

Construction Change Directives – How to Take the Initiative

In today's market, it's more important than ever to use documentation as a tool to protect your profits. As a service to our fellow ASA members, eSUB provides educational articles and webinars to assist you in spending more time on your work and less time on your paperwork. This month we're addressing Construction Change Directives, otherwise known as CCDs. The best way to protect yourself from these Owner Friendly stipulations to your contract is to proactively issue correspondence to outline the terms and protect your rights to fair payment BEFORE you perform the work.

According to the AGC Contract Documents Handbook, "Contract Construction Change Directive is a written instrument prepared by the Construction Manager and signed by the Owner directing a change in the Trade Contract Work and stating a proposed adjustment, if any, in the Trade Contract Price or Trade Contract Time or both. A Trade Contract Construction Change Directive shall be used in the absence of agreement on the terms of a Trade Contract Change Order."

What does this mean in layman's terms? It means that even if you're at an impasse with the Owner on what the Change is going to cost, you're still mandated by contract documents to perform the work.

Certain contracts have language that is friendlier to Subcontractors than others. For instance, beware of AIA A201 General Conditions where the Architect has the right to decide the amount of the contract change. You may have the right to dispute the decision, but if you do, you also run the risk of having to fund the entire cost of the change until the dispute is resolved.

On the flip side, the ConsensusDOCS are much more favorable to the Contractor and stipulate that the Owner must pay 50% of the estimated cost to perform the work during the dispute resolution process.

Take heed of section 14.1.3 of the AGC Contract Documents Handbook which states, "The Trade Contractor shall evaluate the proposed adjustment... and respond, in writing, to the Construction Manager stating the Trade Contractor's acceptance or rejection of the proposed adjustment and the reasons therefore."

To protect yourself, eSUB is offering such a letter which you can download by visiting www.esubinc.com and clicking on the "Free Project Correspondence" button in the middle of our Home Page. By proactively issuing this piece of correspondence, you're taking the initiative to outline the terms instead of the other way around.

If you're interested in learning more strategies to protect your profits, please contact our educational director, Benny Baltrotsky at bbaltrotsky@esubinc.com to register for one of our educational webinars, offered at no cost to ASA members.

Wendy Swift-Rogers, CEO

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