



**You Just Committed to the
\$10-Million Construction Project:
Now What?**

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Expectations of the Project

- **Contractor Responsibilities**

- **The scope of work**

- **Completing a scope of work with the specific details of the project is essential**

- **All of these details should be included in the proposal/contract**

- **Do not assume that the owner knows:**

- (1) what they want or

- (2) what they are getting

- **This is especially critical with the unsophisticated owner**

- **The scope of work should also set out any exclusions of work**

Examples of Specific Scope of Work Provisions

- **Emphasize the mutual understanding of the parties' scope of the project**

RE: CONSTRUCTION PROPOSAL

Dear Owner

We are pleased to submit this proposal for the above-referenced project. Our proposal is based on the layout drawings provided by the owner:

Drawing 1 of 9	Plan view - Basement Floor Layout
Drawing 2 of 9	Plan view - Main Mill Floor Layout
Drawing 3 of 9	Plan view - Feeder Screw Service Platform Layout
Drawing 4 of 9	Plan view - Feeder Screw Layout
Drawing 5 of 9	Plan view - Bin Hopper Layout
Drawing 6 of 9	Plan view - Bin Roof Layout
Drawing 7 of 9	Plan view - Headhouse Layout
Drawing 8 of 9	Plan view - Elevation View at Column Line 11
Drawing 9 of 9	Plan view - Elevation View at Column Line 13

Contractor drawings:

Drawing F01	Flow Diagram Part 1
Drawing F02	Flow Diagram Part 2

Per our Initial meeting, the following design parameters were given to contractor for pricing of this feed manufacturing facility:

1. The facility will be located in Des Moines, Iowa, at an existing owner-owned facility. This plant will tie into the existing grain handling structure via a top transfer belt conveyor to the new whole grain bins.
2. Fat will be added to the mixer at a rate of 5% liquid fat per ton of feed.
3. The batching system will utilize a 4 ton, dual shaft mixer on a 4-minute cycle for a total output of 60 tons per hour of mixed feed.
4. The Initial production of this plant will be 140,000 tons per year of swine feed (2692 tons per week) running 45 hours per week with the ability to expand production by adding hours to the production schedule.
5. Three (3) liquid tanks will be relocated from other facilities and delivered to this site by the customer.
6. All milling Ingredients will come into the facility through the truck receiving pit with the exception of the whole grain which will be transferred from the existing facility.

Examples of Specific Scope of Work Provisions

■ General Conditions

INCLUSIONS/SCOPE OF WORK

1. DIVISION 1000 - GENERAL CONDITIONS

- a. Project Manager
 - i. Will be based out of the corporate offices and will make monthly trips to the jobsite .
 - ii. Will be in charge of Scheduling, billing, purchasing, RFI, Sub-contracts and maintaining the equipment list.
- b. Field Superintendent for the duration of the project.
 - i. The superintendent will also serve as the designated safety officer for the site during construction.
 - ii. The superintendent will be responsible for day to day communications on the site and will communicate on a regular basis with the Project Manager.
 - iii. The superintendent will provide overall supervision of the contractor field crews and subcontractors.
- c. Engineering - Structure, Electrical, Architectural, Mechanical.
- d. Mobilization - Once each way for contractor equipment & personnel.
- e. Shipping/Freight
 - i. Freight is included for delivery of all building materials, material handling equipment and process equipment for the project.
- f. Safety
 - i. Contractor will designate the field superintendent as the on site, safety officer.
 - ii. Employees will be trained and certified in OSHA 1926 (Construction), First Aid & CPR.
- g. Rental Equipment
 - i. Cranes, forklift, etc. as required to perform the construction of the facility.
 - ii. Will provide a field construction office.
 - iii. Will provide portable toilets as required for the site.
 - iv. Will provide a jobsite tool trailer for storage of construction related equipment.

Examples of Specific Scope of Work Provisions

■ Specific Divisions of the project

2. DIVISION 2000 – SITEWORK

- a. Surveying for location of building structures on the site is included. A full site survey and topographical map for the site is not Included.
- b. Excavation and backfill for all structures is included as an allowance and will be firm bid once a current soils report for this site is completed.
- c. A deep foundation system for support of structures is not included.

