

Lessons Learned



Learning from mistakes is one thing. But mitigating mistakes by managing expectations using an ironclad contract is another thing entirely and can be the difference between a great job and a great loss.

By Jess Campbell- Piling Canada

We all face challenges in our businesses from time to time. Arguably, how you handle those challenges is less about what you may lose and much more about what you may stand to gain. Because, as the saying goes, a smooth sea never made a skillful sailor.

Don Henry of Henry Drilling in Langley, B.C., learned just about every lesson there is to learn on a job site in the deep foundation and drilling industry. Despite the headaches and frustrations, Henry is now sharing the lessons that have made him a much more skilled sailor.

Contract Considerations

In 2014, Henry Drilling was hired to complete a job by a large, well known general contractor. It was a large project that would take several months to complete, but that would result in a multi-million-dollar payment. Needless to say, Henry Drilling was eager to get started and so they did - but without a contract in place, which would indeed come back to haunt them throughout the entire project.

Having gone through this experience, Henry now understands how crucial it is for companies to have a solid contract, signed and agreed upon, before ever setting foot on the job site. Henry says there are several things that he would have included in the contract, had it been crafted correctly.

"First, you need to include the schedule. That's number one because it keeps everyone on the same page throughout the job. Then, you need to determine the expectation for the general contractor to take on liquidated damages. For example, if the schedule isn't made, are we expected to shoulder the costs due to that schedule? There also must be a detailed scope of the work to be done and terms of payment. But another really important item is a reciprocal termination clause. The general contractor will, most of the time, have terms to terminate the contract if we're not doing our job. A lot of times, with newer contracts that are being drafted, they remove our right to terminate. It's a sticking point because if they're not paying us, we should be able to terminate the contract," he said.

Another often overlooked consideration when it comes to protecting yourself and your company is correspondence between your company and the general contractor.

"To protect ourselves, it's really important to send properly worded emails," said Henry. "(You need to) start early with correspondence, saying that the work isn't going well and that there's culpability on the other side. I think it's important to get some verbiage from your construction lawyer, so you can protect yourself if you do end up needing to terminate."

Outside Consult

Once the reliability and consistency of this particular job began to falter, Henry says he relied heavily on his legal team for advice and support.

"You don't necessarily need a legal team to do everything. But it is a good idea to seek their counsel when you start seeing red flags. If you're at the point where you're sending pretty pointed emails, but nothing is changing, you should have the right to stop work and work something out. You need to have some sort of recourse, definitely," he said.

Henry recognizes that a solidified contract would have helped the situation once significant delays became the norm. However, visiting the job site would have also made a huge difference to how this job turned out.

“Do not mobilize the site,” said Henry. “General contractors are under a hard schedule; they have significant skin in the game for getting that work done on time. When you’re mobilizing the site and starting the work then you’re investing money in the job. The key is not to get into the situation where you’re already on site and invested in the job before you have a contract that spells everything out.”

Change for the Better

Henry Drilling eventually ended up walking away from the job in question, but not without significant financial loss. Although the lessons he learned may not make up for the lost profit, Henry says he gained valuable experience from the entire situation and applies that experience on each job, every day.

“It’s important to have a contract signed before you mobilize the site, as much as you can with each client you work with. But we don’t have that with each client; it really depends on the client and the work. So, it’s also about identifying your risk with the client right off the bat. I’ve learned to identify the different types of jobs out there and to identify our rights and our risk for each type of work. That determines how we handle the contract,” he said.

Hard lessons are tough to learn but are rarely repeated. In Don Henry’s case, such a lesson became a learning experience that has made him and his team stronger and more resilient. Henry shares his experience with the hope that others can learn from him and build their own resilience and strength for when hard lessons – or rather, rough seas – come their way.

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