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FEATURE

Handling the Problem Project

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Most subcontractors have experienced the "problem project." These projects are rife with delays, defective work, design errors, major changes, excessive RFIs and broken handshake deals. They drag on long past the completion date, require additional overtime and temporary labor, and always bust the cost budget. Losses from problem projects can offset net income from multiple other projects and may even result in extensive litigation.

When such projects are encountered, subcontractors are either reactive or proactive. Reactive subcontractors ignore the problem and allow it to continue, accumulate their losses, and hope for eventual recovery one day. They are at the mercy of the upstream contractor's honesty in evaluating the cause of the problem and willingness to compensate the affected subcontractors.

On the other hand, proactive subcontractors know how to spot the problems early. They can identify the red flags before a project jumps off track and address them directly or in cooperation with the upstream contractor. They also assert their rights early and often. By identifying problems and notifying the upstream contractor, proactive subcontractors facilitate in finding a solution, limit the ability of others to improperly shift blame, and in the process, satisfy contractual requirements to recover any resulting losses.

Defining the Problem Project

The telltale characteristics of a problem project are busted labor, material, and time budgets. Putting aside the possibility of a bad estimate, a bust in the labor budget can result from being on the job longer, possibly due to delays, defective design or construction, or project shutdowns and suspensions. Or it could result from employing existing employees more hours than expected, which may result in expensive overtime pay. It can also result from bringing additional employees to the jobsite, or even the use of higher-cost temporary labor. These circumstances usually occur when the work is accelerated to compensate for prior delays or an owner's request for early completion, or when coordination failures result in inefficient work, trade stacking, and crowded work areas. Whatever the cause, the result is the same—higher labor costs and a budgeted labor budget.

A bust in the materials budget can result from uncompensated changes in the work and the correction of defective work, whether incorrect materials or defective installation.

Another red flag of a problem project is noncompliance with the schedule, or a busted time budget. A busted time budget can be costly because time usually drives the increase in several job costs. Busts in the time budget can result from the failure to start a job on time, slow progression of the work, inefficient progression, and other forms of delays.

Typical Causes of Problem Projects

It is not enough for subcontractors to merely identify problem projects, they also must know what causes them. There are many potential causes of problem projects, but some appear more frequently than others. Common causes include inferior schedules, lack of progress or inefficient progress, lack of coordination and supervision, design errors, and defective work.

Inferior Schedules

An inferior schedule can wreak havoc on a job. Subcontractors use the schedule to plan their labor and materials, delivery of equipment, and storage availability. So when an owner or contractor fails to properly schedule a job, subcontractors' plans fall through and additional costs rack up. Inferior schedules result from insufficient activities, improper logic or lack of logic, lack of input from subcontractors, razor-thin float, and failure to consider scheduling constraints such as weather or owner-imposed constraints. Even if the contractor develops a good initial schedule, it must be updated frequently. Failure to account for subsequent events on the ground can render a good schedule useless.

Spotting inferior schedules is not always easy. While some logical errors may be apparent from the schedule printout, normally scheduling problems are embedded in the metadata, which is not usually distributed to subcontractors. But subcontractors will know if they have not been approached for input on a schedule. They also will know if schedule updates are not frequently distributed.

Lack of Progress or Inefficient Progress

Even with a good schedule, a project can go off the rails when other trades fail to complete their work on time. Signs of inadequate progress include typical delays, frequent start-stops, hopscotching, and trade stacking. Scheduling logic is based on the idea that work flows in a typical pattern, and delays in predecessor activities can impact successor activities. These impacts include delays, inefficiencies, and additional rental costs. As a result, subcontractors should keep a close eye on the activities that precede their work and watch for signs of inadequate progress.

As an example, many of the interior trades cannot start their inside work until "building close-in." They may have rented equipment expecting to start work on time. But if the steel subcontractor does not get the decking in place on time, then "building close-in" will not occur on time. This inevitably will delay the interior trades' work. They will need to put their labor to work on

other jobs (if any are available). Some trades have a hard enough time attracting labor, so any downtime may result in loss of skilled labor. In addition, the interior trade may incur additional costs for the rental equipment that will be needed at another time.