3. DIVISION 3000 - CONCRETE

- a. Foundation design for the structures assumed that the soils conditions at the site will have sufficient bearing capacity for the various structures. Final design of the foundations will be completed once the soils report is completed and final foundation adjustment will be made at that time.

4. DIVISION 4000- MASONRY

- a. Concrete masonry units:
 - i. Units shall conform to ASTM C90, Grade N, Type 1
 - ii. 2000 psi Net Area Strength
- b. Mortar: Type N, Conform to ASTM C270, 750 psi at 28 days
- c. Grout: Conform to ASTM C476. 2000 psi minimum. Grout all reinforced cores full.
- d. Horizontal reinforcement: Type, 2 No. 9 Ga. Wires, 16" center to center vertical, 6" staggered lap splices
- e. Vertical reinforcement: Provide bars as noted on the structural drawings, 48" o.c., at corners, and adjacent to all openings.
- f. Lintels: Place lintel beams above all openings. Extend reinforcement 8" beyond edge of opening.
- g. Provide vertical control joints as noted on the structural. drawings. Joint material shall be either rubber or PVC control joint.

5. DIVISION 5000 - STEEL

- a. Structural steel scope of work is to include: supports for the bins, floors and miscellaneous platforms.
- b. Miscellaneous steel scope of work is to include: stairs, handrails, ladders, ladder rest platforms, access platform bar grating
- c. Fabricated steel scope of work is to include: collection hoppers, weigh hoppers, spouting.

■ Specific Exclusions

- If contractor will not be responsible for all aspects of the project, ensure that it is specifically noted

6. DIVISION 6000-WOOD - Not Included

9. DIVISION 9000- FINISHES - Not Included

10. DIVISION 10000 - SPECIALTIES - Not Included

11. DIVISION 11000 - EQUIPMENT - Not Included

12. DIVISION 12000 - FURNISHES - Not Included

Initial

13. DIVISION 13000 - SPECIALTY CONSTRUCTION

- a. Steel Feed Mill Bins, Bin Configuration as noted on drawings provided by owner. Smooth wall bolt together bins With 45 degree corners.
 - i. Capacity of the bins is a useable capacity per bin calculated as the straight sidewall of the bin. The hopper is not included in the capacity to allow for the void in the top of the bin.
 - ii. The bins will be supported on a structural steel grid and will extend from the foundation at grade, or basement level, to the top of the bin hopper level.
 - iii. The grinding and main mill ingredient bins are figured with 42'-5" sidewall heights. The bin gauges will be (1) section of 7 Ga. Panels, (7) sections of 10 Ga. panels and (3) sections of 12 Ga. Panels.
 - iv. The load out bins are figured with 31'-2" sidewall heights. The bin gauges will be (5) sections of 10 Ga. Panels and (3) sections of 12 Ga. Panels
 - v. All exterior bin components are fabricated from G-90 galvanized material. The top (2) interior sections as well as roof components are galvanized. The balance of components will be carbon steel, unpainted.
 - vi. All exterior bin sidewall stiffeners are 60 degree baffle style.
 - vii. The bin hoppers are fabricated with ¼" and 7 Ga. Carbon steel and exterior prime painted.
 - viii. The bin roof over ingredient bins and whole grain bins will be poured concrete.
 - ix. Each bin top will have (1) 22" square grated manhole, (1) 12" diameter spout insert and (1) 8" diameter level indicator insert.
- b. Prefabricated towers and bridges.
 - i. 8' x 8' Freestanding tower x 70'-0" Overall height sitting on top of the feed mill roof to support the Receiving leg, main receiving distributor and ½ of an access bridge. Tower will be galvanized. This tower will have (3) interior service platforms one head service platform with 3# expanded metal walkway and required handrail. The tower will have one catwalk support beam.
 - ii. 16' x 20' Freestanding tower x 33'-0" Overall height sitting on top of the feed mill roof to support the Mixed feed leg, and ½ of the whole grain belt support and access bridge. Tower will be galvanized. This tower will have one Interior service platform and one head service platform with 3# expanded metal walkway and required handrail. The tower will have one catwalk support beam.
 - iii. 10' x 10' Freestanding tower x 109'-0" Overall height sitting at grade, extending up to support the whole grain transfer bridge and support bridge. The tower will have two catwalk support beams.

