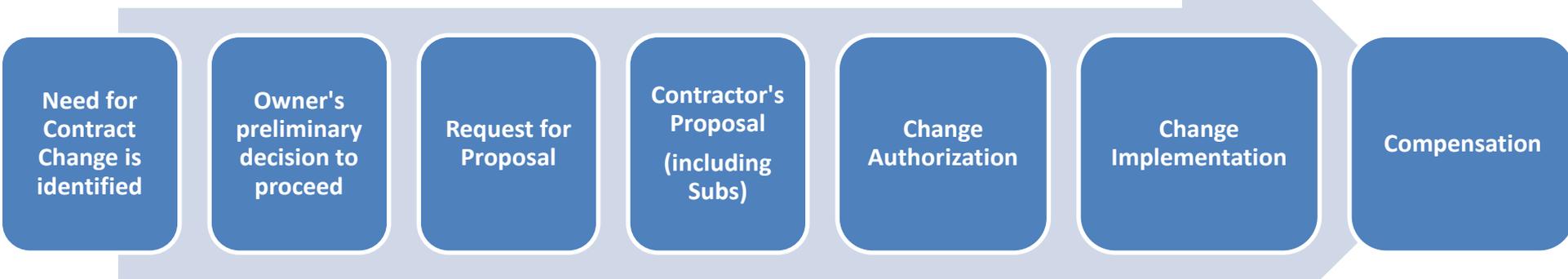
It describes, among other things:

1. What work will be done, and by when;
2. Who provides labor and materials; and
3. How Contractors will be paid.

**Change Orders
also impact
subcontractors**



Change Order Flow Chart



1. Once the necessity for a change is identified, the Owner evaluates the request and determines how to proceed
2. The Owner submits a Request for Proposal (RFP) to the contractor. The RFP must include all information required to make a realistic estimate on cost, time and effort.
3. The contractor will prepare his response/proposal **–including subcontractors’ information-** and submit it to the Owner as fast as possible.
4. The Owner reviews the proposal, approves or rejects it or asks for further clarification. If approved, instructs the contractor formally by issuing a Change Order or whatever provided in the contract.
5. The contractor acts according to the Owner’s instruction.
6. The contractor submits invoice after work is completed.

Change Orders

CHANGE ORDER

PROJECT/OWNER NAME: _____

CONSTRUCTION PROJECT: _____

ADDRESS: _____ CITY/STATE/ZIP: _____ PHONE NUMBER: _____

PROJECT NUMBER: _____ CHANGE ORDER NUMBER: _____ ORIGINAL CONTRACT DATE: _____

DATE: _____

CHANGE THE FOLLOWING WORK TO THE ORIGINAL CONTRACT:

The following are common reasons for change order initiations by various parties:

Common Types of Change Orders	Common Reasons for and Sources of Change Orders
Change in Scope	Tenant agency has requested a design change.
Unforeseen Conditions	Site conditions differ from the expected. Requested by contractor or professional.
Professional Errors and Omissions	Requested by contractor or professional.
Errors	Professional has incorrectly drawn the construction design plans and specifications.
Omissions	Professional has inadvertently omitted an item or element from the plans.

Examples:

- Add 5 valves.
- Change location of electrical outlets.
- Remove contaminated soil.
- Install additional fire proofing. (*Required by Code, and was not shown in original plans*)

Why contracts have change clauses allowing change orders



- No architect or engineer ever produced a perfect set of plans and specifications.
- Every construction project is different.
- Work is often impacted by the unforeseeable.
- No set of drawings can anticipate such conditions or events, nor other factors that make the owner/City alter the project midstream.

The Trouble with Change Orders

Most construction contracts require that all changes or authorizations for extras be put in writing, generally before the work is performed. In real life though, the pace of work out in the field is often so fast and furious that, in the interest of completing the project, change orders are approved verbally, with the understanding that someone will put them in writing when time permits.

As you may have learned the hard way, change orders written after the fact -or not at all- can lead to major disputes, and all sides can lose big money on change orders that lack proper documentation.



