



CITY OF HOUSTON

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The Honorable Oscar Longoria
Chairman
House Committee on Business and Industry
P.O. Box 2910
Austin, Texas 78768

Dear Chairman Longoria and Members of the Committee:

On behalf of the City of Houston, I write in opposition to House Bill 3485 (“H.B. 3485” or the “Bill”) and ask that this written testimony be included in the formal legislative record for H.B. 3485. The City and I thank the Committee and Chairman for the opportunity to comment regarding this proposed legislation.

The City of Houston opposes H.B. 3485 for the following reasons:

1. H.B 3485 would inject a significant element of instability to City projects. Contractors and subcontractors would be free to stop work on projects if the two conditions (non-receipt of fully executed change order and the aggregate actual or anticipated value of the additional work requested without a change order exceeds 10% of the original contract amount) are met. While City departments strive their best to memorialize change orders, the inherent delay could conceivably stop or delay hundreds of City projects.

The Texas legislature has already enacted Local Government Code sections relevant to change orders, all aimed at speeding up the approval process and protecting contractors.

- Texas Local Government Code Section 252.048(c) (“Change Orders”) notes that, when the change order is under \$50,000, authority for change order approval can be delegated to an administrative official of a municipality.
- Furthermore, Texas Local Government Code Section 252.048(c-1) expands the delegation of change order approval found in Section 252.048(c) when two conditions are met. When (1) a municipality has a population of 300,000 or more, and (2) the

change order is for \$100,000 or less, a municipality can delegate change order approval to an administrative official.

The Bill would thus interfere with those processes, such that even a change order administratively approvable would allow a contractor the ability to walk off a job site. Contractors currently have the ability to stop work unilaterally already. Given that change orders are memorialized and agreed to by both parties, and that the Texas Prompt Payment Act requires payment within 30 days of invoice submittal, this Bill is remedying an insignificant problem.

2. In addition, several other Texas statutes are already statutorily efficient regarding change order approval and protect Contractors against undue contract price increases.

Texas Local Government Code Section 271.060 protects contractors by requiring that City construction contracts (that are over \$1 million) may be increased by no more than 25% of the original contract price. Furthermore, the price may not be increased unless the funding for the increase has already been secured:

- Section 271.060(a): “After performance of a construction contract begins, a governing body may approve change orders if necessary to: (1) make changes in plans or specifications; or (2) decrease or increase the quantity of work to be performed or materials, equipment, or supplies to be furnished.”
- Section 271.060(b): “The total price of a contract may not be increased by a change order unless provision has been made for the payment of the added cost by the appropriation of current funds or bond funds for that purpose, by the authorization of the issuance of certificates, or by a combination of those procedures.”
- Section 271.060(c) limits the amount by which the contract amount for contracts of one million dollars or more may be increased to 25% of the original contract price:

“(c) A contract with an original contract price of \$1 million or more may not be increased by more than 25 percent. If a change order for a contract with an original contract price of less than \$1 million increases the contract amount to \$1 million or more, subsequent change orders may not increase the revised contract amount by more than 25 percent.
- Section 271.060(d) sets a maximum amount (\pm \$50,000.00) by which a governing body may authorize an official or employee to approve a change order, as follows:

“(d) A governing body may grant authority to an official or employee responsible for purchasing or for administering a contract to approve a change order that involves an increase or decrease of \$50,000 or less.”

Texas Government Code Chapter 2269 (“Contracting and Delivery Procedures for Construction Projects”) does not discuss change orders at all, suggesting an intent to defer to already extant statutes discussing the issue, or an intent to allow for the use of contractual processes to handle change orders.

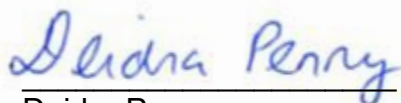
3. Both contractors and the City rely on the predictability and stability of the already well-established process in City contracts that require the City and a contractor to execute and approve change orders before any work can be done and paid for.

The standard language in the City's construction contracts already provide that (i) change orders are to be submitted by the Contractor and approved by the Director of the relevant department before they take effect; and (ii) Contractors are not to proceed with additional work until and unless a change order has gone through the approval process and been authorized by the City (usually the Director of the department). In fact, the City's General Conditions, as written in Document 00700, require that change orders that (1) concern contract time and contract price, and (2) are mutually agreed to by both parties "will be immediately recorded."

This contract structure provides two-way protection for both the Contractor and the City. Both parties are assured that no additional work is to be done unless initiated by the Contractor in a change order and approved by the City. The City can no more unilaterally impose a change order for additional work on a Contractor than a Contractor can unilaterally perform additional unapproved work and demand payment for it.

These well-established change order processes provide stability and predictability to both contractors and the City in the uncertain world of construction. H.B. 3485 would only create the potential for instability in City projects and restricts the parties' freedom to contract for any unforeseen, emergency, or exigent circumstances.

For the foregoing reasons, the City of Houston respectfully opposes H.B. 3485.



Deidra Penny
Deputy City Attorney