

Rules of Engagement for Construction Claims

PART ONE OF A
TWO-PART SERIES

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Both the contractor and the owner make certain assumptions when entering into a construction contract. The contractor assumes that the scope of work is sufficiently defined, the plans and specifications are complete and accurate, and the owner has fulfilled any requirements necessary to proceed with construction. The owner, on the other hand, assumes the contractor is qualified to complete the work accurately and on schedule, and the price proposed is the total amount the owner will have to pay for the project.

When these assumptions are not fulfilled, a claim usually ensues.

If the owner and contractor both understand the rules of engagement for administering a construction contract, then they will know what to expect should a claim arise from the occurrence of a disruptive event.



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THE CONTRACTOR'S RULES OF ENGAGEMENT

A contractor understands the company should have competent supervision and competent and effective workers, subcontractors and suppliers. Additionally, a contractor should have a concise strategy that incorporates at least six rules of engagement that are critical when entering a contract. These six rules include the following:

1. Read and know the contract documents.
2. Develop a comprehensive and accurate construction schedule.
3. Prepare accurate and comprehensive daily construction reports.
4. Notify the owner of issues.
5. Keep track of costs.
6. Maintain inclusive documentation.

The contractor entering a construction contract with an owner assumes that the owner accurately and completely defined the entire scope of work. This enables the contractor to project costs and profits and successfully complete the project.

The contractor also assumes the owner fulfilled any requirements necessary to proceed with construction. Such requirements may include the following: the plans are permitted, the land upon which the project is to be constructed is available and free of obstruction and financing is secured.

When assumptions such as these are not fulfilled, a claim will usually develop. The six important rules of engagement must be understood and implemented by a contractor to execute the contract effectively.

Rule 1:

Read and Know the Contract Documents

Reading and knowing the contract documents is a simple task, but, surprisingly, the most misunderstood task. Many contractors believe the contract documents are for the lawyers to know and understand, as long as the contractor has the plans and specifications. The contract documents are not overly complicated, however, and are intended to provide contractors with a roadmap to administer the contract. The contract documents will not build the project, but they will guide the building of the project.

The American Institute of Architects (AIA) defines the minimum requirements of a general construction contract as:

1. The agreement or contract between the owner and contractor is the main component of the contract documents.
2. The conditions of the contract provide basic definitions to words or terms used in the contract and set forth many of the rights, responsibilities and relationships of the parties involved in the contract. These conditions describe provisions of the contract and can be supplemented or altered specifically for the project.
3. A modification to the contract after execution is generally a written agreement signed by both parties that alters either the scope of work or scope of the contract and becomes a part of the contract documents.
4. Project drawings and technical specifications are generally included as a reference within the contract documents.
5. Addenda issued prior to the receipt of bids or execution of the contract are included.

The inclusive contract documents act as a roadmap for the contractor to follow with regard to its rights, responsibilities and procedures should an unexpected change occur at the jobsite.

Rule 2:

Develop a Comprehensive and Accurate Construction Schedule

Developing a comprehensive construction schedule is another important but misunderstood task. Whether the owner

requires a schedule, it is a valuable tool that every construction project needs, especially if an untimely incident should occur. These project schedules do not have to be complicated, resource-loaded schedules, but must be accurate and current.

A comprehensive construction schedule notifies the owner, as well as the contractor, of what construction tasks have been performed, are being performed or are planned. Should the owner desire to modify the work, the owner must be given the opportunity to know when or if the work task is scheduled to be accomplished.

A construction schedule informs the contractor of when specific material, equipment or labor is needed to perform a specific work task. The schedule must include any updates should plans regarding a specific work task change. It is critical to inform all parties regarding the reason for the schedule change, whether it is a work task scope change or a work task execution change.

Should the scheduled time of project completion be impacted and become an issue regarding accountability, a complete tracking of all work task items is necessary to evaluate which work task may have contributed to the impact. Without a well-documented, current construction schedule, the contractor and owner must recreate an impacted schedule analysis.

Rule 3:

Prepare Daily Construction Reports

The third rule of engagement recommends that the contractor prepare accurate and comprehensive daily construction reports. Inclusive, unbiased daily reports are credible sources for establishing a record of events affecting daily work productivity. Any issue that affects productivity should be itemized on the daily reports.

Should the owner affect the contractor's productivity, it should be recorded. If a contractor or subcontractor causes an issue, it should be recorded. These comprehensive daily reports notify the owner of issues that may be referenced in a dispute situation.

Rule 4:

Notify the Owner of Issues

If a construction issue outside the expected occurs on a project, the contractor should notify the owner, especially if there is the possibility of a productivity impact and the issue is not the contractor's responsibility. Most contracts define when, how and why notification should be made. If the specified outline is not followed, then any claim may not be valid. The timeliness and accuracy of the notification is impor-

tant because it allows the owner the ability to correct the detrimental impact of the construction issue or, at least, understand its potential consequences.

The one contract requirement that is generally not available at the time of notification is the cost impact of the construction issue. When this is the case, a contractor may estimate its potential cost. The owner can then make a realistic judgment call about the impact. If the issue is an extra work item, the owner may decide to perform the work later. If the issue is

going to affect the timely completion of the project, the owner can weigh any alternative opportunities.

Rule 5:

Keep Track of Costs

An obvious rule of engagement most contractors comply with is keeping track of all costs; however, the method of tracking costs differs from contractor to contractor. Most costing systems adequately establish the actual cost of specific, contested issues.

In many contracts, the owner can audit the costs of the contractor. Thus accurate and comprehensive cost reports are paramount should extra costs incurred by the contractor be claimed for extra work. Though it is not recommended that the owner be issued contractor cost reports, the costs for change orders cannot be disputed if the change-ordered work was performed efficiently and the specific costs recorded accurately.

Rule 6:

Maintain Inclusive Documentation

Maintaining inclusive documentation is certainly not the final rule of engagement for contractors. It goes without saying that accurate and timely documentation of detrimental construction problems assists in the mitigation of construction claims. The contractor that maintains inclusive documentation can more effectively establish entitlement for costs. Document maintenance should include compiling information from written notes and conversations.

A job documentation accounting system is paramount, even if the project runs smoothly and completely without any lost productivity or cost overruns. An ideal project is the best training tool for the next one, and a complete and inclusive document history will help guide contractors along the way.

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