

Contracts: read 'em before returning, says this veteran landscape contractor

It's not necessary to be an attorney to smell a rotten deal. Be wary.

by Kent Miller

■ Before you "sign it and send it back," read the fine print of your landscape construction contract.

It's not necessary to be an attorney to smell a rotten deal. You may not have ready access to an attorney, but you can still take some precautions on your own.

I sit down to read a contract agreement with a straight edge, black pen, the landscape plans and specifications, the bid proposal and scope letter. I weigh the needs and wants of our organization to the scope of work and the reputation of the general contractor.

How often does the contract agreement that you are reviewing neglect to reference the bid proposal or scope letter you submitted by fax on bid date?

Does your agreement state landscape and irrigation complete in place and cross-

reference the complete set of plans, specification and the contract between the owner and general contractor? If it does, you may have found yourself in a dispute over who is responsible for installing the rip-rap or transplants indicated on the civil and grading plans. That's also about the time

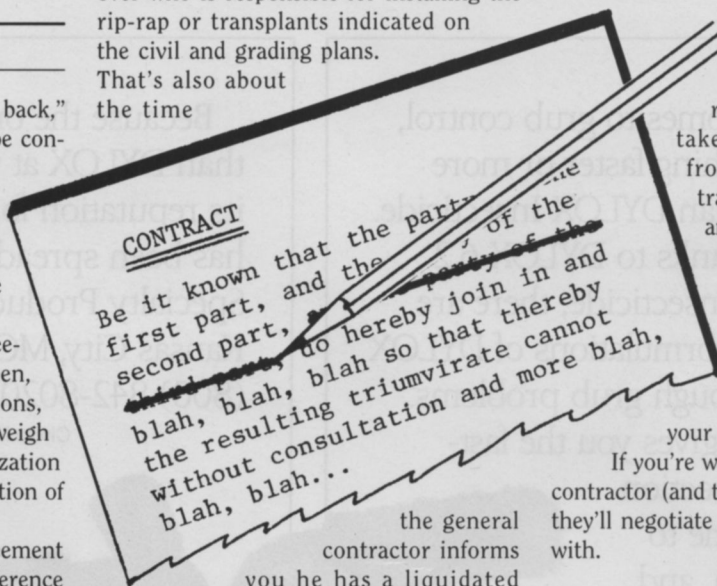
the sections of work and associated pages. When it's time to contract, I tie my bid to the contract documents as an exhibit.

The point is that I have yet to lose a job because of my straight-edge ruler and black pen. I have protected my organization's rights of fair play and taken the cattle prod away from the few general contractors who seek pleasure and profit in an easy mark.

Next time you get a contract in the mail requesting you to sign it and send it back, take the time to weigh the wants and needs of your organization.

If you're working with a fair general contractor (and there are plenty of them), they'll negotiate the clauses you can't live with.

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the general contractor informs you he has a liquidated damages clause in his agreement with the owner, and he is going to assess those damages on you.

I try to be specific in bidding by listing

If you find unacceptable phrases, get rid of objectionable wording!

■ Here are several contract clauses that, regardless of the situation, I'll not concede to. See if you find humor in some of them:

Example 1—"The General Contractor may take possession of all drawings, materials, tools, appliances, equipment and contracts pertaining to the work belonging to the Subcontractor at any location. Subcontractor hereby assigns to the General Contractor said drawings, materials, tools, appliances, equipment and contracts for the purpose of completing performance of Subcontractor's work by General Contractor or another."

I always delete the words "tools, appliances, equipment...at any location" in my contracts. The words "over my dead body" come to mind whenever I read that phrase.

Example 2—"The General Contractor may give notice to Subcontractor by con-

tacting such employee by telephone or by giving verbal notice to any employee or Subcontractor at the Project or to one of the authorized agents listed in the Progress Payment Schedule or by mailing or delivering notice at the address of the Subcontractor...however sent, in the event that more than one method of sending notice is used, the notice shall be deemed given as of the time of the receipt of the first notice."

My official notice is only by certified mail, and with a reasonable amount of time to react after receipt.

Example 3—"The General Contractor requires that the Subcontractor's jobsite foreman seek permission from the General Contractor's jobsite supervisor prior to leaving the site for the day."

I delete this, in its entirety. And—in

return for trying to limit my freedom of movement—I counter by adding: "This Subcontractor will not perform any work, whether warranty work, maintenance work, or any other type of work on delinquent accounts. The absence of maintenance will void all warranty."

Example 4—"The General Contractor may deduct from any amounts due or to become due to the Subcontractor any sum or sums owing by the Subcontractor the Contractor under this Agreement or or project or under any other Agreement or project."

Imagine having more than one contract with a general contractor, and one of those projects has some shades of trouble. Keeping the rotten apple away from the rest of the basket would be difficult with that clause.