



Change Orders

by Sam Abdulaziz

Changes in the middle of a project or "extras" can cause problems unless you're prepared to handle them. Here's how you can make changes midstream, keep your clients happy, and still make a profit.

By definition, an extra or a change is a modification of the original contract. Therefore the original contract must be specific enough so that one can define what is within or outside the scope of the agreement. A note about contracts with consumers: Many states have specific legislation covering agreements between contractors and consumers (such as a residential remodel). These laws are designed to protect the "unsophisticated consumer." They take various forms, such as specific contract language, payment schedules, and right to rescind. Due to the fact that these laws will vary from state to state, I strongly urge you to check with an attorney knowledgeable in construction law in your state.

Be Specific

A contract to "remodel a bathroom" for a stated price is fraught with litigation. When one remodels a bathroom what kind of fixtures are to be included? Are they from a particular manufacturer? What are the colors? What will you say when your customer sees fixtures in *Architectural Digest* and tells you that "this is the fixture I want?" Were you planning to purchase that fixture? Or were you planning to provide the standard model?

It is important to be very specific in the original contract document so that any modification will be recoverable. You should also be aware that the burden is usually placed upon the contractor to prove that he or she is entitled to some compensation beyond the contract price, or that the modification is not covered by the contract, since you are held to have greater expertise. If the contract clearly specifies your obligations, it is easier to justify the extra expense.

Before we go any further, it's important to note that we are not talking about *constructive changes* here, which is when the acceptor on a job (usually an inspector in public works) does not pass an item (even though it is done to the specifications required in the contract), and the contractor must make a change in order to get approval.

The Change Order

Assuming that you are able to determine that something is outside the scope of the contract, it is also important that you immediately document the fact that there is a change. Make sure that the modification be in writing so that there is no mistake.

In your change order, which can be a relatively simple form incorporating all the terms and conditions of the previous agreement, you should put

down all of the ramifications of the change. A change effects more than just the cost of material and labor. How about such things as overhead, transportation, or profit? Make sure the owner understands how the change will effect the cost, the plan, and the progress of the work. If the owner is not sophisticated about construction, spell it out clearly and in writing.

If the owner wants a custom or non-standard item, tell them how much time delivery will take and whether or not you can work on another stage while you are waiting. Will it delay the entire project?

If the owner wants the location of a wall, door, or window relocated or changed, tell them how it's going to affect the rest of the plan.

If the owner wants a change in materials tell them what other changes will be required to accommodate the new materials. Make sure you agree *before* you begin the work about the effect of the change. How many times have you been told that "I didn't realize that changing my mind about the location would be so costly, or that it would take so long."

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Actually, all facets of the change should be negotiated prior to the work. It's a fact of life that your services are "worth" more before you perform them than afterwards. So it is much easier to have the change, including all of its ramifications, approved initially than having it approved after the fact. Also, since you have actually performed some of the contract and are not bidding against another contractor at this point, you have better leverage.

Although making sure you've taken all of the above precautions may seem complicated, and may seem "unfriendly" to your customer, it is just good business practice. Don't shy from taking them. You are within your legal rights to do all of the things that are required of you by law. You will have fewer disputes, and when you do have a problem, you will be prepared.

Non-Compliance

But let's assume that you have not complied with all of the above. Are you completely out of luck?

Although you are at a much greater disadvantage, under certain situations you may be able to recover for the reasonable value of the work performed on a time and materials

basis, so keep good records.

Assume that the owner orally requested a change in the placing of outlets *after* the wall was finished. If you didn't get a change order and did not agree, in writing, on a price, you still *may* recover the reasonable value of your work. The reasonable value is what it would have cost generally, at average local prices, to have the work performed.

Subcontracts

Although most of the discussion relates to contracts between an owner and builder, the same precautions should be taken with changes to contracts between contractors and subs. But keep in mind that contracts between businesspeople (as between a contractor and a subcontractor) are much less regulated. They are presumed to know the law and the risks that they are taking. Therefore they can freely assume that risk. Also, contractors and subcontractors are seen as having equal bargaining power.

Get It In Writing!

Following the steps outlined in this article will help you avoid suits and unhappy customers, but if I were to give only one piece of advice it would be to *get it in writing in advance.* ■

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