

Ten Tips To Improve Your Construction Contracts

Companies often write simple contracts without a lawyer's involvement using standard forms. Even when companies enlist an attorney to draft complex or significant contracts, it is usually the client that first gathers the basic information and terms. In either case, your company should remember these 10 tips for better contracts.

Tip One: Know the Parties

Surprisingly, companies do not always know the correct names and addresses of everyone they do business with. When contracting with people, use full names, not nick-names (for example, Robert S. Smith, not Bob Smith). For corporations, get the full corporate name, state of incorporation, and identify officers of the corporation. Insist on knowing the names of principals of small corporations. State who is authorized to give directions for the company. Also, keep these rules in mind when dealing with Partnerships and LLCs.



Tip Two: Define Scope of Work Clearly

Most disputes arising out of construction involve issues concerning whether work was performed as contracted. A well written set of specifications is necessary to define the scope of work to be performed. Also specify the products and methods to be used whenever this appears necessary.



the Advocate

LEGAL NEWSLETTER

Winter 2009 - Issue No. 33

LEONARD S. DEPALMA, LLC
Attorney at Law

973-837-1488
ldepalma@advocate.org
www.advocate.org

Tip Three:

Decide How Disputes

Will Be Resolved In Advance

Today, many companies opt for arbitration over litigation for various reasons. Arbitration can be used for limited types of disputes or for disputes involving specific claim amounts (i.e., claims over \$7,500.00 but less than \$30,000.00). Decide what type of dispute resolution is best for your company in writing and in advance. If you prefer arbitration, it is not likely your opponent will agree to arbitration after you are engaged in a dispute.

Tip Four: Starting and Ending Dates

Always state the project starting and ending date. For example, starting dates can be triggered by issuance of building permits. Liquidated damages clauses assess a penalty per each day on which the project is not completed beyond the agreed completion date. Allow for time extensions for acts of nature, specification changes, and interference with your work by third parties on the project site.

Continued on reverse page ...

10 Tips for Better Contracts

... Continued from first page

Tip Five:

Set Down All Contract Changes In Writing

Why write a contract if, after you start work, you accept changes orally? All Change Orders should be in writing and signed by the correct representatives of all involved. When necessary, confirm that the owner or architect has approved funding for the Change Order to insure you will be paid for the additional work.

Tip Six: State the Method of Payment

It is not enough to state an amount to be paid for the project. Include a payment schedule and method for approving interim payments.

For example, state what would happen if only 90% of the work required for an interim payment is accepted by the owner. Would your company get a 90% payment, or no payment until the remaining 10% of work in dispute is corrected or completed?

Tip Seven: Construction Lien Claims

For years, many contracts said no Construction Liens or Mechanic's Notices of Intention could be filed on the project. Such provisions no longer have any validity under the Construction Lien Claim Law enacted on December 23, 1993 which applies to all projects with building permits that issued on or after April 22, 1994.

Tip Eight: Identify Bonding Companies

When a contract provides there will be a surety bond for your company's benefit, subcontractors and suppliers should identify the Bonding Company and Bond Number as early as possible. Many bonding companies have

unique requirements that must be complied with in order to pursue a claim and get paid on the bond. Your contract should say you will get a copy of the bond. Review all bond requirements to understand what must be done to seek payment on the bond.

Tip Nine: Require Notice of Complaints

Do not fall victim to false complaints invented months after a job is done in order to avoid payment. Your contracts should require notice in writing regarding all defects and complaints soon after they appear.



Complaints not promptly related to your company in writing should be barred from being raised against you at a later date.

Tip Ten: Learn From Your Experience

The unique experience that you acquire as you gain maturity is an invaluable asset. Do not squander your insights. Think of your contracts as flexible enough to be changed from time to time to respond to the industry changes you notice in your work. Refine your contracts on an ongoing basis so they work to your company's best advantage.

Don't get in over your head; get legal advice when common sense dictates. Get your complex contracts reviewed by counsel. If a simple contract needs an unusual clause, have an addendum prepared. Your personnel should know when a standard contract form might be inadequate and the situation requires a lawyer's assistance.