14. DIVISION 14000 - MATERIAL HANDLING AND PROCESSING EQUIPMENT

CD-201 Truck Receiving Drag, 6200 CFH (4900 BPH), Model 1214HF, 21'-0" OAL

Inclined 15 degrees, 149 FPM, 57.1 RPM

12 Ga trough with 10 Ga AR steel bottom liner and 8 Ga AR steel Side liner

2 7/16" Head shaft

1 15/16" tall shaft

Detector Tail

EZ -glide top flight rail return

3 1/2" single High Flight paddles

6'-0" By-pass Inlet

End relief door with limit switch

Split head and Tail sprockets

Digger flights on chain every 5'-0"

Dodge TA3203H25 Class II drive with v-belts and guard

7 1/2 HP Explosion proof motor

CE-203 Truck Receiving Leg, 6200 CFH, Model 30137, Galvanized, 165'-0" DH

Standard head: 10 Ga bottom half, 7 Ga AR steel Liner, removable head pulley lagging

30" diameter x 16" wide head pulley, 3 7/16" head shaft

Standard Boot: 8 Ga with One Inlet, shovel pocket, self cleaning wing tail pulley

30" diameter x 16" wide tail pulley, 2 7/16" tail shaft

Double Trunking: 12 Ga.

13 x 7 cups at 10 1/4" centers

Explosion relief panels on .trunking to meet NFPA 61

Tail shaft Mounted motion detector

Head mounted discharge plug switch

(4) Hot Bearing Sensors

(4) Belt Alignment Sensors

Dodge Class II shaft mount drive, TA 6307H15 with V-belts, backstop and drive guard

40 HP TEFC motor

15. DIVISION 15000 – MECHANICAL

Domestic Water – Base Bid

1. Contractor shall provide (1) flush tank water closet, (1) wall hung lavatory w/manual faucet, (1) single bowl sink w/faucet, and (2) under sink electric water heaters at break room and restroom
2. Primary water service shall be brought in to boiler room
3. Domestic water backflow preventer shall be installed in boiler room
4. Domestic water shall be bored underground from boiler room to restroom
5. Underground domestic water shall PEX tubing
6. Above ground domestic water piping in boiler room shall be Type L copper with sweat fittings
7. Above ground domestic water piping in restroom and break room shall be PEX tubing with brass fittings
8. Insulation and jacket are included
9. Water service shall be sized for future boiler requirements

Fat Piping - Base Bid

1. Contractor shall provided (1) mixer fat pump, (1) mixer flow meter, (2) pneumatic 3-way diverting valves, and (5) pneumatic shutoff valves
2. Contractor shall provide pipe, fittings, and manual valves as required for fat receiving and distribution to mixer
3. Fat tanks to be piped to common supply header
4. Large bore fat piping shall be Sch. 40 black with butt weld fittings
5. Small bore fat piping shall be Sch. 40 black with threaded fittings
6. Insulation, jacket, and electric heat trace are included

Compressed Air Piping – Base Bid

1. Contractor shall provide (1) air compressor, (1) desiccant dryer, and (1) main receiver tank to be located on warehouse mezzanine
2. Contractor shall provide filter/regulator/lubricators as required
3. Large bore compressed air piping shall be Sch. 10 black with grooved fittings
4. Small bore compressed air piping shall be Sch. 40 black with threaded fittings

Natural Gas Piping – Base Bid

1. Contractor shall pipe gas from boiler room stub-in (by others) to (1) gas fired unit heater
2. Contractor shall provide all pipe, fittings, regulators, and manual valves as required
3. Gas piping shall be sized for future boiler and provided with a future tap
4. Large bore natural gas piping shall be Sch. 40 black with butt weld fittings
5. Small bore natural gas piping shall be Sch. 40 black with threaded fittings

SPECIFIC EXCLUSIONS

Sales Tax

- The owner has directed Contractor to not include sales tax with this proposal. A tax exemption certificate will be required from the owner prior to execution of the contract that will cover all expenses associated with this project.

