



Statement of Mr. Greg Long  
President and Owner of Long Electric Company  
on behalf of the  
National Electrical Contractors Association

to the

Subcommittee on Contracting and  
the Subcommittee on Investigations, Oversight, and  
Regulations

U.S. House of Representatives  
for a hearing on

“All Work and No Pay: Change Orders Delayed for  
Small Construction Contractors”

May 25, 2017

NECA's 4,000 member contractors are the voice of the \$130 billion electrical construction industry that brings power, light, and communication technology to buildings and communities across the U.S. NECA's national office and 119 local chapters advance the industry through advocacy, education, research and standards development.

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**Statement of Mr. Greg Long**  
**President and Owner of Long Electric Company**  
**On behalf of the National Electrical Contractors Association (NECA)**  
**Subcommittee on Contracting and the Workforce**  
**Subcommittee on Investigations, Oversight, and Regulations**  
**Committee on Small Business**  
**May 25, 2017**

Thank you Chairman Knight, Chairman Kelly, Ranking Member Murphy, Ranking Member Adams, and members of the both Subcommittees for inviting me to testify today at this very important hearing. On behalf of the National Electrical Contractors Association (NECA), we greatly appreciate the opportunity to submit a statement for the record to the Subcommittee on Contracting and the Workforce and the Subcommittee on Investigations, Oversight, and Regulations on “*All Work and No Pay: Change Orders Delayed for Small Construction Contractors.*” The subcommittees are to be commended for holding this important hearing to address the critical issue of change orders and their effect on small businesses, particularly within the construction industry.

My name is Greg Long and I am the President and CEO of Long Electric Company located in Napa Valley, California. Shortly after graduating from Napa High School, I entered the electrical trades in 1979 and quickly moved through the ranks. Later, I founded Long Electric company in 1990. Over the years, our family-owned business has provided its services for everything from local schools to hospitals, wineries, and various sustainable energy projects. Our business has never seen more exciting times as we continue to promise that “not only are we large enough to do the job, we are small enough to care.”

We at Long Electric are proud members of the National Electrical Contractors Association (NECA), where I have had the honor of serving as a member of the NECA Northern California Chapter’s Board of Directors since 1994. NECA is the nationally recognized voice of the \$130 billion electrical construction industry, that brings power, light, and communication technology to buildings and communities across the United States. NECA, as a member of the *Construction Procurement Coalition*, continues to build on a legacy of protecting the public and making innovation possible in construction contracting. We, as member contractors, strive to be solution-providers for our customers and our industry expertise benefits everyone working on an electrical construction projects.

**Workforce Development and the Apprenticeship Program**

One of the ways which Long Electric and NECA are able to provide the highest level of electrical work comes from our involvement in a rigorous and rewarding training program. We are extremely proud of the level of skill and professionalism that is crafted in each-and-every one of our electricians nationwide by these programs. While there is true merit to a traditional college education, our programs offer an experience, education and career path that rivals the colleges and universities of this country, all without the burden of graduating with hundreds of thousands of dollars in student loan debt and no guarantee of employment.

Over 70 years ago, NECA and the International Brotherhood of Electrical Workers (IBEW) embarked on a joint venture to develop the National Joint Apprenticeship Training Program (NJATC). The newly rechristened “*Electrical Training Alliance*” invests \$100 million in private funds annually in what we believe is the largest and most successful apprenticeship and training program in the nation. Today, there are more than 300 jointly administered local programs that are trust financed and together we have trained over 350,000 apprentices to journeyman status.

Our apprenticeship program is a well-organized and supervised method to train people with little or no prior knowledge of a craft or trade to become capable, qualified craftspersons or journeypersons. It is an “earn while you learn program.” The “on-the-job” portion of the training is a full-time, well-paid job. The goal is to provide the electrical construction industry with the highest level of training and highly skilled workforce possible. To accomplish this goal, apprentices receive the highest level of training in the industry, with a requirement of 8,000 hours of on-the-job training and 900 hours of classroom time over a five-year period. Upon completion of the curriculum and on-the-job training, apprentices receive certificates documenting their successful completion of the program. Incidentally, all electrical apprentices receive incremental raises as they reach certain set milestones. They are not a burden to the taxpayers because the training is fully funded by the industry without any taxpayer assistance. Perhaps the greatest benefit is that in the end they are earning while they are learning. Each year, participants in the program contribute in excess of \$600 million dollars in federal, state, and local taxes. Lastly, they also receive retirement plans and medical coverage for themselves and their families that are also provided at no cost to the American taxpayer.

