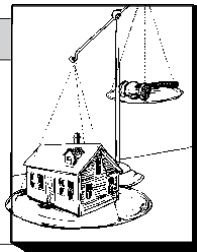


Job-Site Power Perils

by Michael C. Loulakis and Jeffrey G. Gilmore



Almost any project, whether renovation or new construction, requires some form of temporary power or heat for work to progress. When bidding and negotiating on contracts, owners and contractors should evaluate their needs for temporary power and develop specific terms regarding the availability of and responsibility for such services.

The risk of failing to address these needs in sufficient detail is demonstrated by a recent case in Massachusetts: *Joseph E. Bennett Co., Inc. v. Commonwealth*, 486 N.E.2d 1145 (Mass. App. 1985). The case involved the construction and renovation of a 450-bed prison facility in Bridgewater, Mass.

Tying into Electrical Lines

As the prime contractor, Bennett was required to have its electrical subcontractor provide temporary light and power at the job site until permanent feeders were in operation. Other than this simple provision, no language or specification was included in the contract to identify the "contact point" from which temporary feeder lines would run.

As a result of this vague, inadequate contract language, a dispute developed

tact point for temporary power, the contract documents were misleading. Accordingly, the court issued a \$24,000 award to Bennett as reimbursement for the costs the contractor had incurred.

Heating the Job Site

In addition to the dispute over temporary electricity, Bennett submitted a claim for excess costs incurred in providing temporary heat at the site. The supplementary general conditions to the contract required Bennett to provide heat and temporary enclosures so that work could continue from November through March. Unrelated to this specific contract, however, the BBC had amended the standard supplementary general conditions for state contracts to require the state to cover the costs of energy—steam, water, gas, oil, electricity, etc.—to heat the job site.

The court acknowledged the inconsistency between the contract and the BBC amendment, but it nonetheless rejected Bennett's argument that the amendment constituted a modification of the contract.

Moreover—and herein lies an important lesson—the court noted that Bennett never took the steps required in its contract to clarify the discrepancy. As the contract provided, "If any discrepancy or inconsistency is discovered in the plans, drawings or specifications. . . for this work in relation to any such law, ordinance, regulation, order or decree, [the contractor] shall forthwith report the same to the architect and the Bureau in writing."

Relying on this language, the court held that "to the extent the BBC memorandum suggested an obvious inconsistency or discrepancy in the specifications," the contractor at least should have asked for clarification "to bridge the crevasse in his own favor." Because Bennett failed to raise the issue with the state upon discovering the problem, the court determined that Bennett was not entitled to additional compensation for providing temporary heat at the site.

Implications

Bennett's attempt to recover additional costs for on-site heat and electricity demonstrate the risk a contractor takes if these issues are not carefully spelled out in contract documents.

In the case of providing temporary power at the job site, many contractors wrongly assume that the "customary practices" of a given area sufficiently outline their responsibilities. As with virtually any contract, however, the absence of written specifications means that the contractor may be held liable for any unusual circumstances—and costs—encountered.

Similarly, if an ambiguity or inconsistency in the contract becomes apparent after work begins, the contractor should seek clarification *before* incurring any additional costs. ■

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Because the contractor failed to raise the issue of temporary light and power when the problem was first discovered, he was not entitled to additional compensation.

over whether the contractor or the owner (the state of Massachusetts) was responsible for the extra costs associated with connecting the temporary power to the off-site Brockton Edison-Co. contact point. Those costs, incurred by Bennett, amounted to more than \$24,000 for erecting poles and stringing lines between the job site and the contact point 4,000 feet away.

A hearing before a special master appointed by the court determined that the Massachusetts Bureau of Building Construction (BBC) was responsible for determining the exact location at which the link could be made. The master ruled that the plans and specifications implied a "reasonable expectation that electric power would be provided at or near the contract project site." Relying on the project engineer's original estimate that temporary light and power could be provided for \$5,000, the master determined that it was reasonable for the engineer to assume that a power source would be available on site.

In reviewing the special master's findings, the Appeals Court of Massachusetts held that because the plans and specifications failed to locate the con-