The Trouble with Change Orders

The “Do It Later” approach does not work



LATER

It often leads to a huge amount of time spent on the back end trying to resolve disputes that could have been avoided if changes were dealt with in writing before the work was done to ensure that the contractor, subcontractors and owner agreed on and understood the scope of work and price for the proposed change. **Many disputes between the parties arise simply because they honestly had different perceptions of the requested changes.**



Managing Change Orders

- Fortunately, change order pitfalls can be avoided with precise planning and adherence to sound business practices.
- Contractors and Subcontractors who are able to manage change orders effectively will be more profitable, keep projects tighter to schedule and greatly reduce the likelihood of claims and legal disputes over contract provisions.
- Successfully managing your change orders process will improve your company's efficiency and profitability.



Managing Change Orders Strategies for Success

1. Become familiar with the original construction contract.
2. Identify potential changes early.
3. Encourage communication and accountability.
4. Keep accurate records.
5. Maintain your leverage.
6. Track change orders.

Successfully managing your change orders process will improve your company's efficiency and profitability.





Appropriate Uses of Change Orders

1. Unforeseen Conditions
2. Design errors, deficiencies, or defects
3. Design changes requested by the Owner
4. Increased quantities
5. Upgrading materials
6. Compensation for delays (unusual weather or owner caused delays)
7. Force Majeure
8. Regulatory changes
9. Safety or environmental issues
10. Emergency work
11. Additive, Deductive, or Alternate work
12. Negotiated claim settlement
13. Deletion of work
14. Additional work of the same type
15. Potential work identified in advertisement
16. Natural progression of original project

Cardinal Changes

A **Cardinal Change** is one where the purpose of the original agreement has been frustrated or made impossible by the extent of the requested change.

Example:

Recreation Center with accessory snack bar.

- A change seeking to remove the construction of the recreation center from the contract would violate the purpose of the original contract.
- On the other hand, should the owner decide to go ahead with the construction of the recreation center without the snack bar, the original purpose in constructing a recreation center would not be violated, and that would be a permissible change.

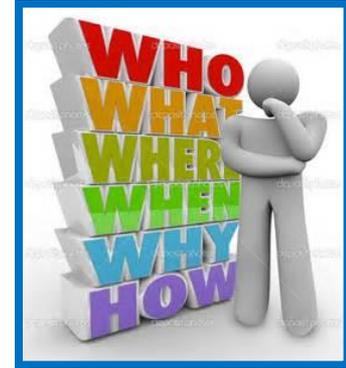
- **In the public construction context, the contractor and subcontractors run the risk of non-payment for work if it accepts a cardinal change.**
- Although a public owner may make changes within the existing scope of work; without complying with competitive bidding statutes, it cannot make a new or different contract.
- Further, simply performing work 'at risk' or 'under protest' may not be sufficient to preserve the contractor's right to compensation.



Contract Change Order Content

The contract change order must be clear, concise, and explicit. When appropriate, it must include the following:

1. What is to be done.
2. Location and limits of proposed work.
3. Any applicable specification changes and references to specifications.
4. The proposed change order 's effect on time of completion.
5. Method and amount of compensation.



Specifications for contract item work already included in the contract will apply to added contract item work.



Contractor or Subcontractor-Initiated Change Order

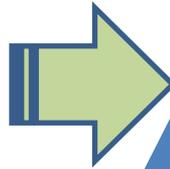


At a minimum, should include:

1. The reason for the proposed change, a reference to the plans and specifications, the benefit to the owner and the project, and the effect of the change on the project sequence.
2. The effect of the proposed change on the contract time and price in sufficient detail to permit proper evaluation by the contractor, the owner, and A/E.
3. A reasonable but definite time period for the owner to accept or reject the change proposal without interruption or delay in the project schedule.

Determination of federal and/or state funding participation in COs, is based upon:

- Change in Scope
- Unforeseen Conditions
- Errors & Omissions



Need for Change

Allowability of the costs

Reasonableness of the method to accomplish the objective

Eligibility of the change

*Group Discussion...
OTC Sidewalk Project*



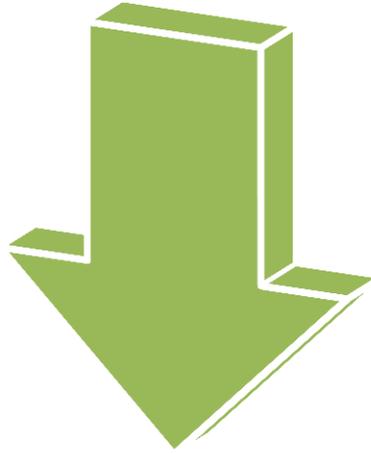
Amending Contracts



**Process
according to
COA
contracts....**



When the inevitable necessity for changes occurs, each segment has needs that compete with the other



Owners need:

- 1) Knowledge of the time and cost implications of the change,
- 2) Fair charges, and
- 3) Prompt execution of the changed work.

