

## The Old Saying is True? DO NOT VOLUNTEER!

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Part of the work for this contract with the Navy to construct a processing and assembly building for explosives included the erection of 3 ½ miles of power line consisting of 161 poles. The electrical drawings set forth coordinates for the poles as well as 42 transit location reference points from a previously performed survey. Those points are the locations at which the transit was located during surveying. Possession of coordinates or data for the reference points was necessary to lay out the power line without having to re-survey the route. However, that information was not included in the contract documents.

The power line subcontractor asked for the reference points from the electrical subcontractor. The information supplied wasn't what it needed. At a quality control meeting, the Navy was requested, for the first time, to provide the coordinates. Again, the information provided was not what was needed, and a request was made for the field notebooks from the previous survey. The search for the data continued. The power line subcontractor was under pressure to complete the power line lay out to meet required milestones. Because the power line was on the critical path, the power line subcontractor directed its own surveyors to re-establish the transit location reference points. Four days later, the field notebooks were located, but because the survey had already been duplicated, they were not sent to the project site.

A Request for Equitable Adjustment was subsequently filed claiming that the work required to lay out the power line system was not required and constituted a change to the contract. The claim was denied by the Contracting Officer because there had been no direction by the Government to perform the re-survey. The subcontractor "performed the re-survey of its own volition before the information could be transmitted."

The Armed Services Board of Contract Appeals denied the appeal of the decision finding that, "There was no direction from any Government official to Appellant or its subcontractors to perform such work." The Board held that "in the absence of any proof that the appellant was required to perform this additional work, the Board must conclude that the work was performed by the Appellant without protest, as a volunteer." Jowett, Inc. 94-3 BCA ¶27,110

Note: Normally, changes ordered by the Government entitle the contractor to an equitable adjustment. However, the contractor must be cautious. Not every request or suggestion may constitute an ordered or directed change. The contractor must also be wary of officials acting beyond their authority- directions given by officials without authority do not obligate the Government. Where there was no objection to the work by the Government, therefore acquiescence to the work by the Government does not constitute a change.

**In the end, you will be glad you made the call; by the way, it's a FREE CALL.**

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