understanding your contract can increase your profits

Planning, Defining and Fulfilling Contract Requirements
The BASICS:

> Contract Terms
> What Is A Contract?
> Why Do We Want a Contract?
> What to check first
> Primary Elements of a Contract
> Consider contract clauses when formulating a price
MISCELLANEOUS TERMS

» Contract
» Consideration
» Scope of Work
» Price
» Payment Terms
» Insurance
» Change Order
» Schedule
» Warranties

» Termination
» Right to Cure
» Retention
» Prompt Payment
» Venue
» Contract Requirements
» General Contract
» CONTRACT

- Binding agreement between or among competent parties, with consideration given, to do or not do a particular thing.
- May be verbal or written
- Contract Documents
- Acts or non-acts must be legal
- Parties must mutually agree
- A contract is important because...
» SCOPE OF WORK

> Does it match your part of the plans and specification that was the basis for your price?
> Do you understand all the terms used in the Scope of Work?
» **Contract Sum**

> Does it equal the amount of your bid?

> If it does not match, is the price comparable to the Scope of Work in the contract?
  - Negotiation between bidding and contract times
  - Documentation
» PAYMENT TERMS

> Forms
> Progress Payments vs Application for Payment
> Time frame relative to work and invoicing
> Relative to Contractor’s General Contract
> Retention -- negotiate
Back at the Office...

- Accounting: Subcontractor accounting/invoicing procedures must comply with Contractor’s timeline.
- Forms / Format
- Dates due
» INSURANCE

> Workers Compensation
> Unemployment (Employers Liability)
> General Liability
> Umbrella Liability
> Automobile Liability
> Additional Insureds for each, except WC
> Owners Risk deductible
SCHEDULE

- Contract Deadlines
- Your schedule
- Contractor’s Schedule
  - Only the Contractor or Owner have the right to change the schedule
- Other Contractors’ Schedule
- Coordination of Schedules
CHANGE ORDER

> Written agreement to add or deduct from the original contract
  • Changed conditions = time + money
  • Extra work = time + money
  • Time due to delay = time only
  • Owner additions or deletions = time + money

> An agreement between the Subcontractor and the Owner, processed by the Contractor
» WARRANTS & GUARANTEES OF ALL WORK

> Pass Tests and Inspections
> Defective Work
> Rework
» RIGHT TO CURE

> Written Notice of Breach
  • Subcontractor’s forces
  • Subcontractor’s expense

> Failure to Cure
  • Contractor’s forces and
  • Subcontractor’s expense + penalty
  • Or, Termination for breach
TERMINATION – parties have a right to end the contract

> For Cause
  • Incurable breach
  • Bankruptcy

> For Convenience
  • Sub to be made whole only up to time of termination
  • Burden to cease work and mitigate costs on the sub.
Dispute Resolution

» Partnering
» Mediation
» Arbitration
  > American Arbitration Association
» Litigation
Catch 22 Clauses

» No Damage for Delay
» Mutual Waiver of Consequential Damages
» Liquidated Damages
» Contractors Review of Documents
» Delegation of Design Responsibility
» Obligation to Continue Work
» Changed Conditions or Differing Site Conditions
Elizabeth Bowers

ebowers@dckww.com

412-384-1000

dck worldwide, LLC

Legal Department