

Written Change Order Requirements in Construction Contracts May be Waived

“A frequent topic of dispute in litigation involving construction projects is whether a subcontractor is entitled to payment for work it performs outside its contractual scope of work—often referred to as ‘extra work’ or ‘change order work’—without obtaining a signed written change order to perform the work. The same issue often arises in the context of change orders and directives issued from the owner to the general contractor,” writes Bradley P. Polina in ***Cole Schotz’ Construction Contracts***.

“In a typical scenario, the general contractor orally directs a subcontractor to perform work outside of the subcontractor’s scope and promises that a written change order will shortly follow. The subcontractor, conscientious to keep the project moving, complies with the oral directive and completes the extra work without obtaining a signed written change order. Its subsequent payment requisition is then denied for failure to obtain the signed change order. Is the subcontractor legally entitled to be paid for the work that the general contractor directed it to perform, even without a signed change order?”

Read the article.