

How to get paid for variations

Getting paid for variations is the holy grail of contracting. It is by far the most common battleground for payment disputes, but least understood.

What is a Variation?

A Variation is either an addition to, or reduction to, or any change to, the scope of work under the contract. It can also be a change to the scope in terms of substituting some of the work for something else. For example two internal staircases could be removed and substituted for one long external staircase. A variation also arises if there is a departure from any plans, drawings, or specifications contained in the contract.

A Variation needs to be carefully assessed in terms of its impact on the completion time, rate of progress of the work, and changes to cost. The contractor needs to work these out before agreeing to actually carry out the variation.

You're not obliged

This brings me to the first important point which few contractors understand: Unless the contract allows for it, you are not obligated to carry out any variations. Your contract will set out your scope of work which you have undertaken to complete for a set price. You are not obligated to carry out any variations that are outside the scope of your contract. Further, those variations directed must be within reasonable limits and generally within the scope of the works. Outside that, you have no obligation to do extra work at extra cost to you unless you agree. (Now go back and read that sentence again so it sinks in).

Now we all know that many clients will bully you into doing additional work without allowing you to quote a price or get a signature or otherwise getting approval for the variation as described by the contract. Most of you who refuse to do the additional work without signed approval, or without following the contract's procedures, are often threatened with the back-charged cost of the client getting someone else to do it. This is a hollow, unsustainable threat. If the client gets someone else to do the work the client will be liable for the cost, not you. (Better read that one again too).

Refusing to carry out a variation is also not grounds for termination of your contract. While many contracts require you to follow the directions of your client, this applies to the work under the contract and does not extend to carrying out any and all additional work that the client requires. Most contracts will describe the process under which a variation may be requested, accepted, and approved. You need to read up on what this is, and hold your client to it. It may also be worth getting some professional advice before accepting or rejecting the direction for the variation work.

So the bottom line is don't get pushed around when it comes to Variations. It's for you to agree to, not your client to demand. This brings me to the next point not understood by contractors.

You hold the power, not your client

Okay now think about this; 'A service is always worth less after it has been supplied'. The opposite is then true; 'A service is always worth more before it has been supplied'. Think about that carefully. When your client is demanding that you do additional work he will normally accompany it with the threat of a back-charge or termination. This is because the client knows that he does not hold the power. After all if you don't do the additional work then the construction programme will fall apart, other trades will move ahead out of sequence, the chance of late completion and liquidated damages looms and so on. In other

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words if you don't do the additional work quickly it is your client who will be up the creek, not you. Therefore when the request for variation work comes your way you can afford to think it over carefully, review what the contract says about how to document it, and then decide whether you want to do it.

If your client refuses to abide by the contract's terms about signing for, or approving variations, then 'don't bloody do it!' (Yeah go back and read that bit again too).

Get it on paper

All your variation work needs to end up on paper. As mentioned the contract will describe what documents and procedures are required for a valid variation to be approved under the contract. So know what they are and follow them.

If your contract is less formal and there is no specified procedure then get the request and approval on paper. This can be documented on your own Site Instruction Form, Site Diary, an email exchange, or even a form that I recommend that all contractors develop: '*Confirmation of Verbal Direction*' form. (Or a CVD form) This kind of document can become valid contemporaneous evidence that additional work was requested and to which you agreed to carry out. My article in the previous issue of 'Building Contractor' talked about how paperwork gets you paid. Variations is a key area where this applies in bucket loads.

Claim for Variation work every month

The biggest mistake made by contractors is holding off on claiming variations until the end of the job. It is a mistake for the following reasons:

Your client will almost always have forgotten just how much additional work was carried out, and the shock of the additional cost will express itself in anger and non payment.

If the matter goes to adjudication, it will affect the credibility of your case because the adjudicator will wonder why all this work was not claimed for through the course of the job. It may raise the question of whether the work was actually done.

The longer you go without documenting all the additional work, the greater the likelihood you will lose, or forget all the details of the work and what you should be claiming.

So the lesson here is to claim for Variation work every single month in your normal monthly progress claim. Don't be shy, and don't dither. Do it. If you're going to fight with your client then do it early rather than at the end when you're carrying the cost of all the additional work but have been paid none of it because you've been too timid.

Strength and Discipline

Getting paid for variation work requires the strength to withstand your client's threats, and the discipline to keep excellent documentation. But once you've done it once, it will get easier. You will get stronger and better at the paperwork, and better at knowing how to follow the contract's requirements.

Then all of a sudden Variation work will make you money, rather than losses.