

Fair Payment for Earthwork Subcontractors

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According to one source, case law on differing soil conditions in the UK favours the Employer (Owner) on earthwork subcontract. To me =, this is unfair. The Earthwork subcontractor is the only sub who is figured to guesstimate about the quantity of material to be moved. All the other subcontractors can takeoff quantities very precisely and thus can provide a reasonable quotation for the work in advance on a lump sum contract for earthwork.

I will mention two cases. One was ICBC Cambie at Fifth in Vancouver. The contract read that it was up to the contractor to remove any and all rock floaters (mass of rock, massive boulders found in clay or sand) during excavation for a high-rise building. Trouble is there is no way a subcontractor could estimate the amount of rock to be found until it was dug up [1]. When it was dug up, a lot more of these massive boulders were uncovered at a huge overrun for the Earthwork contractor. One might argue that that risk is passed on to the subcontractor and they should price for it accordingly. However, there is no way for the contractor to know what is buried. Contractors are not gamblers. They do work for a price and a profit. They are not in business into lose money and fairly deserve to be paid for the work they do to improve the property for the Owner.

A second project was Juno Lighting Warehouse constructed on a flat plane near a stream in Brampton. There boor holes were put down in a one-acre site. The Employer had a onsite soils inspector to monitor the work. He ordered the earthwork subcontractor to excavate below the levels shown in the plans. There is no way the contractor could price how much work had to be done, neither the general contractor nor the earthwork subcontractor. I could see an excess of say under 5% may be passible [2]. But if the material to be moved is over 5% extra beyond the plans, then I think the constrictor deserves to be compensated with an extra. The soils inspector keeps extremely accurate record of the width and depth of the excavation for say the footings. It costs a lot of money to operate heavy machinery. Fuel is expensive. All the subcontractor is asking to do is to be paid for extra work outside that indicated in the plans.

Another project was the Gananoque Water treatment plant construction Lake Ontario. It happened that a one in a hundred-year storm hit the lake and flooded the excavation despite the sheet plie edging the site. I concluded that there was not a construction claim, bu there may have been an insurance claim. The general contractor should have carried insurance for flooding when bidding a project on the waterfront. Whether an Act of God can insure is beyond my knowledge of insurance.

A final project was a civil contract where the homeowner was getting about 10,000 loads of backfill from anyone who would provide it. However, one of the final contractors to work on the site brought tailings from an old landfill. In addition, a bulldozer operator instructed that dump truck caring rock to be siphoned off from the Other material so he could come back and claim it for himself. In the case law, something that is stored on the site but not installed still belongs to the contract [3]. Nevertheless, the homeowner instructed the operator to leave his private property The law should read that anything delivered t a site that is secure belongs to the owner. The subcontractor gave up his right to the material when it was dumped on the homeowners property.

Earthwork, on standard buildings, is the riskiest subcontract there is. Everything should be done to lower the risks involved for the Earthwork Subcontractor lowering costs and increasing solvency in the long run. Too many earthwork contractors go bankrupt when they run into unforeseen conditions. In another project that involved the removal of bedrock from a sloped site ran into trouble when he relied on ion the Engineer's estimate of the hardness of the material. The case law is that the engineer doesn't warrant the plans and specifications, especially regarding earthwork. That should change. If the subcontractor is at risk, so should the engineer be at risk for his work beyond the negligence and professional care standard.

The general principle is that the owner shouldn't be enriched freely without compensation for work performed by the contractor. Just because earthwork is subject to more aviation, the costs should be passed on to the owner. The Owner's Engineer should be held accountable for earthwork overrun. Contractors are not gamblers. They offer services for a fee plus profit [4]. Otherwise, the earthwork could be done on a quantum merit basis. That's the fairest thing. It is the way things are done on Civil Engineering projects such as highway construction. There is an inspector who actually counts the loads of rock and om (other material).

References

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