

Change Order Processes so Subcontractors are not Unfairly Required to Finance the Change

Results of Meeting with Owners on May 2, 2023

ASA of Metro Washington held a meeting with six construction owners/developers to discuss best practices for handling change orders so that subcontractors are not the only entity responsible for financing the construction of a change order. ASAMW Task force along with the event facilitator, Scott Peper, Founder & CEO of Mobilization Funding developed these processes for Owners, General Contractors and Subcontractors to consider:

Owner / Developer:

1. Create a policy for how Change Orders will be managed on your project
 - a. Clearly define that process in your agreement with the GENERAL CONTRACTOR
 - b. Require the GENERAL CONTRACTOR to include the policy in the subcontract agreements
2. Be part of the Change Order Process
3. Attend regularly scheduled meetings to understand what Change Order's are open and what needs to be done to resolve them
4. Require your GENERAL CONTRACTOR to provide a CHANGE ORDER status report
5. Be open to communicating with the Subcontractors

General Contractor:

1. Establish a policy for Change Order management on a project:
 - a. WHEN is a Change Order to be submitted?
 - b. Who are Change Orders submitted to?
 - c. What documentation must the Subcontractor include when submitting a CHANGE ORDER?
 - d. Communication with the Subcontractor on the CHANGE ORDER:
 - i. What is the cycle for approval?
 - ii. When will you communicate back to the subcontractor whether the CHANGE ORDER is approved?
 1. Or, at a minimum, where it is in the approval cycle, whose desk it is sitting on, and current status
 2. What is the frequency you will be communicating with the Subcontractor – weekly?
 - e. Create a standing meeting that is specific to CHANGE ORDERS and include all Subcontractors and the Owner
 - i. An open meeting and communication with one central voice and all relevant stakeholders in attendance will go a very long way to solving problems and issues and more importantly avoiding them before they even start.
2. Create contract language in your subcontract agreement that if a subcontractor does not submit timely CHANGE ORDER requests or provide the specific documentation required then you:
 - a. Have the ability to assign a number to what they will be paid and they have to accept it.
 - b. The process you will follow to come up with that number

- c. This is to prevent the delays of getting a more complex CHANGE ORDER approved that involves multiple trades and parties and one of those parties is holding up the CHANGE ORDER for everyone.

Subcontractor:

1. Have a policy for how your company will handle change orders. Implement the policy with your team. Follow the policy.
 - a. How you will price a change order.
 - i. Labor Rate
 - ii. Overhead and Profit %
 - b. Contract language in your subcontract agreement
 - i. What needs to be added
 - ii. What language must be removed
 1. Example: Make sure you cannot be terminated for refusing to perform change order work that has not been approved and how payment for work performed will be paid
 - c. When you will submit a change order to your customer
 - d. When you will expect an answer
 - e. When you will follow up or escalate to a manager one-level up
 - f. When you will agree to start the work
 - g. When will you choose not to perform work?
2. Make sure to have the names and contact information for the leaders of the GENERAL CONTRACTOR and Owner in the event you need to escalate a conversation above the field.
3. Ask for and receive a redacted (marked up to remove prices and other proprietary information) copy of the General Contractor's Agreement with the owner before you start working on the project. If a bonded job, get a copy of the Payment and Performance bond as well.
4. Have your subcontracts reviewed prior to signing them to ensure you understand what you are agreeing to as it relates to CHANGE ORDERS. Once you agree to certain language realize that is what you signed on for and you must own terms that you agreed to. Be willing to walk away from a project if you do not get the contract language your company needs for CHANGE ORDER management.
5. Be Specific in your Bid process when it relates to the Scope of Work
 - a. Outline what your pricing is
 - b. Include the areas or questions that need more clarity before you are able to LOCK in a number
 - c. Highlight for the GENERAL CONTRACTOR what parts of the Scope are clearly defined
 - d. Highlight the parts of the scope that are NOT very well defined and WHY – include the questions or necessary information you require to clearly define that part of the scope.
 - e. List the assumptions you used for the GENERAL CONTRACTOR – this helps them understand what you are thinking and how you came to your questions or need for further clarity.