Permitting/Insurance/Testing

- Permitting fees (building, EPA, DNR, FAA, SWPP, special Inspections, etc.)
- Excise tax
- Bonding
- Builders risk Insurance (losses due to fire, vandalism, lightning, wind and similar forces.)
- Construction material testing (soil compaction, concrete cylinder breaks, special Inspections, etc.)

Engineering

- Civil Engineering
- Geo-technical investigation/report

Materials

- Signs {traffic, cameras, exits, etc.)
- Fencing (chain link, wire mesh, silt, aluminum, ornamental)
- Trench drains, grates, and frames
- Cast-in-place treads, stair tread nosing and thresholds

Sub-Contractors

- Electrical (main transformers, primary feed to main transformer, lightning protection, motion sensors)
- Fire proofing (fire extinguishers/suppression, spark detection, sprinklers, etc.)

Earthwork

- General/overall site work
- Soil correction (piling/deep foundation system, export/import of soil from/to jobsite)
- Mass/finish grading
- Dewatering (anything beyond what a pair of 2" trash pumps can control)

Scales/Rail

- Railroad (trough mastic, mounting labor/hardware, etc.)
- Rail scale certification (required by state weights and measures)
- Grain grading equipment

Initial

CLARIFICATIONS

Owners Responsibility

- The owner must provide and maintain adequate access into and throughout the site for the safe delivery of cranes, other necessary equipment, and the materials to be erected. The owner affords the erector a firm, properly graded, drained, convenient and adequate space at the site for the operation of his equipment, and removes all overhead obstructions such as power lines, telephone lines, etc., in order to provide a safe working area. Any protection of other trades not essential to the steel erection activity is the responsibility of the owner.
- When the structure does not occupy the full available site, the owner provides adequate storage space to enable the fabricator and erector to operate at maximum practicable speed. (AISC Code of Standard Practice. (9th Edition), 7.2).
- Phone line, electric power, and construction water (concrete cutting, cleaning, etc.) to be provided by others
- Owner will contact the governing railroad for scheduling the test railcar for the rail scale certification and notify when to be present. The owner is responsible to continue the annual re-certification(s).
- Benchmark elevation, and control points (1) gridline north/south and (1) gridline east/west and a northern/easting's common coordinate to be provided by GC/Owner for our use. ·

Construction Requirements

- Our price is based upon a continuous erection sequence. Delays caused by others (electrical, controls, other sub-contractors) possibly causing owners to demobilize is subject to change orders at owner's expense.

Allowances.

Allowances are included within the base proposal, and will be adjusted once final design for these areas is completed. Adjustment of "Allowances" will be performed as a change order.

- 4,000 PSI Standard Concrete
- Reinforcing
- Excavation, Structural Backfill and Warehouse Backfill
- Office Finishes
- Control System, Base Bid
- Control System, Pelleting Add

Assumptions

- We take no responsibility for delays beyond our control, including but not limited to: delays caused by weather, strikes, mill conditions; supplier shortages/delays, lack of engineering/architectural information, and acts of God.
- Contractor has designed for a dust ignition proof area classification (Class II, .Div I, Group G) for inside the grain bin(s), receiving buildings & tunnels. Weather tight design (Class II, Div II, Group G (TEFC) has been used for the outside areas, if determined different by electrical Inspector, additions/deductions to be made at that time.
- Assumes no FAA height restrictions.

Owner Responsibilities

- **Sophisticated Owner – The Scope of Work**
 - Outline/specify exactly what you want in the project
 - Draft your own scope of work to be followed by the contractor
 - Require a detailed scope of supply from the contractor based on your scope of work
 - **Attorney Review**
 - ▶ Always have your attorney review the proposal/contract

- **“Less Experienced” Owners**
 - Evaluate the cost of retaining your own consulting agricultural based engineering firm or consulting contractor
 - **What’s the Benefit?**
 - ▶ You know that your specifications for the project are being met
 - ▶ Have the peace of mind of consulting with “your own” knowledgeable people
 - ▶ It allows you to double check the work of the contractor to verify it is being done in accordance with the contract