Contractors, Subcontractors and Suppliers need:

- 1) Prompt payment of fair compensation for the changed work , plus
- 2) Time adjustments that are equitable.



The COA process to implement changes is a logical approach to meet as many of the needs of all parties as is practical

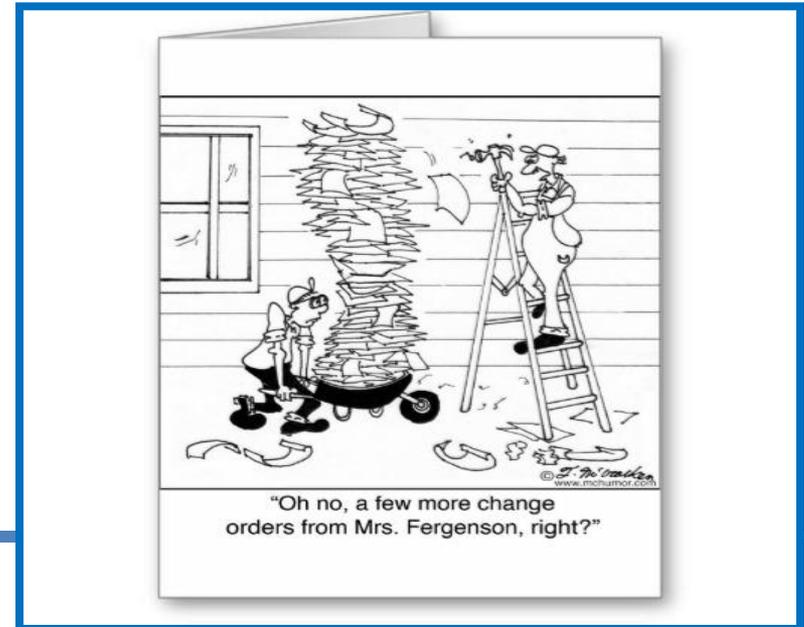


3.3 Amending and Supplementing Contracts

3.3.1 The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof in one or more of the following ways:

- .1 Change Order
- .2 Change Directive
- .3 Time Extension Request

Except in the case of an emergency, a written Change Order or Change Directive is required before Contractor commences any activities associated with a change in the Work which, in the Contractor's opinion, will result in a change in the Contract Amount and/or Contract Time.



Article 3 – Contract Documents: Intent, Amending, Reuse



- 1. Change Orders** – **Written** agreements entered into between the Contractor and Owner authorizing an addition, deletion, or revision to the contract, issued on or after the Execution Date of the Agreement. **The Contract Amount shall only be changed by a Change Order.** *(The original Contract Amount may not be increased by more than 25%)*
- 2. Change Directive** – A written directive to Contractor, signed by Owner, ordering a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Amount or Contract Time, or both. A Change Directive shall be used in absence of complete and prompt agreement on the terms of a Change Order. **A Change Directive does not change the Contract Amount or Contract Time**, but is evidence that the parties expect that the change directed or documented by a Change Directive will be incorporated in a subsequently issued Change Order.
- 3. Time Extension Request** – An approved request for time extension on a form acceptable to the Owner.

Article 3 – Contract Documents: Intent, Amending, Reuse

3.3 Amending and Supplementing Contracts

3.3.2 In addition, the requirements of the Contract Documents may be supplemented, and **minor** variations and deviations in the Work may be authorized, in one or more of the following ways:

- .1 Field Order
- .2 Review of a Shop Drawing or sample
- .3 Written interpretation or clarification



- **Field Orders** – A written order issued by Owner’s representative which orders minor changes in the Work and which does not involve a change in the Contract Amount or Contract Time and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- **Shop Drawings** – All drawings, diagrams, illustrations, schedules and other data which are specifically prepared or assembled by or for the Contractor and submitted by the Contractor as required by the Contract Documents.

These documents do NOT change the Contract Amount or Contract Time.



