BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

ADAM E. RICHARDS, PRESENTER, "NO CHANGE ORDER AGREEMENTS IN CONSTRUCTION: MITIGATING RISKS TO CONTRACTORS AND LIMITING COSTS", STRAFFORD

September 15, 2021

View Full Article

This CLE webinar will advise construction counsel on the increased practice of limiting or removing all modification provisions from written agreements. The panel will address how no change order (CO) contracts should be employed and how to mitigate liability when a project's circumstances are altered.

Description
COs are a common term in construction agreements that provide for a modification to the parties' construction contract, which can be additive or deductive, and can relate to the scope of work and/or cost and/or time. All stakeholders, from architects/engineers, owners, contractors, subcontractors, construction lawyers, carriers, lenders, and sureties alike, are impacted by projects turned sideways due to COs or disputed COs.

Due to these issues and to keep down costs, construction attorneys are increasingly utilizing agreements that provide that no COs or modifications can be made to the contract. Some versions of these agreements provide that only owner-initiated changes will be considered. Where the project parties know and understand that COs will not be generated from the contractor or subcontractors from the onset, then the parties will have to perform more due diligence during the bidding, pricing, and contract negotiation stages. Additional markup to the contract price should serve as consideration for such an offering and further shift/mitigate risk.

Counsel for each stakeholder must consider this approach. This type of agreement can create certainty in price, timing, and the potentiality of disputed non-payment claims. Aside from the impacts to the early stages before construction, counsel should consider the potential differences during construction, from attention and care, collaboration, creativity to responsiveness, when a potential CO becomes apparent on a no CO job.

Other possible CO-themed delivery methods can involve a contingency for owner-directed or contractor-directed COs or a cap on the amount of potential total CO cost or time adjustments over the lifespan of a project. Regardless, given the enormous market share that disputed COs still hold, it remains apparent that greater attention, collaboration, and innovative thinking will alleviate the largest, if not one of the largest, pain points in the construction industry.

Listen as our expert panel discusses this innovation in construction contracting, best practices for owners and contractors, and how possible CO-themed delivery methods can be adjusted to mitigate risks for individual stakeholders.

Related Practices

Construction Litigation

Construction

Related Team Member(s)

Adam E. Richards