- Hire a reputable contractor with a “track record” in this type of work
 - ▶ Ask for references and then actually follow up with them
 - ▶ Visit some facilities the contractor has built and talk with the owner/operator of the facility.
- Demand specific details in the proposal from the contractor
 - ▶ Never assume that some aspects of the project “will be addressed later”

■ Insurance Considerations

■ Liability Insurance

- ▶ Owners – Always require the certificate of proof of liability insurance
- ▶ General Contractors – Always require the certificates of liability from subcontractors

■ Builder's Risk

- ▶ Whether a completely new site or existing site, proof of the existence of builder's risk is essential

■ Surety Bond

- ▶ Will the owner require one?
- ▶ This may be dependent on the size of the project

■ Registered Engineer's – Proof of Insurance

Permitting Issues

- **Examples of potential permits:**
 - Air
 - Storm Water Runoff
 - Water Discharge
 - Well
 - Railroad Spurs
 - New Highway Configurations
- **“Don’t try this at home”**
 - Retain a competent firm that routinely handles permitting issues and which has a good reputation with the various agencies who will issue the permits

EMR Ratings/Safety Training Programs

- Owners are routinely requesting this type of information from contractors
- In turn, contractors are requesting EMR ratings from subcontractors
- Owners are requesting confirmation of Employee Training Program offerings from the contractor for the contractor's employees
- Here is a good example of confirmation of a safety training program in place:

Employee Training Program Offerings:

OSHA 10 hour, NCCCO Crane certification, Certified Rigger, Equipment operator safety courses, Aerial lift operator, Forklift operator, Fall protection, Confined space, Lock-out / Tag-out, MSHA part 46 & 48 certification, 1st Aid & CPR certification, Site Specific Orientation, Weekly Tool Box Talks, Annual Construction Conference & Safety Up-date

Complete comprehensive safety policy manual – available upon request

Complete collection of safety checklists and permits – available upon request

Complete (active) collection of MSDS – available upon request

Complete collection of employee training records & certifications

Drug testing program policy with complete documentation system

Safety Program Practices & Implementation **{Leading Indicators}**

The safety system incorporates the philosophy of utilizing a “best practice” procedural approach to safeguard our employees. Shortcuts around safety issues and placing our crew members at risk of accident or injury is not allowed nor condoned. The safety initiative is managed and funded with equal importance to production and quality efforts for the overall success of our company.

Listed here are some of the important components of our “best practices” program:

- All employees receive many hours of safety education & training.
- Construction equipment is inspected and maintained on a regular schedule.
- Safety equipment is selected for high standards of performance and durability.
- Job sites and project locations are staffed with safety managers, or are visited regularly by the safety management team.
- Employees who have questions or concerns about job procedures or safety techniques are encouraged to contact the safety director for proper guidance.
- “Safety Sensitive” Equipment (rigging, electrical, fall protection, etc.) is inspected each day before work begins – damaged materials are removed from service immediately.
- Critical operations and work procedures are “check-listed & documented” to insure that all personnel are informed of the safety controls that are needed to complete the job

Safety Training Opportunities/Requirements

- On-site Safety Orientation is required for all personnel.
- OSHA 10 hour outreach program (CFR 29 part 1926 construction safety)
 - MSHA CFR 30 part 46 / 48 certification (mine safety procedures)
 - Advanced 1st Aid / Adult CPR certification
- NCCCO (National Consortium of Certified Crane Operators) required for all crane operators
- Rigging Safety & Crane Signal seminar is provided for ground crews & labor personnel.
 - Forklift operation & safety training is required for all material handling employees.
 - Skid Steer (“Bobcat”) operation & safety training is required for all operators.
 - Construction Equipment (loaders, trucks, excavators, etc.) may only be operated by trained & authorized personnel.
 - Welding, Grinding, Cutting, and “Hot Work” operations
 - Power Tool Safety and Electrical Devices Safety
 - Lock-out / Tag-out and Energy Controls
 - Confined Space Entry, Supervision, and Rescue Procedures
 - Aerial Lift, Scissor Lift, Elevated Platforms, and Scaffold operations
 - Fall Protection Systems and Techniques (construction & general industry)

