

Getting to Know Your Contract



By Aman Kahlon

“TAKE TIME TO REVIEW YOUR CONTRACT AND BECOME FAMILIAR WITH KEY REQUIREMENTS AND OBLIGATIONS.”

After a contract is successfully negotiated and signed, it is vitally important that personnel administering the contract become familiar with the requirements, risks, and obligations set forth in the agreement. Misapplication or maladministration of a contract can lead to unforeseen risks and impacts to any project no matter how strong the contract language is in a company's favor. It doesn't take a legal background to manage a contract properly, but it does require organization and diligence. So, where does one start when it comes to contract administration?

Collect a complete set of contract documents. At the outset of any project, you should first collect a complete set of the contract documents. Often, these documents will include a form agreement, general terms and conditions, and numerous exhibits. Exhibits may include the scope of work, specifications, drawings, lien waiver forms, payment application forms, insurance coverage requirements, bond forms, etc. Additionally, certain contracts may incorporate other documents by reference. For example, a subcontract may flow down liquidated damages amounts from the prime

contract by reference to the agreement. It is important to have a complete set of the contract documents in one location, so you have a reference point when navigating project issues, change orders, and other disputes that typically arise on construction projects.

Do not rely on “parole evidence” to determine requirements under the contract. Contract negotiations often involve extensive correspondence and discussions between the parties. Once a contract is executed, try to avoid relying on a statement or email from the party you contract with that does not make it into the actual body of the agreement. Such “parole evidence” or statements which pre-date the execution of the contract may not always be relied upon to vary or contradict the terms of a written contract. Instead, the express terms of the contract will generally control, although there are exceptions to this rule.

Read and study the contract documents, especially the applicable terms and conditions. Effective contract administration demands that your personnel have read and

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understand the contours of the agreement. A thorough read-through with a highlighter and pen to make annotations next to key provisions will reap benefits down the road. You want to be familiar with the contract terms and conditions, so, when project impacts arise, you know which provisions to refer to and how to appropriately and timely respond to such circumstances. Some key provisions you should pay particular attention to include payment terms, notice requirements, change order provisions (time and cost), and pricing.

Also, be aware of any order of precedence language in your agreement. Conflicts in contract documents occur all the time, especially in more complex, large dollar agreements. If, for example, your agreement provides that the scope of work takes precedence over conflicting provisions in your general terms and conditions, you need to be aware of conflicts and manage your contract to the controlling requirements.

Consider anticipated project occurrences and determine how the contract governs these scenarios. As you are reviewing your contract, consider next steps in project development and figure out the path forward under the contract. Some example questions you should be asking yourself during this exercise include the following:

- What insurance coverage do I need for the work? What does the contract require relative to insurance requirements such as additional insured endorsements and policy limits?

- What are the circumstances that entitle my company to a change order? Are there any limitations on costs to be claimed under a change order? Are overhead and general conditions available for project delays?
- What third parties are involved in project administration (i.e., construction manager, lender, architect, etc.)? What notices do I owe these third parties? How do notice requirements and other obligations to third parties affect my plan for the work?
- How much are liquidated damages and when do they begin to accrue?
- What are the notice requirements for delay or extra work claims? When is notice due? To whom must notice be provided?

Thinking through common project issues as you study the contract will make it easier to manage risks and impacts when they actually arise.

CONCLUSION

Signing a contract is often an important milestone on construction projects. Negotiations can be grueling and extend over the course of several weeks or months. Once an agreement is executed, there is a tendency among many to relax and shift their focus to commencing construction activities and mobilizing to site. But, if you take time, amidst this flurry of activity, to review your contract and familiarize yourself with its key requirements and obligations, that effort will pay dividends as construction begins and the seemingly inevitable array of project impacts and issues arise. ■

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