



MFC NEWS

“Building Understanding”

MFC will find out the truth about buildings and answer the hard questions.

Fall 2017

Volume 12 Issue 1

What’s New at MFC...

When you call MFC, you will no longer hear Clif Wooten’s voice. Instead, you will most likely be greeted by Kaycee Beames, our current Administrative Assistant. We wish Clif the best in his return to South Carolina.

Barb Mummy celebrated 19 years with MFC in September. Congratulations Barb and thank you for everything you do!

Also, please join the Corcoran family in joyfully welcoming two grandchildren into our world.



Joke of the Day

We here at MFC have the *best* construction joke... but we’re still working on it. In the meantime:

A ship carrying red paint crashed into a ship carrying blue paint. The crews were marooned.

If you have a (clean) construction joke that may shovel in a few laughs, please email us with subject heading “MFC News Joke” to mfcnews@mfcbuild.com for future MFC News publications.



Quote of the Day

“Failing to plan is planning to fail. Time = Life. Therefore waste your time and waste your life, or master your time and master your life.”

–Alan Lakein, Author



About MFC News

MFC News is the e-Newsletter published by Myles F. Corcoran Construction Consulting, Inc. (MFC) located in Santa Cruz, California. It is circulated to our colleagues in the construction and construction-related fields. Visit our website www.mfcbuild.com for more information.



MFC Tip of the Day

On the subject of planning, the intensive building process – from the first phone call to the final walkthrough – might, at times, feel more wasteful than masterful. Although all involved are (hopefully) doing their best, the feeling is normal.

For owners who feel stuck in a slow process, for a myriad of reasons, we want to thank you for your patience in waiting for the good designer and contractor work to come through, and for willingness to wait a little longer for a job well done.

For those good designers and contractors who are inundated with work right now, we are thankful that you are willing to put in valuable thought and time for an excellent work product, and that you are also realistic with your planning and work availability: even if you are giving a difficult answer to an appreciated customer.

“Pursue excellence through social patience and mindful planning.”

– Kaycee Beames, MFC

Do you have insightful construction input to share? We welcome your feedback, comments, wisdom, and ideas for future issues. Call us at 831-476-4502 or use subject heading “MFC News Idea” and email us at mfcnews@mfcbuild.com.

...see Scope of Work Article on page 2

Wisdom Corner

Don't Skimp on Scope-of-Work Details

By [Alexander Barthet](#)

Article discovered in July-August 2017 edition of DCD Journal. Used with Permission.

Most disputes we get involved with as construction lawyers generally revolve around a construction contract's scope of work. It's usually a misunderstanding where one party believes something was included in the contract and the other party believes it was not. The [scope of work](#) provision addresses these issues.

Specify what you will do

For contractors doing the work, it's critical to specifically define in your contract the services and materials you will provide. Pay special attention to the language that is being used. Is any of the verbiage vague or misleading? Could anything in the scope of work be interpreted in a different way? Be as detailed as possible.

Clarify what you won't do

In addition to delineating what you will do, it's just as important to clearly state what you won't be doing. Include an exclusion provision in the contract specifically for work you know will not be part of the quoted price. This provides added clarification to your scope of work and can save you a tremendous amount of headaches in the long run.

Avoid common issues

Certain scope of work issues are common subjects of dispute. They require even greater clarification during the contract process. These include, but are not limited to:

- ⊞ Sealing pipe penetrations
- ⊞ Fire safing and stopping
- ⊞ Temporary electric, water, and other utilities
- ⊞ Onsite storage
- ⊞ Parking
- ⊞ Hoisting of men or materials
- ⊞ Clean up and trash removal
- ⊞ Lighting
- ⊞ Security of tools or materials, stored or installed
- ⊞ Patching and painting to correct the work

Watch for words that undermine

Even with a tightly written scope of work, other language in the contract can erode the work covered by your price. Here are three common examples of the type of provisions to watch out for:

1. *"The furnishing and performance of any and all labor and materials by the subcontractor which is within the scope of the contract documents or which can be reasonably inferred from the general scope of the contract documents."*

The last portion of this sentence is critical as it places upon the contractor a heightened obligation to perform work that may not be specifically articulated in the contract documents, but which could be reasonably inferred from those documents. You can limit this definition by adding another sentence that states: *"Only those items specifically listed within the proposed scope of work shall be included in the work."*

2. *"In the event that portions of the contract documents are inconsistent, the provision imposing the most stringent standard (e.g. the highest quality, the greatest quantity) shall control."*

This provision places the risk upon the subcontractor when additional work is needed due to inconsistencies in the contract documents. You can limit your exposure by making it clear that you are only responsible for your stated scope of work. Add that you *"are not responsible for missing or conflicting information or for the constructability, performance, or use of the project."*

3. *"Subcontractor represents and agrees that it has examined and understands the contract documents including the schedule, has investigated the nature and condition of the project site and locality, has familiarized itself with the conditions affecting the difficulty of the work, and has entered into this subcontract based upon its own examination, investigation, and evaluation and not in reliance upon representations or information from the contractor."*

This is a common sentence that verifies in writing you have inspected the site and are capable of performing the work. A statement such as this, however, will obligate you to all aspects of the project including the schedule. The statement will also minimize any of your complaints that you were unaware or surprised by the occurrence of, for example, excessive rain or sub-surface conditions. To counter this type of statement, you will want to *"disclaim responsibility for conditions which are hidden or otherwise not reasonably discoverable by you as the contractor doing the work."*

Summary

A well-written scope of work within a contract prevents disputes by making it easier to determine whether a particular item is part of the base contract work or requires a change order. Done right, your scope of work can set the stage for a more successful project and can help protect you in case of litigation.