Addressing our nation’s current and future employment needs is critically important to our industry and we believe the existing apprenticeship infrastructure provided by construction trades is a sure-fire bet for success, particularly for small businesses. More important, the program is 100 percent industry designed and funded and is a wheel that does not need to be reinvented.

The apprentices that graduate from our training centers work across the commercial and industrial sectors and specialize in a broad range of areas including traditional power and lighting, power quality, lighting controls, fire, life safety and security systems, backup power generation, communication and connectivity systems, automation controls and energy efficiency projects.

While successfully completing this work, we on the management side of the business, often run into the topic of today’s hearing, change orders.

### **Change Orders: Their Current State and Effect on Small Construction Businesses**

Change orders are an essential part of every construction project. In a perfect world, we would have zero change orders and all jobs would be bid exactly as is, with no hiccups or complications in their completion. But that is not the world we live in. That said, our goal as contractors is to be as adaptable and accommodating as possible to the contracting officer’s needs and to respond efficiently and effectively to their request for an equitable change.

Today, a change order is defined as a written order, agreed upon by the owner, contractor and designer, authorizing changes to the scope of the work, the contract sum, and the contract time. While this appears to be a clear-cut definition, the processes that formalizes and compensates a contractor for a change order is not so. Due to the lack of a clear standard for administering change orders, beyond the requirement that they be within the “scope of the project,” much of the onus of risk falls directly on contractors like myself to accommodate contracting officers working on behalf of the federal government.

A refusal to complete an order or to challenge the validity of a change order can result in a loss of payment or potential lawsuit by the contracting officer or even the prime contractor. Therefore, contractors proceed with the work and do their best to account for the consequential costs and risks incurred when the timing and scope of a job is altered.

These costs and risk factors generally present themselves in one of three forms, either: 1) project and field conditions, known for delaying project completion like capacity issues, or season and weather changes; 2) added cost factors, including increased contract administration, supervision time for another job, and/or lost profits due to delayed scheduling; and, 3) labor productivity-related factors, involving the stacking of trades, morale and attitude, and/or crew size inefficiency. The combination of these factors amounts to one anxious estimator and project manager. This pair of individuals, in conjunction with the job’s foreman, are then expected to issue a hastily revised and accurate bid proposal, where both parties expeditiously and in good faith can negotiate and adjust the contract price and/or the contract timing.

Once we are able to navigate the various challenges change orders present, too often we collide with the very title of this hearing, *All Work and No Pay*. As stated previously, change orders do not exist in a perfect world. Instead, they thrive in a realm where contractors have extremely limited leverage in agreeing to completing the work and even less in extracting payment for their hard work. In some cases, contractors are not paid for as long as 18 months. In some cases, this can last even longer. This elongated period can be crippling to a small business like my own who must balance the books monthly and anticipate capital for upcoming projects. If we are unable to anticipate prompt pay, or to receive prompt payment as guaranteed under the Prompt Payment Act of 1982 (PPA), our business is unable to function, let alone prosper.

When timely payments are made under the PPA by the contracting officer to the prime contractor, subcontractors have no ability for knowing when that transaction takes place. This again adds another layer of complexity for subcontractors when it is time to be paid themselves. Jobs that have multiple layers of subcontractors can be extremely tough to navigate when the date of payment from the government to the prime contractor is unknown. Any solution that requires a notice of payment by the contracting officer would be gratefully welcomed by all contractors involved in this process.

It is clear that the single most common area of dispute in the change order process leading to delayed work or payment is cost. In fact, a 2014 study by Michigan State University found that “among cost-related disputes, items related to recoverable direct cost, overhead-profit percentages, and impact factors resulting in inconsequential costs constitute the clear majority of the disagreements.” Every change order could hypothetically run into these problems, but those that

are most prone are the ones that have not addressed an “agreed upon price or percentage amount (for such costs) in the initial contract.” This is disturbingly common as “most standard contract documents do not provide specific guidance” on these percentages. To make matters more complicated, subcontractors must deal with multiple parties, including other subcontractors, suppliers, designers, prime contractors, and of course the owner of the project.

