

Construction Contract Review Basics

Executive Summary: Each day we hand contracts down to our subs or we are signing contracts down from Owners or General Contractors. Know some of the basics of what to look for here.

What and when will I ever use a Contract? A contract is a laying out of the “Rules of the Game”. The Contract has all the rules that you and your partner (be it an Owner, General Contractor, subcontractor, or supplier) will follow as the job progresses.

A contract has scope, payment terms, insurance and notification requirements, and of course a reference to applicable plans and specifications.



When will I ever use a Contract? In the first sixty seconds of meeting with your attorney, he or she will be asking for the Contract you signed. It will be a constant reference during the ensuing dispute.

Before you sign, review these items below. Issuing a contract is something that should be relatively easy – you hopefully had your attorney review your basic contracts, and each time you do work, you send the document to your sub or supplier. That’s easy.

In signing a contract handed down to you, look for these items:

1. No damages for delay – this is a terrible clause in which you are paid only in time extension but not in money you spent to hang around during a delay (see my earlier article QR). If you cannot strike this paragraph, consider rewording it.
2. Pay “if” paid – where a GC is looking for Pay if paid, it is better to use Pay when paid. (I have language if you are interested).
3. Retaining your equipment – many contracts state that the GC can keep your equipment on the job to finish your work if you leave or are removed. With specialty contractors, this can be a killer since only your specialized equipment can accomplish the scope you service.
4. Differing Site Conditions (DSC) – if you run into an underground obstruction not shown in the documents, the best way to receive time and cost reimbursement is via this standard clause. Make sure your contract has this clause or account for this risk via contingency.
5. Human remains or hazardous materials – check to see if you are protected from time and cost impacts resulting from this extra work. Often times contracts are



silent or include a no damages for delay clause which does not compensate you for your standby costs.

6. Order of precedence of documents – many jobs have conflicts within their documents (conflicting details in the drawings and/or conflicting language between the drawings and the specifications). Seek out the order of precedence of the documents (specific language usually trumps general language, specifications generally override the drawings, and higher quality is generally required over lesser quality products).
7. Work hours – you may have stated on your proposal that you include only straight time work. Check the contract, it may say you have to accelerate (i.e., pay overtime) on your own nickel.
8. Markup on extra work – does the contract allow markup on additional scope or must you perform it at cost?
9. Liquidated damages (LDs) – are there any? By working day, calendar day, minute? Based on substantial completion or final completion?
10. Job duration – job required to finish by a calendar date or within a certain number of days? Calendar days or work days? What are the holidays?
11. Weather – if it rains and you cannot move dirt, do you get a “credit” for this day (i.e., get a time extension)?
12. Inspector overtime costs – if you plan on working overtime, is the inspection cost by the owner at no additional cost to you, or must you pay to have the inspector on the job watching you – and what is the hourly rate?
13. Bond – often times the language says bond to be provided at the Owner’s cost. Two things here should be verified: (a) whether or not a bond is required and (b) that it is spelled out that this shall be extra cost.



Attorney review. Although you may think you’re great at contract review, your attorney’s better. Consider passing every new contract by your attorney for suggested edits with your client.

My Story. I’ve seen contracts that say pay at or near 25 working days after receipt of payment (“at or near”, what does this mean?!), that have no markup on equipment, and that are pay if paid. And I’m not saying I negotiated all of these things away.

A contractor is always one job away from going under – take whatever steps you can to tip the legal scales in your favor at contract signing.



And the bonus item for today – don't think that the other party "likes you and will take care of you". Once it gets to their lawyer, the Contract is all that matters, and he/she will do their best to skin you alive. And lose no sleep over it.

Work Safe!