LEGALLY SPEAKING:
Project Documentation in 2013: Having a Plan in Place for Success

By Matthew J. DeVries

In last month's article, we talked about some of the *Lessons on Today's Technology-Driven Construction Project*. As we enter the new year, you may make resolutions about how to better organize your projects, better streamline your estimating procedure, or better prepare for disputes. Let's face it…no one likes disputes! However, there are going to be certain rules that must be followed to either prove your claim or defend the lawsuit. In the construction industry, it is important to be familiar with the plans and specifications. However, it is equally important to document events that occur during construction and their impact on the means and methods, schedule and cost on an on-going basis.

Why document? As a construction lawyer, I think documentation is the most important component of detecting a potential claim and providing or disproving its impact. In their book *Professional Construction Management*, Barrie and Paulson suggest the documentation system meet the following objectives:

1. To provide an organized and efficient means of measuring, collecting, verifying, and quantifying data reflecting the progress and status of operations on the project with respect to schedule, cost, resources, procurement, and quality.

2. To provide standards against which to measure or compare the work progress and status. Examples of standards include CPM schedules, control budgets, procurement schedules, quality control specifications, and construction working drawings.

3. To provide an organized, accurate and efficient means of converting the data from the operations into information. The information system should be realistic and should recognize (a) the means of processing the information (e.g., manual versus computer), (b) the skills available, and (c) the value of the information compared with the cost of obtaining it.

4. To report the correct and necessary information in a form which can best be interpreted by management, and at a level of detail most appropriate for the individual managers or supervisors who will be using it.

5. To identify and isolate the most important and critical information for a given situation, and to get it to the correct managers and supervisors, that is, those in a position to make the best use of it.

6. To deliver the information to them in time for consideration and decision making so that, if necessary, corrective action may be taken on those operations that generated the data in the first place.

Errors in documentation. Documentation is necessary to prove both the occurrence of a condition for which compensation is due and, more critically, the damage resulting from such a condition. Ironically, when claims are not settled, it is usually the result of one party or both not having sufficiently prepared job progress and cost records. There are three basic reasons why inadequate record keeping may occur:

First, a documentation system may exist, but field and project management personnel do not put the necessary effort into completing forms. For example, some construction personnel feel documentation interferes with performance of primary responsibilities. Everyone has heard a contractor supervisor who "has so much paperwork, there's no time to get the job done." Other personnel simply do not understand the importance of documentation or the potential impact of not having it when things go wrong. These scenarios are probably the most difficult hurdles to overcome when attempting to institute a successful reporting system. Even the most well planned system employing efficient, easy-to-complete forms will fail unless company management is committed to its success. Perhaps the most successful (yet unfortunate) motivator for a party in this regard is the experience of failing to recover on a claim for which entitlement is admitted by one party, but the records of the other party fail to link extra costs to the compensable condition.

Second, the reporting system itself may be lacking. For example, there may be too many forms for specialized purposes. Supervisors might be required to fill out separate forms for employee payroll, job progress, equipment usage or downtime, extra work, materials received on the job, fuel and lubrication on equipment, unforeseen conditions, equipment rental, etc. In such scenarios, receiving information from the field depends on whether supervisors remember to fill out the correct form for the situation. The mere act of placing the job name and date on each of several reports takes valuable time away from the project supervisor.

Third, the actual design of the forms may foster insufficient and/or inefficient reporting. The forms should be designed to take supervisors through logical and sequential thought processes to ensure that maximum information is provided. Spaces for narratives or description should be adequate. Forms that limit comment spaces to two or three lines encourage half-hearted efforts resulting in brief and meaningless reports.

Planning ahead. The design of a project documentation system starts with an examination of your operations, both in the field and office. A documentation system requires effort from the personnel and must be in harmony with the way they carry on their primary responsibilities. In addition, expectations should not exceed the ability of the employees who are providing such information. For example, when designing a job cost system, the level of detail for which costs will be tracked should not exceed the ability of field supervisors to accurately record during the day. As we begin the new year, you should have a plan in place for creating, handling, using, and organizing your documentation.

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