The ultimate challenge for these issues is the true lack of any real profit for our business in the completion of a change order. In reality, most electrical contractors consider change orders as not profitable. Cases where change orders are truly profitable are few and far between. The same Michigan State University study mentioned previously found that change order work results in a profit of merely two-to-five percent, as opposed to the generally anticipated ten to 15 percent for the job as a whole. Once all other costs like overhead or direct material costs have been accounted for, electrical contractors have been found to make a profit of only 3.54 percent. This is drastically low and does not adequately account for the risk factors previously identified.

### **Payment Bonds**

Branching out from the topic of change orders, one key component of the construction world that comes into play concerns bonds. Payment bonds are an essential investment where a financier provides a prime contractor with the backing of funding necessary to assure payment of its subcontractors and suppliers. These bonds are generally defined for a set amount of time and are held at a fixed interest rate. Typically bonds and the assurance we as contractors receive from them do not come into play until a contractor is unable to complete their work or pay for the work of subcontractors; in such a case the bonding company would then be obligated to do so.

When considering change orders and the effect they may have on the bonding process it is paramount to recognize that in any dispute that may delay the construction timeline or negate the contract altogether, the bonding agency is obligated to provide services or payment in lieu of the faltering company. As a subcontractor, our main concern for such disputes generally arises over concerns of receiving payment for services. When a prime contractor becomes unable or unwilling to pay for services rendered, subcontractors are able to file a claim to the bonding agent. Under the Federal Miller Act of 1935, Federal Acquisition Regulation requires that payment bonds of this type be utilized on all jobs exceeding \$150,000.

Too often the information for contacting bonding officers or the text of the bond itself is either kept private or it remains privy to a handful of people involved on the job, making it extremely difficult for a subcontractor to extract the information from a contracting officer when need be. There is an industry wide need for an easier method to access bond information which could be fixed through the already existing network of internet platforms that house so many of today's construction documents.

### **Opportunities Lay Ahead**

Although I have painted a gloomy picture of the current state of change orders, there are a handful of opportunities in the near future that have contractors like myself optimistic for the industry as a whole. The first, is the growth that the construction industry has experienced over the past year.

At nearly a four percent increase since March 2016, our markets continue to expand. This growth, combined with the current political support for a nationwide infrastructure plan have the entire industry tinted with a positive glow.

On a legislative note, we at NECA were delighted to learn about two recently introduced bills. The first, introduced by Rep. Bacon, H.R. 2350, the “*Small Business Know-Before-You-Bid Construction Transparency Act of 2017*.” This legislation aims at addressing the length of time it takes the federal government to review, approve and pay for equitable changes; the validity of payment assurances, such as payment bonds; and the timeliness of monthly payments. These reforms will streamline the process of bidding on federal construction work and allow subcontractors to adequately address the consistent and undue risk they assume when completing change order work.

The second, introduced by Rep. Fitzpatrick, Rep. Murphy, and Chairman Knight, the “*Small Business Payment for Performance Act of 2017*” offers our contractors the ability to continue work without fear of withheld payments for change orders. The bill requires a partial payment of 50 percent within the time frame specified by the Prompt Payment Act for any additional work performed. This bill does note that the 50 percent payment does not amount to a mutual agreement on price itself.

## **Conclusion**

The issues this Committee is willing to tackle concerning change orders, bonds, and contract information are ones that do not just affect Long Electric’s work in California or solely the electrical contracting industry; these are issues that affect each-and-every small business contractor and others bidding on government contracts nationwide.

Thank you for the opportunity to testify at this very important hearing. NECA applauds the committee’s unwavering efforts to examine these important components of our expanding construction economy. We are pleased and remain optimistic at this committee’s efforts to address change order concerns. We will continue to offer our support in helping advance the committee’s agenda and look forward to working with you all as you move forward in enacting smart and sound policy for the entirety of the construction industry.