

Stack the odds in your favour; get paid for variations.

A recent talk by ‘Contractors Debt Recovery’ (CDR) inspired me to provide the following information. I have covered this in my lectures, but after hearing an expert opinion on the topic, I am confident in giving the following suggestions. The CDR presenter was articulate and firm in his comments; there was no hesitation on what needs to be done.

There are four (4) aspects to Contract Variations.

- a) Setup the original estimate correctly
- b) Clearly define the scope of works
- c) Provide a value for the work
- d) Obtain written agreement before starting

1: Setup the original estimate correctly

It is important to have a breakdown of each section of the project and know the individual values, which include the cost of materials, labour plus the mark-ups.

This will help with cash flow projections. (See the Project Tracking course) Estimates produced on the Sharp Estimator software can provide a ‘Bill of Quantities, (BOQ). The builder will appreciate that should the owner / developer request additional work, the schedule of rates provided will in fact, protect them and keep the process fair to all parties.

2: Clearly define the scope of works

It is a known fact a ‘Site Instruction’ to carry out additional work is not a guarantee of payment. If a Variation Price Request (VPR) is not initiated by the builder, then you must put one in place. Treat it exactly as a quote / estimate.

A VPR must have a number and description for identification purposes as it could be disputed toward the end of the contract.

Clearly define the complete scope of works. Do not rush it, take your time and detail exactly what is included and where it will occur on the project. Is it to be a particular distance from the north or south boundary, is it on level one, or in a basement, be clear **exactly** where it is. Do not generalise, also nominate the plan and revision numbers, and even nominate the grid line coordinates.

Detail what work is to be performed. Provide a comprehensive list with explanations. Remember it may not be you that ultimately need to follow the explanation, but rather an arbitrator who does not completely understand the finer detail.

Include quantities, it is not sufficient to say, install taps or lights, or drains. You may mean a unit of one, whilst the builder had twenty-five in mind.

Detail the reason for the variation. Was it left off the drawings, did the owner / developer request it, or was it the inspector who asked for the extra work? Find out

the reason and include it in your VPR. Even provide a design or sketch to identify before and after.

3: Provide a value for the work

Everything is too expensive, we all know this. Regardless, the cost plus mark-ups is what it is worth. Don't forget, the builder's job is to get the best price they can, just as it is for the subcontractor when they are purchasing materials. What is difficult to understand is the builder seems to think it is their own money. The builder gets an additional mark-up on the variation; therefore it follows that paying the correct price for a VPR would benefit them.

The value of the VPR may be established from the schedule of rates. Alternatively, calculate the cost of materials, labour and apply the same mark-up used to win the original tender. As part of the contract the builder may have set in place an agreed mark-up and a set labour charge rate.

Review the VPR value and see where the builder can pick it to bits, if this is the case, fix it now. It will be cheaper in the long term.

4: Obtain written agreement before starting

Include a section for the person who has requested or is approving the VPR to sign and agree on the scope of works and the value along with any conditions or qualifications.

Never! Never commence work on the variation without the signed agreement. If you do, your ability to negotiate is almost nonexistent.

Abide by the Security of Payment Act. It stipulates when you must lodge the VPR claim and when the builder must agree or challenge such claims.

Some helpful comments

- a) Don't be pushed into starting variations without an agreement.
- b) A builder may threaten to toss you off the project; this is unlikely to happen as it would breach their own contract.
- c) They may threaten to get another contractor; this would also breach their contract.
- d) Another one is 'You will be holding up the project'. Not so, remind the builder it is them who is holding up the project by not approving and signing the VPR.
- e) A builder or head contractor cannot by law breach their own contract.
- f) Stand your ground, comply with the contract and have confidence in yourself.

Conclusion

Take your time, do not be railroaded, carry out the process in accordance with the contract. Stand your ground, don't allow the builder to succeed by calling your bluff. Document the variation so a professional organisation has the information to work with, should you need representation. It does not take long and will save you a bundle of \$\$\$\$ by doing it properly the first time.

Contractors Debt Recovery sells standard variation formats, which can be purchased from their website. Google them.

For what it is worth - I'm Paul Funnell