

Knowing When to Pull the Plug on a Construction Project



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BKK Construction & Land Use Newsletter

June 2012

It is sometimes a painful reality to accept that a construction project does not materialize in the manner that one or more of the parties involved in the project expects. The reasons a project ends unfavorably often include the inability or unwillingness to pay attention to the warning signs. Recognizing and responding to warning signs early in the life of a construction project can save contractors and clients valuable time and expense.

The Warning Signs:

- Client Pays Late or Not at All
- Contractor Misses Deadlines Routinely
- Quality of Work is Questionable in Early Stages of Project
- Too Little or Too Much Communication

Client Fails to Make Timely Payments

Late payments are a strong indicator that the project may result in early termination. It is not uncommon that at the start of the project, payment is received in a timely manner. However, the closer the project gets to substantial completion, only partial payments are made, or worse, no payments are made at all. Because the client has a past reputation of paying on time, work continues on the project with the expectation that the warning sign is not a real consideration.

Don't overlook the obvious. Late payment is the client's way of letting you know that funds are lacking or there is dissatisfaction with the work. Review the construction contract to determine your rights, inquire with the client both verbally and in writing, and don't be uncomfortable to state that work will cease if any outstanding amounts are not paid in full. Prolonging issues related to payment increases the cost of doing business. Exercise your right to control the situation.

Contractor Misses Deadlines Routinely

There are legitimate reasons why a contractor may not complete all or a phase of the project in accordance with the construction contract. Change orders may delay the completion date for a project. Inclement weather or other circumstances beyond the control of the contractor may also cause a delay. The contractor should have documentation to support any activity that causes a legitimate delay. If an architect or a construction manager is a part of the team for your project, it is likely that they will have access to and review periodically the contractor's records. If you work directly

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with the contractor, review the contract to determine if the contractor is in default.

Provide the contractor with the opportunity to avoid termination of the project by giving written notice if in fact the contractor is in default. If the contractor cures the default, the expense of having to terminate the contract and engage another contractor to complete the project is avoided. If the contractor does not cure the default, evaluate the status of the project. An engineer or other construction expert can advise on the expected cost to complete the project as well as document the existing condition of the project in the event that you need evidence for possible litigation. It may be that it is less expensive to accept a later completion date and to continue working with the current contractor rather than instituting litigation or entering into a new contract with a different contractor. Know all of the costs associated with terminating a contractor prior to taking any action against the contractor. Then, if action is needed, you have laid a proper foundation to establish your claim.

Quality of Work Is Questionable

Quality of workmanship issues are often a real source of tension between an owner and a contractor. When a project is at or near the stage of substantial completion, a punch list is prepared and the contractor completes the list of uncompleted contract items in order to receive final payment from the owner. Examples of punch list items include damaged building components, such as a broken window or cracks in paving, or problems with the final installation of building materials or equipment, such as peeling carpet or missing roof shingles.

Owners often seize the opportunity before final payment is made to voice their concerns about the overall quality of the work. The punch list addresses minor items. To alleviate concerns about inferior workmanship of major components of the project, work with the contractor early in the project to establish criteria for judging workmanship. The more that an owner and a contractor come to agreement about established standards for workmanship, the more likely that the project will result in good quality without unreasonable expectations on the contractor.

Little or Excessive Communication

Parties to a contract may have different expectations about the level of communication that should exist, and therefore, it is critical for each party to communicate those expectations. Some clients are satisfied with periodic updates on the progress of a project, while others want to engage in daily communications either in-person, by phone or e-mail. If your style and frequency of communication is at odds with the other party, it may lead to miscommunication or a breakdown in the client-contractor relationship.

Timely updates are critical during a project, though the frequency of the updates preferred by each client varies. Some clients want hour-by-hour updates, while others want their contractor to supply updates every few days or weekly. Whatever the case, both parties should be clear about the reporting requirements at the beginning of the project.

If the contract needs to be terminated, consider the practical consequences and work actively to reach a compromise and limit your exposure to damages. Successful projects are ones where the parties to the contract have a clear understanding about each other's concerns, limitations and ability to readjust if the situation requires.