

CHANGES IN THE WORK

- 3 kinds of “modification”
 - Change Order
 - Construction Change Directive
 - Minor Change in the Work
- Additive versus Deductive Change
- Relative bargaining strength
 - During bidding, the Owner
 - During construction, the Contractor
- Entitlement to a change order
 - Compensable event
 - Excusable event
 - Inexcusable event
- Requirements for a verbal change order
 - Work not included in the contract
 - Extra work ordered by the owner
 - The Owner agreed to pay extra
 - The Contractor didn’t do the extra work voluntarily
 - Extra work not the Contractor’s own fault
- Cardinal change
- Limitations on the Owner’s authority
 - Agency laws
 - Public projects

DELAYS

- Basic concepts
 - Commencement, notice to proceed
 - Substantial and Final Completion
 - Acceleration
 - Critical Path
- Early completion
 - Owners often offer a bonus
 - Not always beneficial to Owners
- Force Majeure
- Owners' delay damages
 - Hard costs, i.e., insurance, rent, interest, etc.
 - Consequential costs, loss of use
 - Liquidated damages
- Contractors' delay damages
 - Hard costs, subcontractor claims
 - Extended field overhead (“general conditions”)
 - Extended home office overhead (Eichleay)
- “No damages for delay” clauses
- Critical Path scheduling

PAYMENT

- Progress payments
 - Based on the percentage of completion (early)
 - Based on the balance of contract (later)
- Payment upon completion
 - Substantial completion – withholding for punchlist
 - Final completion – waiver of claims
- Retainage
- Lien waivers
 - Current
 - Trailing
 - To date
- The escrow process
- Doctrine of Substantial Performance

SURETY BONDS

- Relationship among surety, principal and owner/client
 - Like a co-signor
 - Owner/client is third party beneficiary
- Bid bonds
- Performance bonds
- Payment bonds
- Surety's defense: alteration of the construction contract