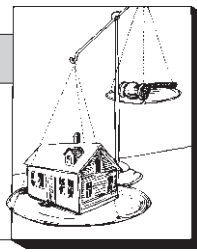


# Proposals as Written Contracts

by Lisa Messing



Many contractors use a preprinted proposal form that, when signed by the owner, becomes the contract between the parties. This provides a simple way to create a written contract. However, proposals designed as selling tools may lack some important provisions you need to protect your interest in the event of a dispute.

To create a proposal form that also makes a safe contract, consider including the following:

**Price and payment terms.** Set a time limit for the owner to accept the price given. Labor and material costs change, and you do not want there to be any question about your obligations should the owner not execute and return the proposal for several months.

Generally, contractors require payment in full on completion of work. Include a provision for the accrual of interest at the highest rate allowed by law in your state on any amount overdue. Also include information about the recovery of your collection costs — including attorney's fees — in case payment is not made when due.

**Scope of work.** Specify the scope of work in detail, including necessary exclusions. For example, on a second-story addition, you might want to state that any structural work needed to make the first story capable of supporting the addition will cost extra.

Also include a provision ensuring that you are paid for any extra work you perform with the owner's knowledge and consent. State that such work is to be billed either at an amount to be agreed upon or on a time-and-material basis that includes a percentage for overhead and profit.

**Warranty.** Your standard warranty should be referred to in the proposal, and a copy attached. Have your attorney review the wording.

In the proposal, include a provision clearly establishing your firm's standard warranty as the owner's exclusive remedy for all defects in workmanship, and the manufacturers' warranties as the exclusive remedy for all defects in materials. Add a disclaimer of all liability for special, incidental, and consequential damages.

**Asbestos and toxic materials.** For remodeling projects, include a provision that addresses your rights and specifies remedies in the event that asbestos or other toxic materials are encountered or disturbed while you are performing the work. You

should reserve the right either to rescind the contract and be paid for any work you have performed or to stop work while the owner engages a firm specializing in the removal and disposal of such materials.

In either case, you should state your entitlement to reasonable compensation for any additional expenses you incur as a result of the unexpected presence of asbestos or other toxic materials. You also should obtain the owner's agreement to indemnify your firm from all liability and claims related to asbestos or toxic materials at the job site.

**Delays.** Include a provision stating that you will not be liable to the owner for delays due to circumstances beyond your control. These might include your inability to obtain materials and labor, equipment breakdown, weather, and the owner's changes in the scope of the work performed.

**Premises and cleanup.** Include a provision stating that your firm is not responsible for reasonable wear and tear to driveways, walks, lawns, shrubs, and other vegetation caused by the movement of trucks, men, equipment, materials, and debris. Also establish who will be responsible for the removal and proper disposal of all debris.

**Final acceptance.** Establish a specific time period after completion within which the owner must inspect your work and advise you if he considers the work to be incomplete or unsatisfactory. Establish that without such inspection and notice, the work is deemed accepted.

**Entire agreement.** Include a provision that makes the proposal and warranty the entire agreement, notwithstanding any previous communications or negotiations — written or oral — that might have taken place. Require that any changes in the agreement must be approved by you in writing to be valid.

A contractor who is willing to spend some time to develop an effective proposal form will benefit in the long run. An effective proposal form will improve relations with the owner and leave you in a better position if, despite your best efforts, something goes wrong on the job. ■

*Lisa Messing is an attorney with the Atlanta-based law firm Hendrick, Spanos & Phillips. This article first appeared in Professional Remodeling magazine.*