

# THE NATIONAL LAW REVIEW

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## Avoiding Pitfalls of Performing Work for Public Entities

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Anyone who does business with a governmental body should heed the lessons learned by Patrick Engineering, Inc.(PEI).

In early 2007, the City of Naperville entered into a contract with PEI for a stormwater management system. During the project, the city's employees directed PEI to provide additional work outside the scope of their agreement, but PEI failed to issue any formal change orders as required by the contract. PEI performed the additional services and invoiced for the work, but the city declined to pay. A lawsuit between the two followed.

More than five years later, PEI has little to show for its extensive extra work for the city other than a sharp rebuke from the Supreme Court of Illinois. In order to avoid the time, money, and frustration that PEI endured, one should keep in mind three rules: 1) know who directs your work; 2) follow the terms of the contract; and 3) paper your trail.

### Know who directs your work

First, at the early stages of entering into the contract with the governmental body, the contractor should identify the official with actual authority to bind the municipality. Knowing what individual or individuals have authority to authorize extras is imperative. Proceeding without that knowledge can make it difficult, if not impossible, to recover for extra and additional work that was directed by an employee of your client, but was not technically authorized by an official with actual authority. PEI learned that even individuals who may appear to have authority may not bind the governmental body. Even individuals that are closely involved with the project and possess titles that would suggest authority with regard to the project, may not have actual authority. Failure to know who can and who cannot bind the governmental body may prevent the recovery of reimbursement for work performed.

### Follow the terms of the contract

Second, the contractor should attempt to comply strictly with the terms of its contract, especially when asked to perform extra and additional work. While in many instances the contract terms may be a mere formality, when a conflict arises a court will turn to the agreed-upon language in the contract to determine whether the contractor took the necessary steps to confirm the change orders. And while contractors may be able to avoid the effect of certain contractual language on private projects, enforcing course of conduct and other similar defenses becomes much more difficult with governmental bodies. Extra work will have been performed for naught if the contractor doesn't follow the contractual roadmap for extras.

### Maintain a paper trail

Lastly, it is important for any contractor to maintain a paper trail. The realities of construction are that it is not always possible or practical to obtain a written, executed change order before beginning work. In those instances it is important to have a record of conversations or communications from which you received directions. And it is especially important that those directions come from an individual with actual authority to bind the governmental entity. A contractor may have relied upon promises by the municipality in beginning certain work, but a court will not deem that reliance to be reasonable unless it was based upon conversations with an authorized individual.

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The court's decision in ***Patrick Engineering, Inc. v. The City of Naperville*** is unforgiving and could result in severe consequences for companies that don't follow the necessary steps. Therefore, one should heed these three simple rules to avoid the same pitfalls that PEI encountered.

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