



Change Order Gladiator

Contractors' Guide to Change Orders by Andrew Civitello, Jr.
(Prentice-Hall, 1987; 515/284-6751). Hardcover, 8 1/2 x 11, 378 pages. \$66.95.

by Paul Hanke

Change orders are the bane of every contractor who wants to be compensated for work beyond the original scope of the contract. And as construction manager and author Andrew Civitello points out in *Contractors' Guide to*



Change Orders, changes occur on almost every construction project. So a comprehensive reference on how to manage change orders would seem to be a welcome addition to any builder's library. Civitello modestly claims his book is meant to be "the" reference on the subject, but I'm not so sure.

Civitello begins by warning contractors to view every problem, no matter how seemingly minor, as a potentially serious dispute. He notes that claims can result from errors and omissions, project acceleration and delay, interference, and latent (unknown) conditions. The book progresses from a discussion of different contract types — noting the relative advantages and disadvantages of each and the responsibilities of the contracting parties — to what Civitello calls "proven strategies" for applying contracts, the purpose of which are to secure the contractor's "power position."

Burning Your Bridges

Following this theoretical material, the "how-to" section of the book begins. Here the focus is on strategies and techniques — such as carefully perusing the construction documents for defects, inconsistencies, and illegal specs (calling for a brand name on a public project, for example) — that will help builders collect on any and all changes. By "prospecting" for possible change orders early, you allow enough time to work them out before facing a scheduling crunch. But Civitello, ever the tactician, also suggests that waiting till the last minute to present your findings to the owner

may cause a "less thoughtful response on the part of your opponent."

Civitello points out how essential it is to do your homework and keep records when preparing a change order proposal — which is the one great strength of his book. In keeping with his philosophy, however, all of the sample notification letters to owners, architects, and subs, take on a legalistic and adversarial tone. This is the case despite the author's acknowledgement that while such an approach protects your interests, it effectively rules out informal communication and completely eliminates trust from the process.

More advice on negotiating and resolving change order claims includes always presenting the maximum amount you think can be justified, standardizing the way you itemize cost categories on change order proposals (make sure your subs do the same), and why *not* to use time and materials as a basis for payment. There are also tips on how to document your costs and track change order progress, as well as a discussion of the relative merits of arbitration and litigation as dispute resolution techniques (mediation is not included), and advice on how to hire an aggressive lawyer who "enjoys a fight for the fight's sake."

There is much to be learned from this book, especially for inexperienced or large-scale contractors, but as you have probably already guessed, I took great exception to the author's attitude and to some of the techniques he advocates. These are evident even in his chapter subtitles, such as "The Cards You Keep Up Your Sleeve." If he were a bidder on a private project on which I was advising the owners, I would recommend against his selection on the basis of his nickel-and-dime strategy, which is designed to

generate as much compensation beyond the bid price as possible. I'd much prefer to work with someone who would point out errors, omissions, or incomplete aspects of the drawings and specs so that they could be corrected, rather than a person who will save them for use as a weapon later. At one point, Civitello says that one of the values of a good change order proposal is that it "can intimidate your opponent." Later, following one of only two real-life anecdotes in the book, he recommends that you purposely make "improper" reductions in the amounts quoted by subs to see if they protest. If they don't, he says, their prices may be inflated. Apparently subs aren't to be trusted either.

I also consider many of the recommended tactics — providing "options" (designed by you) while attempting to conceal other alternatives, feigning "stupidity" (or even "irrationality"), and changing negotiators just to disconcert your opponents — to be highly manipulative and disreputable. As noted previously, Civitello occasionally admits that his methods are unlikely to earn you much goodwill, but he never seriously considers the merits of any other approach.

If you like to play hardball, or if you find yourself trapped in an extremely adversarial situation, you might appreciate Civitello's approach more than I. But if you prefer to pursue a win-win approach to business, want to generate goodwill, mutual trust, and respect despite inevitable disagreements, or like to cooperate with the architect and owner as much as possible, you should look elsewhere for an adviser. If you do choose this often redundant book as a guide to change order administration, you'd better keep a firm grip on your own ethics. ■

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