Any experienced contractor knows that even carefully planned projects can result in devastating losses and unanticipated budget overruns due to a number of factors. That’s often when legal disputes often arise. If litigation ensues, the success of your claim or position will depend largely upon key steps taken before, during and after execution of the construction project. Below are seven items that you can do to help prevent and minimize loss on a job.

1. **Do Your Homework**
   Before submitting your bid, be sure to take the time to diligently review all available information, documents, plans and specifications. Understand all the conditions and obligations. Get as much data as you can to inform your company’s bid. Failure to do so can doom your project and profit potential. If you notice ambiguities or inconsistencies in the bid documents, or if you have concerns about any of the information provided, be sure to document those issues and raise those concerns before submitting your bid.

2. **Do Try to Negotiate Your Contract**
   Negotiating or, at a minimum, identifying unfavorable or restrictive contract terms before signing is beneficial to your bottom line. Many contractors mistakenly believe that attempting to negotiate contract terms will result in the loss of a job. The contractor that drives the best bargain always wins, and whomever you are negotiating with will respect you more in the process.
   Consider having your attorney assist in the review and negotiation of the contract, as certain provisions may be unenforceable or limited. Keep in mind that your attorney’s knowledge of the law is your bargaining tool in negotiations. Even if the party with whom you are contracting refuses to negotiate or alter terms, make it a point to identify restrictive and unfavorable terms. Then tailor your actions during the project. The following are a few critical provisions to look out for in this exercise.
   - **Scope of work provisions**—Demand a specific scope of work provisions and be wary of language that may be susceptible to different interpretations and arguments for inclusion of additional work as part of your base scope.
   - **Change order provisions**—Make sure there is a provision in the contract that outlines the process by which change orders are issued and approved.
   - **Notice provisions**—Be wary of overly restrictive notice provisions and strict compliance requirements that could bar your claim. Try to negotiate less restrictive terms and entitlement in situations where the other party acknowledges the conditions giving rise to a claim.
   - **No damages for delay**—Check for such a clause. Try to negotiate limitations on enforcement, such as circumstances in which delays are caused by the other party.
   - **Liquidated damages clauses**—Check for a provision allowing an owner or general contractor to assess liquidated damages against you, and understand the circumstances under which such damages can be imposed.
   - **Pay-if-paid clauses**—Subcontractors should be wary of clauses that condition their right to payment on the contractor’s receipt of payment from the owner. Negotiate the removal or modification of language that shifts the risk of an owner’s nonpayment to you.

3. **Do Be Proactive & Prolific**
   Make it routine practice to consistently and promptly notify parties up the chain in writing of any and all conditions and problems that arise during construction. Do this even when there have been verbal discussions or it seems clear that all parties are aware of a situation. In the event that litigation ultimately occurs, the party who has the best documentation usually
prevails. Ensure that your staff is well trained to maintain complete and well-documented project files in the event of a future dispute.

4. DO NOT REMAIN SILENT

Similarly, it is imperative to always respond and document an objection to any correspondence or record that contains information or statements that you believe to be inaccurate. It is crucial that you document your dispute of any of the following assertions or implications by another party:

- An allegation regarding your responsibility for causing a delay
- An allegation that there is a problem with your performance
- An allegation that you have performed deficient work

5. DO CREATE A PAPER TRAIL

With respect to any affirmative claims for additional compensation, it is critical that you document all work and costs giving rise to a claim. Create a comprehensive paper trail to support any future claims. Pay close attention to any contract provisions regarding claims or force-account work. Be sure to submit all necessary backup documentation to support costs and claims in accordance with any contractual requirements.

6. DO NOT MISS DEADLINES OR NEGLECT CLAIMS PROCEDURES

Be diligent about complying with all claim and dispute resolution procedures and deadlines to advance claims for additional work and costs. Even if there are ongoing settlement discussions or efforts to resolve claims or disputes, do not deviate from the contract’s deadlines or neglect claims procedures. Regardless of the outcome, these contract terms will remain in force.

7. DO NOT BE AFRAID TO SEEK COUNSEL

Enlist the assistance of legal counsel early on during a project or while construction is ongoing. Often, disputes can be successfully resolved or avoided if addressed early. Counsel can assist by handling issues before they develop into larger problems. An attorney can offer guidance and counsel from behind the scenes.

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