How to Handle Bad Plans and Specifications

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Most of the time, a contractor's work runs smoothly, but bad plans and specifications can cause several problems that may not be recoverable. In many cases, disputes over bad plans are taken to court, and the legal system is full of precedents relating to such issues. Plans and specifications are critical to the successful completion of a job, but it is not always the responsibility of the client to provide accurate plans. Contractors who do not bring obvious errors to the attention of their clients may find that they must pay the additional costs of completing these projects out of their own pockets.

Interpreting Plans

Plans and specifications are not always as straightforward as most contractors would like. Many require a degree of interpretation before they can be executed. It is the duty of the contractor to interpret the plans and specifications reasonably and logically. The interpretation must take into consideration the plans in their entirety because interpreting them piecemeal may cause misunderstandings.

The legal precedent in interpreting ambiguous plans was set in 1965 in Hol-Gar Manufacturing v. United States. In this case, the rule of contra proferentem was established. Contra proferentem states that ambiguous plans and specifications can be executed as they have been interpreted by a contractor. The risks associated with ambiguous and unclear plans are assumed by the party that drafted the plans.

The two main issues with contra proferentem are plans that may be reasonably interpreted in multiple ways and the specifics of what construes a reasonable interpretation. If a contractor can prove that his or her interpretation is reasonable according to prevailing standards, then the contractor cannot be held at fault for the results even when another interpretation is deemed preferable by other parties.

As a final note about interpreting plans, courts lend a greater importance to interpretations made before a dispute arises. Changing an interpretation after a dispute calls into question the reasoning of the contractor.

Ambiguous Plans

Ambiguous plans are one of the top reasons for disputes between contractors and clients. If a contractor is aware that the plans and specifications received can be interpreted in multiple ways, the contractor has a duty to point this out to the client before placing a bid on or accepting the project. A contractor can be held liable for misinterpreting plans if the ambiguity of the plans is obvious. In cases where the ambiguity is hidden or

otherwise unknown, the contractor is usually excused for not bringing it to the client's attention before accepting the job.

Ambiguous plans must always be brought to the attention of the client. As long as the contractor's interpretation is reasonable, the client must accept an equitable adjustment of the contract, including additional costs, should the plans need to be changed or amended. It is not important whether the contractor's interpretation is the most favored, most expensive or most intelligent. It must only be deemed reasonable.

Design Specifications Versus Performance Specifications

Specifications fall into two different categories: design and performance. Design specifications detail how a contract must be performed, and no deviation from the specifications is allowed. Design specifications inherently come with an implied warranty that acceptable results will be produced when they are explicitly followed. In contrast, performance specifications only detail the end products, and it is the responsibility of the contractor to devise a plan in which the detailed results are achieved.

It is important for a contractor to understand which sort of specifications are being used because performance specifications do not come with the same implied warranty as design specifications do. If a design specification is faulty, then the client is obliged to pay for any changes required or damages caused from the unworkable plans. With performance specifications, damages and unintended results are the responsibility of the contractor.

Determining which type of plan a contractor is following is not always simple. In some cases, a complete plan may include both design specifications and performance specifications. This means that each element in a particular plan must be considered separately. If the details provided for a particular element include how it is to be built and installed, then it must be considered a design specification. On the other hand, if the plan only offers measurements for the final piece and details on how it must function, then it is most likely a performance specification.

When working with bad design specifications, the contractor must only be able to show that a defect in the design is the most reasonable cause for the deficient performance of the completed work to escape liability for the problem. However, if the contractor cannot provide evidence that the design was faulty, then he or she may not be able to recover additional expenses.

Implied Warranty

It is important for every contractor to understand that, by their nature and by legal precedent, design specifications include an implied warranty. The implication is that if the design plans are followed, then the aesthetics and performance standards of the results will be acceptable. This implied warranty has been legally recognized since 1918. In the United States v. Spearin, the court ruled that when including particular processes or methods of performance in a design, the drafter of the design implies that such methods or processes are sufficient to produce the desired results.

In 1979, the implied warranty was expanded so that contractors may legally recover any additional costs required to produce the desired results after the design has been found to be defective.

The implied warranty extends to designs that include specific methods and processes but do not mandate the use of them. If a contractor follows the recommended methods even though another method may have produced a desirable result, it is still the fault of the design drafter.

Inaccurate and Incomplete Specifications

A tenet of contract law that was established long ago is the entitlement of contractors to equitable adjustments required to complete work with inaccurate or incomplete specifications. In 1968, inaccurate or incomplete specifications officially became known as defective specifications, and the official definition is as follows: Defective specifications are those that, if followed as stated, do not result in a usable product.

The legal test that allows contractors to recover the additional costs necessary to produce a desirable result is that the contractor must have been misled by the client or the plans. In a case from 1954, the U.S. government failed to pay additional costs to the contractor for a project. However, the court found that the contractor was misled by the plans because they did not mention that the contractor would have to deal with large volumes of groundwater in the course of the work.

In another case with the U.S. government, a contractor discovered an error in the scale presented in the plans, but because the error was discovered while an opportunity to withdraw still existed, the contractor was not awarded the price adjustments required to complete the project. This makes it clear that contractors must bring defective plans to the attention of clients when they are discovered before the bid is finalized.

Plans with Errors

A contractor can never ignore plans with obvious errors or omissions. If a contractor does not bring plan deficiencies to the attention of the client, then he or she risks the rejection of any future claims. When the errors are brought to the attention of the client during the bidding process, the plans can be adjusted to give each of the other bidders a fair chance at being awarded the contract.

Some contractors have been known to withhold the discovery of plans with errors in the hope that they will be able to profit from the necessary adjustments after the contract has already been secured. This is a dangerous practice because contractors who withhold information are not assured of receiving the price differential.

In more than a few cases, clients have ignored the errors in their plans after being made aware of them by bidding contractors. It is risky to accept projects when errors are ignored or seen as unimportant. Most contractors will have to eat the added cost of completing the project to satisfaction because they knew what they were getting into before the bid was finalized.

Contractors enter a sticky area of contract law when job conditions change or when conditions are hidden. Changing conditions that may have been predicted could be the fault of either the client or the contractor. It depends on what was reasonably known and whether the client misled the contractor. In most cases, it is up to the contractor to investigate conditions. If the court believes that changing conditions could have been predicted by sufficiently inspecting the job site and materials, then the contractor may not be able to recover price adjustments.

The liability for work that does not meet a client's standards is not always bound by the plans and specifications. The contractor has a duty to inspect all elements and conditions of the job beyond what are presented in the plans.

In a similar vein, hidden conditions are not always the fault of the client. If a court decides that the hidden conditions could have been easily discovered, then the blame may be shifted to the contractor.

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