



CERAMIC TILE INSTITUTE OF AMERICA, INC.

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SUBJECT: The Trials and Tribulations of Being a Tile Contractor

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I recently had the occasion to reflect upon my life, and the fact that I have been involved to some capacity in our family operated company, J. Colavin & Son, Inc. for over one- half of my life. I have only been operating as the Responsible Managing Officer and CEO for the last 12 years, but they have been the most dynamic years of my life. I was going to title this paper “The Trials and Tribulations of Being a Woman Tile Contractor”, but I have come to realize that gender has nothing to do with running a business, even a male-dominated industry. Except for the fact that I simultaneously still attend to traditional female household duties which entitles me to the title of wonder-woman, I have found being a woman contractor often leans to my favor. None-the-less it is my intention to outline the hurdles/liabilities/frustrations of being a tile contractor.

Contracts:

The contract between a general contractor and a sub-contractor has evolved from a handshake to the indenture of one’s first-born son. I recently signed a contract for Turner Construction that was 3” thick (I measured). As a subcontractor I am called upon to indemnify, additionally insure, and hold harmless the general contractor. I recently had a prime contract with San Bernardino City Unified School District. Our contract required that we “indemnify, defend, and hold harmless the district, its governing board, officers, agents and employees, architect and Construction Manager from every claim or demand made and every liability, loss, damage or expense of any nature whatsoever, which may be incurred by reason of.....except for liability for damages referred to above which result from the sole negligence or willful misconduct of the district, architect, Construction Manager, their officers.....” While on the job an employee of the Construction manager was dismantling scaffolding from the roof. The spotter was not doing his job; the area was not cordoned off; and they did not have anyone certified in scaffolding safety in the area. A piece of cross bar bounced on the ground and ricocheted back to graze the forehead of one of my employees. This employee was not wearing his hard hat for whatever reason. The employee feigned serious injury, which became a costly workers’ compensation claim (but that’s another story). The ramifications here was that I was on the hook to defend the construction manager against the injured

party because they were hanging their hat on the possibility that Colavin was at least 1% responsible because he did not have his hard hat on. They maintained that it didn't result from the SOLE negligence of the construction manager. This is one example of the inequities I have had to sustain over the years due to contract obligations. The most widely used onerous contract is the 31 page AGC Document #200-Standard Form of Agreement and General Conditions Between Owner and Contractor. Article 10, section 10.1 Indemnity which compels the contractor for liability for any damages for anything, created by anyone, anytime, anywhere for any reason. One might suggest that a sub-contractor might have the capability to strike any wording they felt was unacceptable. We do on many occasions, however, if the owner/general contractor postures, we have no recourse but to concede, or walk away from a contract. If we are prime contractor we are not even allowed that luxury. Our attorney often reminds us that it is just plain too risky to be in the contracting business anymore (I try and consult with him as little as possible so I don't have to be reminded of that).

Getting Paid:

Although William Crawford, attorney with The Law Offices of Crawford and Bangs won a California Supreme Court decision making "Pay if Paid" unconstitutional, most sub- contractors still have to wait out the "Pay When Paid" scenario. Of course we have our Stop-notice/mechanics lien rights, but unless we are willing to spend the legal money to perfect our rights, we usually end up having to play out the waiting game as we find ourselves in the middle of an owner-general contractor battle. As is usual and customary in the commercial playing field, sub-contractors are allowed to bill our completion to date less 10%. Who made up this rule and why do most sub- contractors accept these conditions? Most often the owner only holds 5% until the notice of completion is filed and all punch list items are satisfied. Why is the sub-contractor made to bear the burden of an extra 5% for as long as 2 years. Of course we all know how easy it is for the general contractor to just plain stall payment. With some generals who make it a regular practice to "rob Peter to pay Paul", we have heard it all. We have heard everything from the check is in the mail (no it's not); to: the bookkeeper is on vacation (for 6 weeks?); to: we don't have your insurance certificate on file (it was sent); to: your daily's are missing (they were filled out); to: your certified payrolls are wrong (no they are not); to: we never got your billing (it was faxed and mailed); to: we need a second signature on the check (that takes 6 weeks?); to: we haven't been paid (yes they have); to: we have a cash crunch (not our problem).

Insurance:

I've already touched on some of the unreasonable waivers and indemnity's, and additional insured endorsements, but one of the most flagrant inequities to be bestowed upon sub-contractors is hidden in the "Owner controlled insurance program" or OCIP. The owner buys a wrap policy for liability and workers' compensation for all the sub- contractors with the idea that it will be less costly for the project when all the subcontractors discount their bid after they have deducted their direct cost for these items.

The problem comes into play when you realize the huge deductibles that are much more than the ones on your own policy,. God forbid you have a claim that could be very costly for you. The other component of the wrap insurance is that policies often only have a 3-5 year lifetime coverage. Everyone knows you are on the hook for 10 years for construction defects. And now you have a 5 to 7 year window of uncovered liability. Of course we all know that construction defect will manifest itself in the 9th or 10th year. The choice is to not bid OCIP projects. That really narrows the playing field when your bread and butter jobs are schools because they are all jumping on the OCIP bandwagon including LAUSD. One of the most

problematic construction defect claims is the mold issue. Much of the problem is real and result in legitimate claims, but there is a bit of hysteria that surrounds the industry in regards to mold, and owners see this Achilles tendon as yet another way to re-capture their capital investment. Never the less, most liability insurances do not cover “ pollution” and the burden is on the sub-contractor to pay the very costly stand-alone pollution insurance. Of course this particular insurance is usually only written as a “ claims made” policy which only makes it viable if the claim is made in the year the premium was made. Therefore the sub-contractor must make the commitment to pay for this insurance policy every year he is in business.

