

Risk Reduction Strategies for Construction Contractors in North Carolina

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September 3, 2024



An ounce of prevention is worth a pound of cure.

Today's construction environment demands a lot from contractors who are pulled in multiple directions and whose responsibilities may seem limitless. Beyond performing good work, managing and effectively communicating expectations and responsibilities is crucial to preventing problems with clients (typically owners) and subcontractors. Taking extra time on the front end will

save extensive time and money on the back end.

Having written contracts with both clients and subcontractors is of the utmost importance in the construction industry. The focus of this article is on strategies for preventing problems and on the provisions that should be present in a typical construction contract, but that frequently are not.

The Contractual Relationship with the Client

Three issues that frequently should be treated by specific provisions in a written construction contract are:

- change orders;
- invoicing procedures or payment terms; and
- communications between the parties.

Change Orders

The owner-contractor contract must contain clear provisions for change orders. Though change orders are a routine part of the building and contracting process, for many owner clients, this is the first time they have engaged a contractor to perform work of this magnitude. Change orders are a foreign notion to them.

Many clients do not understand the difference between allowances or material selections, work directives or minor changes in the work, and change orders. The owner-contractor contract must set forth the distinction between these processes. Similarly, before work begins, contractors should consider sitting down with the client to ensure the client fully grasps these concepts.

Once construction begins, it is imperative that contractors carefully follow the change order provisions in the written contract. Most importantly, any changes that extend the date of completion or increase the contract price should be in writing and signed by the client. In other words: When in doubt, write it out.

Signed change orders address two problems. First, they ensure that the work being performed is what the

client wants, which creates satisfied clients and avoids costly tear-out-and-replace work. Second, it reduces the likelihood of clients being surprised by an unexpected invoice.

The Importance of Written Subcontracts

Historically, some contractors frequently had handshake deals with their subcontractors, whose reputation was staked on the notion that their word was their bond. As society has become more litigious, this is no longer a good business practice.

Having a written subcontract ensures subcontractors understand the expectations of them both on the substantive work and legally.

In addition to the items listed above that should be present in the owner-contractor contract, the following provisions should be present in the contractor's subcontracts.

Additional Insured Provision

From a legal perspective, the subcontract should contain an additional insured provision. This provision requires the subcontractor to have the contractor added as a named additional insured to the subcontractor's insurance policy.

Although insurance does not cover all scopes of work, if the general contractor is sued by a client for work performed by a subcontractor, this may provide insurance coverage to protect the contractor. This additional insured provision can often be added to the insurance policy for minimal additional cost.

It is important to note that this provision is not satisfied by the subcontractor merely providing the contractor with a certificate of insurance. The existence of that certificate of insurance, by itself, does not provide the contractor with any coverage.

Indemnity Provision

Subcontracts must also include an indemnity provision. These provisions can vary, but they generally require a subcontractor to defend the contractor if the contractor is sued by a third party as a result of the subcontractor's work.

Many subcontractors believe that they are providing a more limited warranty than the law actually requires. Among other things, indemnity provisions ensure subcontractors appreciate their legal obligation to fully stand behind the quality of their work.

Manufacturer's Instructions and Building Codes

The subcontract must also require the subcontractor to follow all manufacturer's instructions and building codes.

Manufacturers have different installation instructions for similar products. Slight variations in the installation instructions can cause significant problems, particularly relating to moisture intrusion.

As regulations and specifications have become more detailed, subcontractors must recognize the importance of compliance with the building code and manufacturer instructions.

A written subcontract helps communicate the contractor's expectation that the contractor is relying upon the subcontractor's expertise.

The Value of Preventing Construction Contract Disputes in North Carolina

Preventing problems is ten times cheaper than solving them.

Time spent on the front end may ward off litigation, which often takes years to reach finality. Litigation costs hundreds of hours in lost productivity and thousands of dollars in legal fees and expenses, even for the prevailing party.

In addition to avoiding litigation, these risk management practices deepen your relationship with clients and subcontractors.

From a marketing perspective, a client who receives accurate and frequent communications will be highly likely to refer new potential clients.

For workflow, subcontractors who appreciate professionalism and who have faith in the contractor-client relationship will prioritize their projects accordingly.

Ward and Smith's construction attorneys are experienced at preparing these contracts and are available to assist with tailoring solutions unique to your business needs.

This is a part of our September series: "The Power of Preparedness." For more insights, click here.

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