Determination of Value of Work

11.4.1 The Value of Work covered by a Change Order for an adjustment in the Contract Amount will be determined by one or more of the following methods:

- .1 by application of **unit prices** contained in the Contract Documents to the quantities of items involved.
- .2 by a mutually agreed **lump sum** properly itemized and supported by sufficient substantiating data, **including documentation by subcontractors performing the work**, to permit evaluation.
- .3 by cost of Work plus Contractor's fee for all overhead costs and profit – using **Force Account** method ***(Only used if neither of the methods in .1 nor .2 can be agreed upon)***



Determination of Value of Work

Unit Prices

Using Unit Prices contained in the contract



Example:

- 100 linear feet (LF) more of silt fence is needed
- Bid Item # 642S Silt Fence for Erosion Control
- Unit price in the contract is \$4/LF
- Thus, Value of Work is $100\text{LF} \times \$4/\text{LF} = \400

Determination of Value of Work Lump Sum

by a mutually agreed **lump sum** properly itemized and supported by sufficient substantiating data, **including documentation by subcontractors performing the work**, to permit evaluation.

- Labor
- Materials
- Equipment
- Overhead
- Profit

The lump sum change order is preferred because it defines precisely the total cost or credit and time variations to the contract .

Example:

100 linear feet (LF) more of silt fence is needed

- Labor = 2 hrs x \$25 = \$50
- Materials = 100 LF x \$1 = \$100
- Equipment = 2 hrs x \$50 = \$100
 - Subtotal = \$250
- Overhead = \$250 x 58% = \$145
- Profit = \$250 x 10% = \$25
- Bonds = \$12
- TOTAL = \$432



Determination of Value of Work Time and Material (Force Account)

- When work cannot be easily estimated.
- When there is a disagreement over cost.
- Force Account establishes a method to track and pay actual costs plus defined markups.
- Both contractor and owner keep records as work progresses.
- Contractor pricing costs are consistent with pricing for Lump Sum (fixed price) change orders.

- Only used if neither Unit Price or Lump Sum methods can be agreed upon .
- When using a time and material change order, all parties should be sure to have a clear definition of reimbursables before the work is to begun.



Determination of Value of Work Time and Material (Force Account)

Exercise / Group Discussion...

1. The Owner wants to change the scope of work, but the parties cannot agree on how this will affect the contract price.
2. The Owner urges the increased scope should cost \$50,000.00, but the Contractor estimates the work at \$65,000.00.
3. The dispute leads to a stand-off, where the Contractor refuses to make the change, and the Owner claims a breach in contract.
4. Owner issues a Construction Change Directive, requiring the Contractor to proceed forward with the change... Now what?

Let's
Recap

Although each change order must be evaluated separately, certain procedures are applicable to most change orders and should be followed:

1. Establish change order handling procedures early in the project.
2. Identify those individuals who have authority to negotiate and approve change orders.
3. No work beyond the scope of the base contract should be performed without prior written authorization from the owner, except in emergencies.
4. The scope of the change order should be clear and the request for the change should contain enough information to enable the contractor or subcontractors to make a realistic estimate of the costs and time involved.
5. Proposals should be submitted as soon as possible after the receipt of a request, and once submitted should be acted upon immediately.
6. The timely issuance of change orders can prevent excessive costs, delays and friction between the parties.



Questions? Comments?



For additional Information:
<http://austintexas.gov/departments/contract-management>

Next Class:
**Contract Compliance –
Wage Rates and Payroll
Reporting**
August 27, 2014
6 – 7 pm
One Texas Center
Suite 1045

Bonus Exercise...

Yet another example using
Force Account/Time and
Material

Determination of Value of Work Time and Material (Force Account)

Example: *Reference: COA 00700 Article 11.5*

100 linear feet (LF) more of silt fence is needed

- **LABOR**

- Labor = 1.5 hrs. x \$15.67 = \$23.50 (actual hrs. worked x certified payroll rate)
- OH & Profit = \$23.50 x 25% = \$5.88 (use % allowed per contract 00700 11.5.1)
- Insurance (Such as Liability, Worker's Comp, Social Security, and Unemployment) = \$23.50 x (55% - 25%) = \$7.05 (Ref. 00700 11.5.1)

- **MATERIALS**

- Materials = 100 LF x \$1 = \$100
- OH & Profit = \$100 x 25% = \$25

- **EQUIPMENT**

- Equipment = 1.5 hrs. x \$50 = \$75 (Actual use x rate per Rental Rate Blue Book or contract)

- **SUBTOTAL = \$236.43**

- **BONDS = \$12 (actual from surety)**

- **TOTAL = \$248.43**

