



The Dotted Line: How construction firms can manage the 'necessary evil' of change orders, *Construction Dive*, ft. Andrew Richards

Andrew Richards, Co-Managing Partner at Kaufman Dolowich & Voluck, LLP in Long Island, was quoted in an article written by Kim Slowey for *Construction DIVE*, (July 12, 2016) –

She wrote - Construction projects, like anything else in life, are subject to change. Design blunders, unanticipated revisions to building codes, an owner-driven switch in material selection – all of these events can lead to changes that add a few dollars or create a significant addition to a project's scope and cost. It all starts with the contract.

Details in the construction contract

Instructions for how a general contractor or subcontractor should proceed with changes to its original scope of work can typically be found in the contract's general conditions. Both general contractors and subcontractors should pay close attention to the notice provisions of their contracts because this is where they can find the requirements for getting paid for any changes to the work, according to Andrew Richards, co-managing partner at Kaufman Dolowich & Voluck, LLP.

Many contracts, he said, require the contractor to provide written notice of a change within a specified number of days, or the contractor waives the right to make a monetary or time change request to the contract. The notification period ranges from just a few days to the more generous 21 days in an American Institute of Architects contract, but, regardless, if subcontractor or general contractors do not meet the notice requirements, they could very well end up eating any costs spent on a contract change, according to Richards.

Different considerations for GCs and subcontractors

General contractors always need to make sure their contract with the owner allows for a few more days to provide notice of a change than their subcontracts specify so that they have time to process the subcontractors' changes to the owner, according to Richards. If the general contractor's notice period is less than the subcontractors', the GC could find itself on the hook for a subcontractor's extra work with no recourse for payment from the owner.

The general contractor has some supervisory costs, Richards said, but he agreed that the bulk of the risk lies with the subcontractor. "They're the ones doing the work, and they have to wait for payment from the owner," he said. The general contractor has liability if the owner never pays for the subcontractor's change, but the subcontractor "has to actually go out of pocket," Richards noted.

And whether changes originate from the subcontractor or GC, contractors must make sure they include not just the cost of the labor and materials necessary to perform change but overhead, insurance, extra time and profit, according to Richards.