



## **Are You Writing About Me?**

Every time we send out these newsletters we get a response back from many clients that we must have written a particular article about them. Obviously we need something to write about, but often the client is mistaken. The reason that many of these situations sound familiar is that there are only so many tricks to be tried and all reimbursable cost contracts are 95% the same. Hopefully, the payoff, from the reading of these updates, is that what we found on someone else's project will save you money on yours.

## **Billing GL Insurance Upfront**

The cost of GL and Umbrella insurance has been a subject discussed here for years, however, this time we are going to discuss not the cost but the timing. It seems as if a memo has been passed around among GC's that Owners may be willing to accept the billing of the entire GL insurance cost upfront.

At this point it may be helpful to point out that almost all GC's either pay for GL over the course of the policy period, pay for GL as claims are paid, or both. By billing the Owner upfront the GC has benefit of the Owners money for a longer period of time and, if it turns out the GC has over billed for the cost of general liability insurance, the Owner must then recover the over billed amount from the GC.

Bottom line is, do not allow the GC to bill the general liability upfront, even if you have agreed on a total project cost for this insurance unless you just enjoy paying more in construction interest.

## **Billing for Mobilization**

Why do we see many GC's billing for "mobilization" at a flat dollar amount in the first billing? The answer is "It works". Owners have a habit of allowing a GC to bill \$100,000, or so, as mobilization on the first billing. This mobilization billing will sometimes be in addition to a percentage billing for general conditions cost. Then, starting with the second or third billing the GC will begin billing at actual incurred costs for that month. The problem is that the GC will usually not go back and reconcile the over billing from mobilization billing in pay applications #1 or #2. Therefore the over billing will continue until the Owner has an audit done or never, whichever occurs first.

## **OCIP Credits from Contractors Should be the same as Estimated Cost**

We deal with many larger projects that have an OCIP (Owner Controlled Insurance Program) in place. Often, the OCIP insurance credits due from the contractors are reconciled at project completion with the Owner allowing the contractors to include estimated insurance cost in the contract value with a final deduct taken at project completion. Typically, these OCIP's are administered by an insurance agency with assistance from the Owners in-house risk management department. The administrator will be responsible for verifying the credits received from the Contractor and subcontractors for the Owner provided insurance. However, this agent typically has very little contact with the Owners project management personnel when it comes to

estimated costs and change orders. We have seen, in almost every OCIP project, glaring differences between the credits received from a GC and Subcontractor for OCIP and the estimated cost for the same insurance used in developing the GMP and Change Orders. On a recent project, the difference between the workers compensation and general liability insurance in the GMP developed by the GC and the approved actual cost credit as determined by the insurance agent was \$600,000. On another project, a subcontractor was marking up labor on change orders 15% for workers compensation insurance even though the actual cost had been determined to be just 6% by the OCIP administrator. Project management personnel should require that the OCIP administrator's information on actual cost be made available to allow for use in determining the proper estimated cost of insurance.

### **Not Yet Complete Deductive Change Orders**

We try to put in at least one "your kidding me!" item in each newsletter. Even though the following is more humorous than substantial, we hope that it will be worthwhile.

While performing a final audit of a large residential project recently, we were reviewing the billings of some of the subcontractors. All of the subcontractors were under lump sum contracts and all were billed almost complete. In fact, several of the subcontractors had billed their "Total Completed and Stored to Date" at amounts in excess of the contract sums. When we reviewed the cause of this situation, we discovered that these subs had many additive and some deductive change orders. Many of the deductive changes related to the additive ones, such as adding 50 light fixtures on one change order and taking away 25 on another. The subs in question had billed their original scope of work 100% complete. They had also billed all of their additive change orders complete, yet for some reason, they were having a difficult time completing the deductive change orders. Had they ever completed the deductive change orders then the final billings would have been less, but since they couldn't quite finish the credit work

they were faced with the burden of having to bill more cost.

Of course if the Owner or Contractor required the subcontractors to incorporate all change orders into a revised schedule of values, this strategy for over billing would not work.

### **Who Pays for Accelerating the Schedule?**

In a recent audit the Owner's contract did not specifically address whether overtime was reimbursable. On this project, the contract named a specific date for completion, but also said that the contractor would use its best efforts to achieve completion at an earlier date also named in the contract. There was no definition of what the "best efforts" meant and if the additional costs of "best efforts" were grounds for a change order. The contractor assumed he was authorized to spend whatever money that was necessary to achieve the earliest date named in the contract.

In the end, the contractor essentially achieved the earlier date and gave the Owner a bill for overtime, expedited materials costs, etc. to make the earlier date. The Owner had no idea that this was going on and was astounded at the size of the bill to compress the schedule. As of this writing, the issue is not resolved. We can see the potential for claims and potentially a law suit.

It seems there are at least three lessons to be learned here. First, it does not seem wise to include a best efforts completion date, other than the scheduled completion date, without discussing in the contract whether any additional acceleration costs are reimbursable or create a scope change. Second, Owner's representatives should take note of any excessive overtime being worked and ask who the contractor anticipated was going to pick up the tab. Third, the contract should state that overtime is not reimbursable without the specific approval of the Owner in advance.