



# CHANGES IN THE WORK

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How to Avoid Delay  
Damages and Get Paid  
for What You Do

# SET YOURSELF UP FOR SUCCESS

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It can be said that contracts are an exercise in fortune-telling.

## Nowhere is this more true than in construction.

Companies sign a contract today in the hope that it will fairly determine what should happen months, or even years, from now. Your job, before you sign the contract, is to make sure the provisions you sign off on today will work in your favor tomorrow.

## When it comes to changes in the work, your goal, in negotiating every contract, are to:

1. Make sure you get paid for every single extra work item.
2. Protect yourself from delay damages for time spent waiting for written authorization to proceed with a change.
3. Avoid a conflict between what the contract says and what has to happen in the field.



## 3 Reasons for Changes in the Work:

1. An Owner-directed change
2. Unforeseen circumstances or site conditions
3. A mistake in the Contract Documents



# CHANGES IN THE REAL WORLD

## Most Construction Contracts

Require a written Change Order signed by both parties before starting any additional work.

Limit Applications for Payment to base contract and approved Change Orders.

Contemplate consequential and liquidated damages for delay.

Provide for a waiver of the subcontractor's right to request a change order in the absence of immediate notice.



## What Happens in The Field

Scheduling issues require the subcontractor to start extra work immediately, while “the paperwork will catch up.”

Subcontractors devote time and materials to extra work without the ability to submit an invoice.

Subcontractors lose time through no fault of their own while negotiating changes with the GC.

Subcontractors either don't recognize the scheduling impact of an event or work to make up time, rather than submit a notice right away.



# WHAT TO DO WHEN THINGS GO SOUTH

Changes in the work are a fact of life in construction.



The bigger or more complicated the job, the more likely the changes are to come. While most every contract anticipates change, only the rare few adequately address what happens in the field.

## Subcontractors should:

Provide immediate notice of the scheduling and monetary impact of a delay, both via email and in accordance with the contract's Notice provision.

Obtain a fully executed Change Order, if at all possible.

In the absence of a signed Change Order, send a "this is to confirm" email specifically referencing the GC's waiver of the contract provision requiring a signed Change Order to proceed with extra work.



# PROTECT YOUR BUSINESS TODAY.

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