

# THE FINE ART OF OBTAINING **FINAL PAYMENT**

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# Contract Formation – TABS 1 AND 10

- Submit Proposal with Attachments:
- Terms and Conditions
- Scope of Work
- Inclusions and Exclusions

## – FACT SCENARIO #3

# Contract Formation – TAB 2 and Pages 3 - 11

- Revise RED FLAG PROVISIONS: Pages 3 - 11:

INDEMNITY

NO DAMAGE FOR DELAY

CONDITION PRECEDENT

CHANGE ORDERS

SUPPLEMENTAL FORCES

SCHEDULING

PAYMENT CONDITIONS – TAB 7: 32-1129.02(C)

- **Fact Scenarios #1, #2, #7, and #8.**

- Review Entire “Proposed” Subcontract – TAB 2

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# Contract Formation: SCOPE OF WORK – TAB 1 and Page 9

- ENSURE SCOPE OF WORK IN BID IS IDENTICAL TO SCOPE OF WORK IN SIGNED CONTRACT.
- ATTACH BID TO SIGNED CONTRACT!
- CONCEPT OF INTEGRATION

## **Contract Formation: SCHEDULE MUST BE KNOWN BEFORE SIGNING CONTRACT**

- REVIEW SCHEDULE BEFORE SIGNING CONTRACT – CHECK OWNER’S SCHEDULE.
- NO SCHEDULE? NO SIGNATURE...BECAUSE OF ONEROUS TERMS IN CONTRACT / INTERPRETATION OF WHAT IS “REASONABLE TIME.”
- LIQUIDATED DAMAGES REDUCE “FINAL PAYMENT.” ACTUAL CASE.
- SCHEDULE MUST BE ATTACHED!
- REVISED / COMPLETION SCHEDULES ARE DANGEROUS – ATTEMPT TO AVOID PAYING ADDITIONAL COMPENSATION.

# **Beginning of Project: PRELIMINARY NOTICES ARE ESSENTIAL – TAB 3 and Page 12**

- Within 20 Days of Supply or Work: Research Contracting Entities at the State Registrar of Contractors.
- Cannot Lien a job without a Preliminary Notice.
- Cannot Stop Notice a job without a Preliminary Notice.
- Lack of Preliminary Notice jeopardizes some bond claims. (Sub-subs and suppliers): GET COPY OF BOND!

**During Project: MAKE CLAIMS / CHANGE ORDER REQUESTS IMMEDIATELY AND IN WRITING – TAB 4 and Page 14.**

- Any Delay may waive your rights. Why? Owner / GC contract (concept of incorporation by reference).
- Don't forget time extensions!
- Liquidated Damages are dangerous...gets the Owner off of the hook by negotiating final payment agreement with GC.
- Bill for Change Order Work immediately.
- Get GC to apply for C.O.'s immediately.

# **During Project: WAIVERS – TAB**

## **5**

- CLEARLY IDENTIFY ON THE WAIVER FORM WHAT “WORK” PERFORMED IS NOT COVERED BY THE WAIVER.
- IF THERE ARE DISPUTED ITEMS, MAKE SURE WAIVER ALSO DOES NOT WAIVE INTEREST OR ATTORNEY’S FEES.

**During Project: RESOLVE /  
ENGAGE DISPUTES EARLY and IN  
WRITING**

- Don't expect a resolution "at the end of the job."
- Your lack of written notices can lead to a waiver of rights.
- Stop Notices should be filed during the project because they stop the flow of construction funds. **TAB 6 and Page 15.**

**During Project: ONLY “STOP WORK” IF YOU ARE CERTAIN OF RIGHTS – TAB 7**

- Use judiciously because a wrongful “stop work” is a material breach of contract.
- Know for sure that you are “due” the money, i.e. that the Owner has paid the GC for your work.
- **FACT SCENARIOS #4 and #5 and A.R.S. Section 32-1129.04(D).**

**Enforcement: BOND and LIEN  
CLAIMS ARE EXTREMELY TIME  
SENSITIVE– TABS 8 and 9**

- Obtain copy of bond as prerequisite to beginning work.
- Bond Claim: Notify Owner of lack of payment.
- Bond Claim: One year to sue from last date of your work.
- **Fact Scenario #6**
- Lien Claim: 120 Days from Completion / Suit within 6 months of Lien.