Five Factors to Consider in Construction Contracts

Supply-chain disruptions, labor shortages and extreme weather can contribute to delays, price changes and liability issues on construction projects, so understanding how to address these conditions is crucial. Material suppliers and subcontractors should consider these five factors in construction contracts, per attorneys, Scott Vicknair, LLC:

1. Change orders
2. Cost-plus or fixed contracts
3. Scope of work
4. Force majeure clauses
5. Lien waivers

Change orders are common and can lengthen the time of a project as well as increase labor and material costs, according to certified public accountants, Bober Markey Fedorovich. To gain the most profit from change orders, material suppliers and subs must:

- Confirm the new scope of work—request clarification when needed for language or definitions of unclear terms
- Ensure the plans are complete and accurate—know responsibilities to include field measurements and building applications
- Limit exposure—avoid signing agreements that restrict making changes on the job or impose additional costs
- Document every change
- Address any delays in changes—include instructions for submitting invoices and a payment schedule in the change order proposal

Determine if a job is under a "cost-plus" or "fixed-price" contract. A cost-plus contract means the contractor will estimate the base cost of the project and the profit separately, according to attorneys and consultants, Cotney, LLP. This contract states that the contractor will be reimbursed for all costs and will still generate profit despite any changes.

A fixed-price contract establishes the price beforehand despite any changes that may occur during project development, Cotney said. To avoid drastic price increases due to changes under a cost-plus contract, include a cost-control clause.

The scope of work gives suppliers and subs a solid definition of how the project will be conducted and how problems will be handled, according to Scott Vicknair. Creditors should outline when they will be paid, how they will be paid, project timelines and force majeure clauses.

Force majeure clauses refer to unforeseen events like the pandemic or natural disasters, and describe the process that should occur in the event of a project disruption. Force majeure clauses vary by contract, and different legal systems provide different solutions, according to the International Chamber of Commerce. They also allow creditors to protect themselves from damage liability. Review the specifics of these clauses to understand who will be held responsible for damages.

Lien rights are an important security. Contracts may include language that will require suppliers or subs to waive their right to file a lien before receiving final payment, per Scott Vicknair. Consult legal counsel to avoid waiving lien rights too soon.