

# Change Orders...Are you Kidding Yourself?

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Let's face it, the owner of a project typically wants more for their money than they budgeted. The architect, engineer and owner don't want to admit to any mistakes they may have made; poor plans and/or vague specification language (intentional or not). The contractor doesn't want to admit their mistakes: the job was estimated wrong, falling behind in the schedule and/or short on labor. Add all of this to the old rule of "those who hold the Gold make the rules" and you have the foundation laid for a Change Order (CO) war. If not documented properly, the contractor won't get the CO approved. The contractor can fight, kick and scream but in the end...the little voice in the contractor's mind is saying, "you are kidding yourself." Instead of the CO becoming a receivable, it falls into that dark and dreary line on the Balance Sheet...Under-billings!

After 20 years of sitting in on jobsite construction meetings for and with my clients (both GCs & Subs), the three most salient and common aspects that are apparent to me when it comes to COs are: First, one party usually knows the contract language, specs, plans and schedule better than the other party, and has detailed documentation to prove it. Second, Party "A" does know the contract well and is seeing if Party "B" knows the contract as well, if not, Party A is hoping to take advantage of Party B. Third, the fulcrum point for the best leverage in negotiating the CO has often been passed by...losing the opportunity to properly document approved COs.

So what is the fulcrum in the CO process? In my opinion, it is the very point at which the contractor can decide to not move forward with the project until the CO is approved and documented. The fulcrum in obtaining the approved CO is the most powerful negotiating tool. Every CO has the exact moment at which time the contractor has the most leverage to obtain the CO. If at this time the CO is not documented properly and the contractor relies on, "we'll send you the paperwork later" or "I need you to do this now because we are behind schedule and I will make it up to you later or on another project" or "you know me... I would never take advantage of you", well, you have another Under-billing!

While the owner of a project does have the gold, the contractor does have control of the project. It may not seem so but in the end, if the contractor knows their contract, schedule and statutes...they can control the gold and all in good faith. In a world with fast moving projects and lightning quick technology/communication, knowing your contract and the scope of work you bid can give you the confidence to demand an approved CO before you move forward with the project.

Often, the contractor gets caught up with "keeping the relationship" with the owner rather than taking the fiduciary responsibility in protecting his/her business by not executing work that should be a CO. While the contractor may have several other responsibilities, doing work for free is a one-way road. So, the next time a work for free opportunity comes around, the contractor must be aware of the exact fulcrum point to obtain the CO.