A Checklist – Contract Niceties and Nice Niceties

Executive summary. Starting a construction project off on the right foot with the Owner's Representative can pay big dividends on the job for a Contractor. Do things that help you contractually and do things that feed relationship harmony.

Setting the stage. Much of what determines the outcome of a project, for the Owner or the Contractor, has to do with how the Contract is managed. However, a larger part is how the parties relate personally. If, as a Contractor, you develop a symbiotic relationship within both spheres, you're bound to have a successful job.

First, the contract niceties. There are several submittals usually due in the first seven to thirty days of the Notice to Proceed date: submittal register, insurances, bonds, schedule, personnel listing, emergency contact list, subcontractor listing, and on and on.

Here are a select few you want to get in, or do, whether they're called for or not:

1. Schedule of values – this is a common "due in the first 30 days" item, but if it's not called out, get it in as quickly as possible!
2. Equipment rates – this is not often called out, but unilaterally providing them gives the independent cost estimator the rates early to plug into his estimating system. This should be quick and easy for the Contractor because these should come straight from Army Corps of Engineers, Blue Book, AGC, or Caltrans. By providing these rates up front, it saves hunting and pecking for the Owner's estimator later.
3. Labor rates – for the same reason as equipment rates immediately above, there's not much to discuss here. Just get these in early and get them reviewed and approved.
4. Insurance rates – this can be workers' compensation rates, and it can be builder's risk, auto, and general liability. Get them in early so they can be vetted.
5. Set up the field office – if you have the responsibility to set up the trailer for the Owner, the trailer should be one of the first things done. And don't skimp. Setting up the trailer sets the tone for an owner. If the water cooler is available in a cold water dispenser and a hot water dispenser for the same price or a nominal difference, get the one with the blue lever and the red lever.

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Those are the softer items of the Contract, now here are some "harder" items to get done right away:

1. Who's in charge – write an RFI asking for the name of the Contracting Officer, or the Officer in Charge. This will ensure that all of your communication is going to the correct person, plus you know who makes the calls. You need a human being's name, not the definition of the role.
2. Extended performance list – make a list now of all of the items which are subject to extended performance. Extended performance is a term used to describe the cost, per calendar or workday, that it costs your construction company to be on the job. This expense may become necessary of the critical path of your project is extended and you are forced to stay longer than the contract's duration at no fault of your own. You need to put it together for two reasons. The first reason is that you may need it and preparing it bit by bit is better than later in the project when you're more tired and you're under a time crunch to get it done. The other reason is it reminds you, the project manager, how much it costs to be out on the job and for each day you finish early, it's that much less expense to the job (this means more profit!).
3. Contract map – as a Contractor you better know who is in charge (see item 1 above) and also when notifications are due. Many contracts forfeit your right to compensation or time if proper notification is not made. If you don't hire your attorney to do it, you better do it yourself.

And now the nice niceties. Although many Owners think the Contractor is inhumane, mean, and dishonest, we all know that Contractors are people too. The same could be said about how Contractors feel about Owners. You as the Contractor need to get off on the right foot and extend the olive branch first. Asking to go for a beer or lunch on day one may be a bit much (maybe not), but certainly asking about the Owner's representative's spousal and/or child situation sets an immediate opportunity for bonding. If you're feeling bold, dive into his or her hobbies: golf, fishing, country dancing, writing children's books, maybe podcasting. You never know when your hobbies may align with his or her's.

My story. Most of those hobbies above are my hobbies – I guess it's really three and a half truths and the rest lies, but close enough for a Build America podcast.

It didn't happen to me, but my attorney told me a story once that a Contractor had addressed all the correspondence on the project to the wrong person and because

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of that the Owner was able to make a play that "oh, we never got any official correspondence on this project from the Contractor because it was supposed to go to Mrs. Rodriguez, not Mr. Francis." That's a BS move, but that's what lawyers do.

In regard to the softer side of the article, one of my old mentors found out that the Owner's Representative played volleyball. So my mentor and his wife joined the Owner's Representative and his wife regularly for volleyball. That led to a meaningful friendship for the couples, and also a few million bucks in my mentor's pocket!

Work safe!

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