Speaking of construction defects, I just discovered that certain conditions have no statute of limitations. We recently were named in a class-action suit by the Environmental Protection Agency for dumping “toxic” materials in a landfill that has now come under the piercing eye of the EPA. This suit documents manifest receipts that date back to 1973 and 1976 (before I even passed through the doors of J. Colavin & Son, Inc.) The alleged “toxic” waste was terrazzo slush that is comprised of cement and marble dust. We disposed of this slush legally, and there is nothing toxic about cement and marble dust, but it doesn’t really matter. The large oil companies that were doing the real polluting are employing the help of their attorneys to subsidize their moral and financial obligations.

Vendors:

There is nothing more disconcerting than having to rely on another entity to achieve a timely and quality installation. Even though I use large reputable tile vendors with whom I have good working relationships, I can’t count the times vendors let me down. They often lose the purchase orders or don’t process them in a timely manner. They discontinue an item and don’t tell us for weeks. Stone is particularly problematic. They supply only 1 sample initially and they wonder why the owner is unhappy when the material that is delivered is very rangy and looks nothing like the sample they provided. The latest problem is the fabric or sand-backed stone treated with certain polymers or epoxy. These are used to reinforce the unstable stone, but the problem is that we don’t have advance warning that this is what they intend to provide. The polyurethane or epoxy bond coat that is needed for a successful installation is very costly and would have not been incorporated into our bid. Of course the most irritating scenario is when the specified vendor is a custom vendor and requires ½ deposit or the entire cost up front before they will begin production. We can usually bill the general contractor, but we most often have to wait for their reimbursement. Here is yet another example of how we have to finance the project.

Estimating/Project Management:

It is always a good thing when you know what you are supposed to be bidding on. Architects love to throw in generic, antiquated, and conflicting plans and specifications. If time allows, we could write RFI’s all day long before and after the bid. The trouble is that the architects do not read them. We often don’t receive responses and if we do, they often don’t answer the questions. This results in us plugging in enough money to cover all scenarios at bid time, and results in many follow-up phone calls after the bid for the needed clarifications.

Field Problems:

When we are scheduled to begin our tile installation, our operations manager always goes to the job site to check its readiness. More times than not, the job is not ready and we have to act as general contractor and guide them to a state of tile readiness. The other most common problematic conditions and their

solutions are outlined below:

1. Method F-111- Cement Mortar to Cleavage Membrane on Concrete Interior Subfloor

Problem #1: Floors are poured uneven with no pre-slope

Solution#1: Chip parts of floor to create a pre-slope

Problem #2: Floors are not steel troweled

Solution #2: Grind floors with a diamond wheel

2. Method F-112 – Cement Mortar, Bonded on Concrete Subfloor at Interior Floors

3. Problem #3 Floors not steel troweled and curing compound used

Solution #3: Grind floors with a diamond wheel < 3. Method F-121 – Cement Mortar Bed and Waterproofing at Interior Floors

4. Problem #4: Sub floors are not troweled and not presloped

Solution #4 Lay a layer of cleavage membrane on sub floor; dry pack floor using method F-111; and install waterproof membrane over properly sloped mortar bed to ensure drainage. 4. Method F-122 Thinset Interior Floors with Waterproofing

5. Problem #5: Curing compounds on slabs and floor is not level at perimeter of rooms

Solution #5: Scarify floor with a floor grinder; fill floor to bring it to a level and flat floor; install waterproof membrane over a filled and flat floor 5. Method W-201 and Method W-202

6. Problem #6: Scratch coat not even; scratch notches not deep enough; flat spots; and vertical scratch notches

Solution #6: Use a concrete bonder applied to all of the scratch surfaces; re- scratch the whole room.

6. Method W242, Method W243, and Method W244

7. Problem #7: Walls are uneven; at backing plates there are bows on walls; the wall is out of plumb most evident at the inside and outside corners.

Solution #7: Find the highest point; fill out the wall using a bonder applied directly over substrate. Use a latex modified thinset as a bonder. Install a dash coat over areas to bring out to a true plane.

Summation:

I have outlined some of the nightmares and “trials and tribulations” of being a tile contractor. I have also

come to realize that while there are numerous hazards, exposures, and vulnerabilities all around me, common sense and reasonability often prevail. I am proud of the fact that I developed great relationships with general contractors and vendors alike. I have always treated them with the utmost respect and honored all of my commitments. I always return all of my phone calls, and avail myself to help in whatever capacity I can to be a team player.

I have a great office support team around me and I always let them know how much I appreciate them. I insist that our field manpower provide the highest caliber of quality in their workmanship as well. I receive many kudos on the quality of our work, and I make sure the rank and file know that it was largely due to their efforts. I don't know if gender has anything to do with it, and at the risk of sounding sexist, I often wonder how much the small niceties traditionally generated by women contribute to our success.

The preceding article was researched and written by Deborah Lamb as a requirement for the Ceramic Tile Consultant Course. We wish to thank Ms. Lamb for her excellent report.

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