Once we understand the causes of many project changes, we can develop strategies to handle them.

Changes are a normal and expected aspect of any project. Once construction has begun, though, changes can become time-consuming and costly. (See sidebar: “Change Orders, Clarified”)

They can also become very risky. If change orders are extensive on a project—regardless of who caused the need for change—the chances of a claim against the architect or engineer rise. A plaintiff’s attorney will argue that as a design professional, you’re responsible for damages because you “accepted” or “approved” the contractor’s change order request showing the excessive costs. Remember, that’s your signature on those change orders and payment certifications.

According to Carol Stair, Esq., claims manager for XL Group’s Design Professional unit in San Francisco, although change orders can occur for any number of reasons (e.g., owner-requested changes, unforeseen conditions, inconsistencies in the construction documents, fast-track delivery), many can be traced to just a few underlying sources. “Low-bid contractors often produce an excessive number of change orders,” Stair says. “Some intentionally bid low to win the job, then try to recoup their profit through change orders.”

Another source of changes—and claims—is so-called value engineering (VE) or value analysis by the contractor and owner. “This is usually just a cost-cutting exercise to benefit the owner and contractor,” Stair says, “and may result in redesign and redrawing of the documents to reflect the changes.”

Stair says that such changes can be particularly troublesome. If the party making the value engineering change does not carefully coordinate that change with all other design professionals on the project, it can lead to problems, delays and additional change orders.

XL Group’s Design Professional unit views late substitutions as another problem. Contractors generally propose substitutions to reduce their costs, to shorten material lead-times, for ease of installation or because something is more readily available. If a substitution is suggested during construction, you may need to conduct additional research, even if the construction contract requires the contractor to verify that the proposed substitution is of equal or superior quality. If the substitution is accepted, you may need to make changes to the already-completed design documents.

Stair warns there are certain owner decisions that nearly always result in change orders and often in claims. “The owner who wants to use incomplete plans and specifications for early bid packages or to obtain permits is one example,” she says. “This same owner will later blame you when changes or more complete designs are necessary, and want you to pay.”
Have a Plan

While there are no magic solutions, Stair says there are some steps you can take to reduce your exposure to claims that arise from change orders. Having a plan to manage those changes that do surface will go a long way to lessen the potential for misunderstandings and conflicts.

“Communication with the client, a clear and reasonable change-order procedure backed up by contract language, and meticulous documentation of the decision process—those are the keys,” she says. Make sure your plan includes the following steps:

Education the Owner

• At the project outset, explain to the owner that while changes in the work are inevitable, they usually result in greater work effort, higher costs and delays. Encourage the owner to establish a realistic budget and to set aside adequate design and construction contingencies.

• If you know in advance that your project will be fast-tracked or that it will be value engineered (by a qualified VE team), discuss the likelihood that these approaches will require design changes, as well as change orders to handle coordination issues not addressed in the early bid packages.

• Explain that an eleventh-hour suggestion by the contractor to perform a “value analysis” or to make a sudden major change to the program requirements can adversely impact the documentation process and may cost more in the long run.

• Warn the owner about the risks of using low-bid contractors as well as the mode of project delivery. Explain that if these change after you sign your contract, you may need to renegotiate.

• If the owner asks you for construction documents that are 60-70 percent complete in order to put out bid packages or get permits, resist. If the owner insists, make him or her aware of the risks and document your objections in a letter. (If you know up-front this might be an issue, include contract language to prevent it.)

Address the Issues in Your Contract

• Spell out the change order process and everyone’s role in it. Make sure that the owner-contractor contract also describes the change order process and that the language is coordinated with your agreement with the client.

• Include contract language that allows adequate time and compensation for you to make revisions to the plans and specifications if they’re caused by the contractor or owner.

• Add a “Changed Conditions” provision that allows you to renegotiate your contract in the event changed conditions will result in significant changes in the scope, extent or character of the project (financing, size, complexity or other material issues).

Communication with the client...

and meticulous documentation of the decision process—those are the keys.

• Set forth procedures for dealing specifically with substitutions, and provide for additional compensation and time to respond. Consider adding language to the specifications that requires the contractor to warrant that the substituted material or system will perform the same as the original specified material or system would have performed.

• Address last-minute VE adjustments by calling for additional compensation and time for the completion and coordination of all documents after such disruptions.

Manage the Process

If a change is required:

• Stick to the agreed-upon change order procedure.

• Inform the client. Clients who are involved are more likely to be reasonable. Continue to update the client in person and in writing, reminding him or her of the need for or cause of the change and progress in implementing it.

• Analyze options in light of the client’s priorities, the effect on contract time and other parts of the project, and additional cost.

• Thoroughly review the contractor’s proposed costs of changes; keep careful records and call the costs into question when necessary. Notify the owner if the costs appear excessive.

• Make sure the client approves all change orders in writing.

• Insist that change order status become a regular agenda item at all project status meetings.

• Never ignore a problem! If you see defective or nonconforming work, say something to the contractor, document your observations and report it to the owner.
Document Rigorously

- Use standard change order forms, such as those provided by the AIA and EJCDC.
- Document all meetings, decisions and telephone conversations related to changes, either in a log or memorandum to file. Use a Change Log or a Change Control Matrix to keep track of project changes. (Click here for a sample “Change Control Matrix.”)

Pay Attention

- Keep an eye on key project performance indicators (schedule, budget, progress) for hints of trouble.
- Track the volume and frequency of RFIs, as these are often red flags for budget or schedule problems. Notify the owner if the volume/frequency reaches an excessive level.
- Finally, while you don’t have to be perfect, do your best to produce accurate, complete and well-coordinated documents in time for them to be reviewed and corrected before being delivered.

Change Orders, Clarified:* Once the owner-contractor agreement is executed, changes in the work can be initiated by change orders, construction change directives, or by minor change instructions.

A change order is a modification to the contract sum (cost of construction) and/or the time of completion of the project construction as a result of a change in the scope of work required to complete the project. Change orders can add or deduct amounts from the agreed-to “contract sum,” as well as extend or shorten the construction duration. A change order requires signatures of the owner, design professional and contractor.

A construction change directive requires the agreement of the owner and the design professional and may or may not be agreed to by the contractor.

The design professional may issue an order for a minor change without other signatures; however, this minor change cannot change the contract sum or the construction schedule.

*Adapted from the American Institute of Architects, various sources.