Subcontractors can spot progress issues by comparing the project schedule with the progression of work. If trades are not starting and stopping near the scheduled start or stop times, or if their work is not performed in a typical flow, delays could result. Other signs include haphazard work days (i.e., trades showing up for work infrequently) and frequent transitions among various areas of job (i.e., trades hopscotching around the job site looking for available work).

Lack of Coordination and Supervision

Another factor of a problem project is lack of coordination and supervision by the contractor or construction manager. Coordination and supervision are essential to the efficient flow of work and compliance with the schedule. When these tasks are not performed properly, the job and especially subcontractors suffer. Many court cases recognize the tremendous impact that lack of coordination and supervision has on subcontractors.

Fortunately, subcontractors can spot lack of coordination and supervision. They know whether the contractor or construction manager is frequently and proactively seeking their input, requesting submittals, or pressing them to perform faster. They can easily assess how frequently meetings are held, including jobsite meetings, progress meetings, coordination meetings, and pre-cover-up meetings. When these basic functions are not performed, the project may be headed for trouble.

Design Errors

An overlooked but often important cause of problem projects is design errors. Design errors can include, for example, lack of specificity; inadequate coordination among drawing divisions; and failure to incorporate codes, applicable standards, or the owner's true wishes. Each of these problems can negatively impact the schedule, the cost of work, and ultimately a subcontractor's job success.

Design errors can be spotted by inspecting the drawings and seeking input from interconnected trades. A common sign of design problems is a high number of requests for information. As other trades begin to assess their scope of the drawings, they issue RFIs to seek clarification and resolve conflicts. When these RFIs exceed the typical number of RFIs for the type of work, it is a potential warning sign.

Defective Work

Another red flag is defective work. It affects not only the work performed defectively but can affect surrounding work or work that must be removed to perform remedial work. It is difficult to predict when defective work will occur. For this reason, it is important to assess the experience and attentiveness of the contractor's or construction manager's superintendent and supervisory staff. It is also helpful to assess the other trades and their propensity for defective work.

Avoiding and Responding to Problem Project Red Flags

The best kind of problem project is the one avoided. So the first line of defense is to assess the contractor or construction manager, other trades, designer and specialty engineers, and the owner. If the project participants are known for problems, it may be best to avoid them, especially if other work is readily available.

After accepting a job, subcontractors should be on guard for the red flags discussed above. The subcontractor's foreman, superintendent, and project manager should receive training on the red flags and what happens if they are ignored. They should also know how to respond when they observe red flags.

Upon encountering a problem project, the first response is to be proactive in bringing the project back on track. There is no substitute for developing a good relationship with the contractor's or construction manager's superintendent, and subcontractors should make a habit of frequently consulting with them. Because the superintendent cannot remedy problems of which they are unaware, subcontractors should quickly notify the superintendent of red flags and emphasize the impact on the job as a whole. If the superintendent does not or cannot resolve the problem, consider going up the contractor's or construction manager's corporate ladder until proactive measures are taken.

It is also advisable to negotiate a contract that anticipates potential problems. Many subcontracts are written to push the financial burden of project problems down to subcontractors. Avoid those subcontracts and consider the following:

- Eliminate no-damages-for-delay clauses. These clauses eliminate the incentive for upstream contractors to keep the project on schedule. Permit recovery of delay damages when caused by the owner, upstream contractor, or other trades.
- Increase the number of days required to provide notice of potential claims.
- Eliminate or minimize claim waivers.
- Expressly require the contractor or construction manager to coordinate and supervise the work as necessary to promote efficient and timely work.

Of course, some negative subcontract provisions cannot be avoided. So the subcontractor must review each subcontract, identify the requirements to assert claims, and set up a system to ensure compliance.

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