

Avoiding construction claims

The first key is communicating clearly, the second, getting it down in writing

There are many reasons that disputes develop on construction projects, and almost as many reasons why those disputes can elevate into a claim situation. Regardless of how the dispute initially developed, the inability to resolve it amicably and without litigation can almost always be traced back to poor communication by at least one of the parties, and often all of the parties, involved. Too often we either don't communicate at all, or ineffectively at best. We think a matter is not important enough to take a moment and explain it or we assume the information conveyed is received and understood as intended. Often it is not.

Communication

It is very important to establish effective communication before the project even starts. Be proactive; don't wait for problems to arise in order to develop a way to resolve them. Establish ground rules for regular meetings and an open forum for communication between all of the parties involved with the project. Take the time to make sure that everyone is on the same page and knows exactly what is both required and expected.

It is important to convey not only what is occurring, but why and how as well. This leads to buy in of participants, and more importantly understanding. Always try to be as direct, clear and concise as possible. If there is any uncertainty, ask questions. Be specific, share your plans and schedule with those involved and ask the same of them. It may also be beneficial to use graphics when appropriate to convey information.

Resolve all discrepancies as soon as possible. Address issues as they arise, before they impact the project. Do not let misunderstandings or ambiguous items go unresolved. The longer issues go unaddressed, the more disruptive they become and the harder they are to handle. In addition, issues have a way of compounding themselves. Do not delay in making difficult decisions. This does not mean act hastily. It does mean making the tough choices even though they are difficult. The sooner they are handled, the sooner you can get on with the job at hand.

Be receptive to others. Listen to all parties involved and leave your pride at the door. Consider alternative points of view. Good communication is not about making others see things your way; it is about understanding the best way to do things. Look for a resolution that works for everyone. This will resolve the current issue and build trust that will make it easier to handle future disputes.

Documentation

From a practical standpoint, there are several documentation procedures that when implemented reduce the likelihood of both misunderstandings and disputes. The first is development of a proprietary schedule to reflect both your work as planned and your work as built. It is important to develop your own schedule to indicate the status of your work and to accurately update it on a regular basis to reflect both the progress and the impacts that have occurred to your work on the project. The schedule should be presented to other parties at

the meetings to address any potential conflicts. It will also allow you to address any issues you may have with the project's progress and the master schedule.

The next area of documentation is to maintain current and accurate logs. This documentation should include a daily log for work done and issues or concerns about the project; a change order log containing all of the approved changes, those not approved, and those being proposed; and a log documenting requests for information and all related responses. These logs document your situation and can provide others with valuable information regarding the requirements needed to perform the work.

It is also very important to include any concerns or issues you may have in the meeting minutes. Make a list of the concerns you would like to be covered during the meeting and submit them with a request for them to be addressed at the meeting and included in the minutes.

Another critical point in claim avoidance is the regular and accurate production of a monthly status report regarding the work you have performed. This report should address your current progress, any changed conditions, the status of predecessor activities with special attention to those that are or may hold up your work and the need to increase or decrease labor force in order to meet schedule requirements. The completed status report should be provided to your "up stream" contractor and/or the owner. **BXM**

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