WHAT TO DO IF YOU ARE ASKED TO TAKE OVER A JOB THAT WAS STARTED BY ANOTHER ROOFING CONTRACTOR?

READ THE CONTRACT AND UNDERSTAND THE RISKS

The primary concern of any roofing contractor who is asked to take over a job that was started by another roofing contractor is the possibility of incurring liability for the previous contractor’s inferior work. Therefore, the first step to take when you are asked to take over a job that was started by another roofing contractor is to read the proposed contract in detail to determine what responsibility you are being asked to assume for the previous contractor’s work. Often, the proposed contract will include language that requires you to warrant the completed roof and/or assume responsibility for any leaks or other issues that arise even if they are caused by the other roofing contractor’s work.

The schedule and payment provisions of the proposed contract also should be examined carefully. If little progress has been made on the job, you may be comfortable agreeing to a lump sum price for your work and a set time frame for the completion of your work. However, if significant work already has been completed before you take over a project or you suspect that the previous contractor’s work is deficient in some respect, you will need to make accommodations in the contract for the extra expense and time associated with possible repairs necessary to correct deficiencies in the prior contractor’s work. A prudent roofing contractor will contract for a take-over project or at least any repairs that are required because of inferior workmanship of the prior contractor on a unit price basis. Additionally, you should include

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contract language that allows for mandatory extensions of the contract time for delays caused by extra work that is necessary to correct problems in the previous contractor’s work.

**HOW CAN I LIMIT MY LIABILITY FOR THE PRIOR CONTRACTOR’S WORK?**

The best strategy to limit your liability for deficiencies in the prior contractor’s work is to seek to include language in the proposed contract that disclaims liability for losses or claims that arise out of the work of the previous contractor. Language that requires the party with which you are contracting, whether it be an owner, general contractor, subcontractor or surety, to indemnify you for any damages or claims that arise out of that work also should be included. Because responsibility for any particular leak or claim will depend on whose work actually caused the leak or claim, it is important to clearly delineate in the contract the work that was already completed at the time you took over the project and the work you are to complete in as much detail as possible. Vague or incomplete descriptions can easily result in confusion as to who is actually liable for a problem that may arise with the roof.

**WHAT IF MY SUGGESTED LANGUAGE TO LIMIT MY LIABILITY IS NOT ACCEPTED?**

If the owner, general contractor, subcontractor or surety that has asked you to complete the work will not agree to contract language that limits your liability to those issues that arise out your work only, strong consideration should be given to whether the benefits of the project outweigh its potential risks. As discussed, assuming responsibility for the work of others is not advisable; however, further inquiries into the circumstances surrounding the project should be made before passing on the job altogether. For instance, you should attempt to learn why the

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prior contractor is now unable or unwilling to complete the job. Did the prior contractor go bankrupt or abandon the project, or was the prior contractor terminated from the project for defective work? With the answer to this question, you will be in a better position to evaluate the potential risk associated with the previous contractor’s work and decide whether to take on the project. Other factors that will play into your analysis should include the size of the job, the price for your work, the progress made by the previous contractor and your ability to identify problems in the prior contractor’s work before agreeing to take on the project.

Depending on these factors, you may feel comfortable assuming the risk of poor workmanship by the other contractor in exchange for an increase in the contract price. In conjunction with, or in place of, a price increase, you may request that the owner, general contractor, subcontractor or surety that has asked you to complete the work hire an outside consultant or other design professional to thoroughly inspect and certify the workmanship of the prior contractor before entering into the contract. If this option is not agreeable, you may choose to hire a consultant yourself and include the associated costs in your contract price. The cost of test cuts and/or infrared scans necessary to ascertain the sufficiency of the prior contractor’s work may also be passed along as part of the contract price.