

Spell Out Your Standards of Workmanship

by Quenda Behler Story

We've all been there at some point: The contract's signed and you've started the job, but the customer says your work isn't good enough. Even though you believe the work meets the industry standard, you go ahead and put in more hours to improve it, because that's what your customer wants.

But then, when you bill for that extra work, the customer says he shouldn't have to pay you more for doing it right. Is he correct?

What Are You Entitled To?

As long as there's no language to the contrary in the contract, you are entitled to the money. Which leads to a second question: Can you walk off the job until you're paid?

That's a very tricky question, one that's been fought over in countless lawsuits. In certain circumstances — which are too complicated to go into here — it's permissible to walk off the job if you aren't being paid for something you are entitled to be paid for. But do not take this step lightly: If you walk, and it turns out you are not entitled to that money, you will be in breach of contract (see "Know When To Walk — And When Not To," 3/05).

Referenced Standards

A recent Pennsylvania lawsuit helped clarify that when you do more than what the contract calls for to make the job better than average, you're entitled to extra money unless you've already agreed not to charge for that work.

The contract in the lawsuit specifically referred to an industry standard established by the SSPC/Society for Protective Coatings for painting (wash the wall so many times, put on a certain number of coats, use a particular quality of paint). However, when the inspector — whom the customer hired — refused to sign off on work done to that standard, the painting company went ahead and met the higher demands of the inspector because the customer insisted that it do so. Then the painting company billed for the extra cost.

When the customer refused to pay, the painting company walked off the job and refused to come back until it

received the extra money. The contract allowed either party to cancel the contract at any time, and that's what the customer did. When the painting company walked off the job, the customer cancelled the contract and hired another painter. The original painting company then sued for the money owed for the extra work and also for breach of contract.

Burden of Proof

What did the painting company have to prove in court to win its case? It had to prove plenty, but not what a plaintiff in this sort of case usually has to prove: what standard of workmanship was agreed to. That's because the contract already defined a standard by referring to the detailed standards established by the SSPC.

Since it could prove what the standard was and that its work met that standard before it did the extra work, the painting company won the part of the lawsuit in which it asked to be paid for that extra work.

The company did not get damages (loss of profit and so forth) for breach of contract, though, because the contract allowed the customer to cancel at any time.

Local standards. What if there is a dispute about the quality of work and your contract does not state what the standard of work is to be? In that case, it's assumed by the court that the work will meet the "locally accepted standard" in your industry in your area.

But what is the industry standard in your area? The plaintiff is going to say it's one thing and the defendant is going to say it's something else.

Since it isn't written down, the court has to decide what the local standard is based on what the parties to the dispute say it is. Frequently this means bringing in expert witnesses, which adds time and cost to an already expensive and time-consuming process. From the Pennsylvania painting contractor's point of view, it was good that the contract contained written standards; when his case got to court, half the battle was already won. He simply had to prove that his work met those standards.

A workmanlike manner. Many contracts contain

language along the lines of “Work will be performed in a good and workmanlike manner.” This is good language, but it’s not as good as a reference to a specific industry standard, because not everyone will agree on what “good” and “workmanlike” mean. As with “locally accepted standards,” what these words mean has to be established after the fact — usually in court.

What You Should Do

What advice should you take away from this situation? That it’s useful to include detailed industry specific standards in your contracts.

Actually, written standards can help you avoid having to sue in the first place: When the attorney for the other side sees the standards spelled out in the contract, he may tell his client to settle because the

risk of losing in court is too great.

You can put an industry standard into your contract by listing the standard followed by language like “is hereby incorporated by reference.” If you can’t find a standard you want to use, write your own detailed specifications and put them into the contract. Use clear, simple language that says exactly what you’re going to do and what you think is good enough.

Even if you agree to abide by an inspection — and especially if you agree that the customer doesn’t owe you a payment until after your work passes inspection — you’d better make it clear what’s good enough.

In the case of the Pennsylvania painting contractor, it would have been better if he’d gotten the customer to sign a change order for the change in “specifi-

cation.” But given how the customer was behaving, it’s unlikely he’d have signed. The contractor was fortunate to be in a position where he could afford walk away from the job and wait to collect in court. Not every contractor can afford to do this.

If a customer of yours refuses to sign a change order for something you must do to finish the job, I strongly suggest writing him a letter to remind him that you do expect to be paid for the extra work, change order or not. The letter may not convince the customer to pay, but if the dispute leads to a legal proceeding, it will show your intent.

Quenda Behler Story, author of The Contractor’s Plain-English Legal Guide, has practiced and taught law for more than 25 years.