On-Site Safety Programs To Be Followed

- **Jurisdiction of the site**
 - **Who's in charge?**
 - ▶ Tension may exist between the owner and contractor regarding the OSHA regulations which apply.
- **OSHA Regulations in Effect**
 - ▶ **Owner's focus**
 - OSHA standard 29 CFR part 1910.272
 - Applies to grain handling facilities and requires the owners to operate the facility in a safe manner
 - NFPA Regulations
 - Corporate Safety Program

On-Site Safety Programs To Be Followed

▶ Contractor's focus

- OSHA 29 CFR part 1926 – Safety and health regulations for construction
- Sections 1926.12, 1926.20 and 1926.21 assigns the responsibility to the contractor to insure general safety, accident prevention and safety training and education for the construction project.
- If not dealt with in a contractual provision, the parties must have some mechanism in place to deal with this potential safety issue regarding site control.

Relationship Building & Communications Between the Contractor and Owner

- **Conduct a Pre-construction Meeting to discuss Expectations and Differences – Establish a consensus agreement for any changes or variation before work starts on the project**
 - ▶ **Establish Communication Lines and the contacts [names, titles, phone numbers, e-mail address and site/facility mail address]**
 - ▶ **Establish a written chain of command for dispute resolution on safety issues between owner and contractor**
 - ▶ **Establish all safety orientation sessions which will be conducted and by whom**

Contractual Limitation Provisions

- **Limitation on Warranty Provisions**
 - Every contract must specifically outline the warranty limitations
 - By doing so the contractor protects itself from:
 - ▶ Garden variety warranty allegations
 - ▶ The inevitable “he said/she said” allegations of the scope of the project and alleged representations made
 - ▶ Limits or “caps” of any damages
 - ▶ The duration period of the warranty
- **Example of Warranty Limitations**

TERMS AND CONDITIONS

PROPOSAL

If the work described in the Proposal, including these terms and conditions, is awarded to Contractor, a copy of the Proposal including these terms and conditions and any subsequent Addendum's will be made part of the definitive contractual agreements between Contractor and Owner (the "Contract Documents").

WARRANTY

Subject to the limitations set forth below, Contractor warrants (the "Warranty") its workmanship and supplied equipment to be free from material defects for a period of one (1) year from acceptance of the workmanship and/or supplied equipment by Owner (the "Warranty Period").

Failed Equipment:

If equipment supplied by Contractor fails during normal use/operation during the Warranty Period, owner shall provide written notice to Contractor within 3 days of the equipment failure. Contractor shall, at its option, repair or replace the failed equipment. At Contractor's request, Owner shall ship the part(s) that caused the equipment failure to the manufacturer for evaluation.

In all cases, repair, removal or replacement of the failed equipment or part may be performed by Contractor or, if approved by Contractor in advance, Owner's maintenance crew(s). Costs for labor, equipment and material associated with the repair, removal and/or replacements will be allocated as follows:

- If it is determined by the equipment manufacturer that misuse, abuse, improper or insufficient maintenance, improper operation, neglect, tampering, improper line voltage, power fluctuations, adverse environmental conditions, normal wear and tear or modification, adjustments or repair not performed by Contractor is the cause of failure, Owner will be responsible for all repair, replacement and/or removal costs (e.g., labor, material, equipment and shipping charges).
- If it is determined by the equipment manufacturer that a manufacturing defect is the cause of the failure, Contractor will be responsible for the repair, replacement and/or removal costs. If it is necessary for Owner's maintenance crews to perform the repair, replacement and/or removal work, Contractor shall reimburse Owner for the actual and documented reasonable out-of-pocket costs (exclusive of any mark-up, overhead or profit) incurred by Owner for such work.

Maintenance:

Owner shall properly maintain equipment installed by Contractor pursuant to the equipment, manufacturers' specifications. Owner may obtain maintenance specifications for equipment installed by Contractor directly from the manufacturers.

