



ESSENTIAL RECORDKEEPING IN CONSTRUCTION

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Chapter IV

ESSENTIAL RECORDKEEPING

When discussing the reasons why there is a need to keep meticulous notes on a construction project, it is often said that “Memories may fade, but paper only yellows.” Committing to memory events that occur on a project jobsite that may need to be recalled years later is not a good practice and one that can turn a legitimate request for time and compensation into a denial. Whatever form the information and data is kept – whether in electronic form or in hardcopy – contemporaneous documentation is worth its weight in gold.

The following checklist (while no means all inclusive) encompasses the basic project documentation that should be maintained for a job. The size and type of a project will obviously impact the amount of documentation that should be maintained. Larger projects require greater care in the preparation and maintenance of project documents, while smaller projects cannot economically support such extensive documentation.

- a. Project descriptions and requirements;
- b. RFPs;
- c. Bid documents;
- d. Proposal evaluations;
- e. As-built drawings;
- f. Shop drawings and submittals and logs;

- g. Contract drawings;
- h. Project specifications;
- i. Bulletins and RFI's;
- j. Schedules;
- k. Project diaries and construction daily reports
- l. Photographs and videos;
- m. Materials and soil reports;
- n. Contracts (including General and Supplemental Conditions), Purchase Orders and other agreements;
- o. Change orders and change order logs
- p. Job cost reports
- q. Payment applications
- r. Correspondence that documents decisions made in the design and building processes;
- s. Meeting minutes;
- t. Reports.
- u. Punchlists and other close-out documents; and
- v. Temporary and/or Final Certificate of Occupancy

To highlight a few of the important purposes served by these documents, discussion is focused on a claims avoidance/dispute resolution perspective.

A. Construction Contract

The contract, which defines the obligations and responsibilities of the parties, is too often overlooked until a problem arises. Oftentimes, the total contract documents are not well-defined nor are they clearly expressed which documents take priority in conflict situations.

B. Bid Documents

Bid documentation is often called into play to address the veracity of the purported as-planned costs. In order to prove that the additional project costs incurred were reasonable, it is necessary to establish that the underlying contract amount was appropriate. The bid documentation should include the following: takeoffs, unit pricing, subcontractor and supplier bids, calculations setting forth expected production, overhead and profit mark-ups, and mark-ups for labor burdens. All too often, bid documents have been (or claim to be) a casualty of floods, fire, hard drive crashes, etc. On some projects, it is agreed that the bid documents will be placed in escrow so that under certain conditions, they will be available to all parties for review.

C. Schedules

A well thought-out schedule provides the contractor a better road map on how to proceed and allows for a vehicle in which to reasonably assess the impact of actual

progress of in scope work and the effect of changes and delays on the time of performance. It also allows the owner to see how the work is proceeding and offers the ability to make timely decisions on matters affecting cost and time of performance. Regular and proper updating of the schedule permits the parties to accurately track progress and be pro-active in decision making. Furthermore, the schedules provide a contemporaneous record to evaluate should an issue relating to delay or disruption arise.

D. Daily Reports

Construction daily reports typically contain entries that, at a minimum, set forth: (1) each day's weather conditions, (2) on-site subcontractors and employees, (3) deliveries of critical materials, (4) on-site visits by third parties (e.g. project architect, owner or engineer), (5) discovery of hidden site conditions, discrepancies in plans and/or conflicts, (6) important conversations, and (7) any other noteworthy event. But most importantly, in order to effectively address a dispute involving delayed or disrupted time of performance, daily reports should identify the type and location of work performed and the workers and hours associated with that work. In an ideal world, the contractor (and/or the owner) would record such work and manpower information at a level matching the as-planned schedule activities, such that at the end of the job, an as-built schedule has been prepared that identifies in detail the sequencing and duration of how the work was actually performed and the specific days on which work was accomplished.

E. Change Orders and Change Order Logs

The next project that does not have a change order will probably be the first project that does not have a change order. Change order files should consist of all correspondence, including letters, RFI's, Bulletins, sketches, proposed pricing and all other documents associated with the change as well as the change order itself. In addition, a log that summarizes all of the above should be maintained for ease of reference and tracking.

Shop Drawing, RFI and Submittal Logs

The design documents and related correspondence concerning the design of the project should be retained. Likewise, a sound practice is to create logs that identify the date that the document was tendered and the date a response was received, the action taken with respect to each submittal (e.g., was a response provided to an RFI that answered the request or was more information required; or was a submittal approved or rejected) along with any relevant comments.

F. Project Correspondence

Any correspondence concerning the project may be filed in one or multiple ways, including chronologically for all correspondence or by party or by party to and from, etc., and may also be filed by party and/or by issue. Ideally, an index can be developed that

states the subject matter for each letter, including who the letter is from and to whom it is written. Electronic recording of correspondence (as well as numerous other project documentation) through a product such as Primavera's Expedition provides a ready and convenient source from which to locate all material associated with a particular issue; however, there is a caveat – the information must be religiously and accurately input for it to be beneficial. Mention needs to be made of email correspondence and the beneficial (or detrimental) effect it can have on the outcome of an issue. There is a growing recognition (learned the hard way) that emails are written documentation no different from a formal letter that can have the same force and effect. Remember, when you write an email, the whole world may be watching (and reading).

Job Cost Reports and Estimates

For larger projects, it is a common cost- accounting practice to produce a report of the actual cost of each line item on the bid for comparison to the estimated costs for that line item. This is particularly important on cost reimbursement work to be able to identify actual costs incurred, whether said costs are applicable to the project, and whether said costs are recoverable under the contract terms and conditions.

Employee Payroll Records

Change order pricing for extra work performed on a time and materials basis is subject to verification of the hours alleged to have been spent on tickets or other source

documentation. Payroll records (certified payroll on public projects) can assist in determining the veracity of hours charged. Also, a large part of many claims is an overrun in labor hours alleged to have been caused by disruption. The ability to establish, through payroll reports, that the manpower loading for a particular project was not as anticipated when the project was bid is a key part of any disruption and/or delay claim.

G. Photographs and Videos

Dated photographs and videos are useful in determining percentages of completion. They can also be useful in establishing that the work was performed in accordance with the plans and specifications.

There are other issues raised with regard to project documentation. Does your firm have in place a records retention policy? The contract will typically require you to maintain project records for a stated period of time. In addition, with regard to stored electronic information, there has been the initiation of much litigation concerning access to electronic files during the discovery process and a company's policy concerning the retention of records and the availability and cost of retrieving said records. It is safe to say that once a party reasonably believes that it could be a party to litigation, all electronic files potentially relating to that litigation must be retained.

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