Wear Items:

Equipment provided by Contractor is selected based on Owner's project budget and specifications. Owner's operation of the installed equipment at high-capacity or for extended periods of time may cause additional wear and tear and decrease the useful life of some parts. It may, therefore, be necessary to replace certain parts more frequently than the equipment manufacturers' specifications. Replacement of these parts due to excessive wear or failure to by Owner to properly maintain the equipment is Owner's responsibility and sole cost and expense.

THE WARRANTY EXCLUDES ANY REMEDY FOR DAMAGE OR DEFECTS CAUSED BY MISUSE, ABUSE, IMPROPER OR INSUFFICIENT MAINTENANCE, IMPROPER OPERATION, NEGLIGENCE, TAMPERING, IMPROPER LINE VOLTAGE, POWER FLUCTUATIONS, ADVERSE ENVIRONMENTAL CONDITIONS, WEAR AND TEAR, OR MODIFICATIONS, ADJUSTMENTS OR REPAIRS NOT PERFORMED BY CONTRACTOR.

EXCEPT FOR THE WARRANTY, CONTRACTOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES EITHER EXPRESS OR IMPLIED WITH RESPECT TO ITS WORKMANSHIP OR SUPPLIED EQUIPMENT, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, RENTAL EXPENSES, BUSINESS AND REPUTATION; AND FOR LOSS OF MANAGEMENT OR EMPLOYEE PRODUCTIVITY OR OF THE SERVICES OF SUCH PERSONS) REGARDLESS OF WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL CONTRACTOR BE OBLIGATED TO PAY DAMAGES FOR ANY AMOUNT EXCEEDING THE AMOUNTS ACTUALLY RECEIVED BY CONTRACTOR PURSUANT TO THE TERMS OF THE CONTRACT DOCUMENTS.

Indemnity Provisions for Contractors

- Indemnity “shifts” the responsibility of one actor to another.
- In essence, the indemnity language states “if I’m found liable for your acts, you will reimburse me.”
- Indemnity Agreements protect the contractor for the acts of the subcontractor or equipment manufacturer
- Here’s a good example:

INDEMNITY AGREEMENTS

- Indemnity and Insurance Against Injury or Damage. To the fullest extent permitted by law, the SUBCONTRACTOR SHALL ASSUME RESPONSIBILITY AND LIABILITY for all damages or injury to persons, whether employees or otherwise, and to all property, arising out of, resulting from or in any manner connected with, the execution of the Subcontract Work or occurring or resulting from the use by the Subcontractor, its agents or employees, of materials, equipment, instrumentalities or other property, whether the same be owned by the Contractor, the Subcontractor or third parties and SUBCONTRACTOR AGREES TO INDEMNIFY AND HOLD HARMLESS CONTRACTOR, ITS AGENTS AND EMPLOYEES, ARCHITECT, ITS AGENTS AND EMPLOYEES, AND THE OWNER, ITS AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, including, claims for which the Contractor may be or may be claimed to be liable, provided that any such claim, damage, loss, or expense: (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property including the loss of use resulting therefrom; and (b) to the extent caused in whole or in part by negligent acts or omissions or breach of warranty of the Subcontractor or any of its sub-subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.
- In any and all claims against Contractor or any of its agents or employees by any employee of the Subcontractor or any of its sub-subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor, any Subcontractor or sub-subcontractors, under worker's compensation acts, disability benefit acts or other employee benefit acts. This indemnification obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity which exist in this Subcontract or the Contract Documents or at law. SUBCONTRACTOR FURTHER AGREES TO OBTAIN, MAINTAIN AND PAY FOR SUCH GENERAL LIABILITY INSURANCE AS WILL INSURE THE PROVISIONS OF THIS PARAGRAPH.

Punch List for Completion of the Project

- Ensure that every piece of equipment is operated
- Ensure that every operations manual, instruction booklet, and maintenance manual is provided to the owner and the owner/management signs an acknowledgement that all of these manuals have been given to them.
- Providing this type of written material protects the contractor from the “failure to warn” product liability claims



CONCLUSION

DISCLAIMER

The information presented here does not constitute legal advice, does not establish an attorney-client relationship, and does not create any duty of the firm to any reader. An attorney-client relationship with Nyemaster Goode may be established only by an engagement letter signed by a Nyemaster Goode attorney.