

Legal Issues Concerning Working Platforms

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It All Starts with Your Contract

- Lack of working platform regulations in the United States as concerns the evaluation, design, construction, and maintenance of working platforms except for cranes.
- Sufficiency of working of platforms is essential for safety and productivity.
- Claims avoidance

Contract Goals

- Full engineering analysis or empirical evaluation.
- Who is contractually responsible for design, installation, and maintenance of working platforms.
- Incorporation of recommended guidelines.
- Entitlement to costs for work, maintenance, and repairs.
- Compensation for schedule impacts
- Indemnification obligations.

Contract Goals

- Responsibility for working platforms including related safety procedures should be part of the overall contract documents.
- Standard guidelines should be specified for evaluation, administration, and documentation of the creation and maintenance of safe working platforms by the designated controlling entity
- Attempt to contractually address the potential for avoidable unsafe conditions and avoidable accidents.

Contract/Safety

- Responsibilities to evaluate, analyze, design, and certify the subgrade.
- Responsibility to construct improved working platform if needed.
- Standards for equipment and loading upon which working platform is designed and then evaluated.
- Definition and assignment of controlling entity.
- Measurement and payment terms/Indemnification.
- Statutory compliance.
- Value of certified operators. General mitigation.

KEY LEGAL CONSIDERATIONS FOR SAFE PLATFORMS

FORM PROPOSAL

[19016.01]

UPON JOB AWARD, THIS PROPOSAL SHALL BECOME A PART OF AND AN ATTACHMENT TO ANY CONTRACT OR PURCHASE ORDER.

TERMS AND CONDITIONS

1. BASE BID INCLUDES:
2. CONTRACTOR WILL PROVIDE THE FOLLOWING:
 - a) CONTRACTOR WILL EXCLUSIVELY BE RESPONSIBLE TO PROVIDE SATISFACTORY ACCESS AND ADEQUATE WORK PLATFORM CAPABLE OF SAFELY SUPPORTING EQUIPMENT, REASONABLY LEVEL AND DRY, AT THE LOCATION OF EACH PIER, AND CLEAR OF ANY OVERHEAD OR UNDERGROUND OBSTRUCTIONS, IN ACCORDANCE WITH 29 C.F.R. 1926.1402.
3. BASE BID EXCLUDES:
 - a) CONTRACTOR WILL PROVIDE SATISFACTORY ACCESS AND ADEQUATE WORK PLATFORM CAPABLE OF SAFELY SUPPORTING EQUIPMENT, REASONABLY LEVEL AND DRY, AT THE LOCATION OF EACH PIER, AND CLEAR OF ANY OVERHEAD OR UNDERGROUND OBSTRUCTIONS. TRACK RIG EQUIPMENT DIMENSIONS (110K LB CLASS EXCAVATOR) 15FT HIGH(BOOM DN)/24 FT HIGH(BOOM UP) x 15FT WIDE

KEY LEGAL CONSIDERATIONS FOR SAFE PLATFORMS

MALCOLM DRILLING

- Weight and dimensions of the drill unit and service crane are attached separately within this proposal (Attachment “A”).
- Safe access/egress including dry, level, firm, work platform for the entire site, at all times, is required to be provided by others, including all-weather benches and ramps. Ramps and work platforms may require lime or cement treatment for stabilization in soft ground conditions. The largest planned equipment weighs ___pounds and exerts a maximum ground pressure of ___ pounds per square foot during operation over a track width of ___ feet.
- Attached table should be used to establish standard load cases for the work and equipment and provide the required numbers to estimators.

KEY LEGAL CONSIDERATIONS FOR SAFE PLATFORMS

THOUGHTS FROM ANOTHER PROMINENT ADSC CONTRACTOR

- Proposal should include standard work platform language.
- Proposal should also include special language that is specific to that project.
- The proposal should take into account project specific analysis done during the pre-construction stage to evaluate the site conditions, size of rig, work to be performed, and work progression.
- Once that evaluation is completed, then add more definitive language in the proposal for what is expected from the general contractor or the project owner.

KEY LEGAL CONSIDERATIONS FOR SAFE PLATFORMS

EXCLUSIONS

This Proposal is based on the following being performed, supplied, or the responsibility of the Purchasers or others and shall be provided to Subcontractor as required in a timely manner at no cost or delay to Subcontractor.

1. **Site Access and Working Platform** – Provide the preparation and maintenance of clear, well drained, stable, uninterrupted access ways and working platform suitable for Subcontractor's equipment and supply trucks moving under their own power with a bearing capacity of approximately ____ psi. The platform shall be backfilled and compacted with ____" minus materials. This work also includes all snow and ice removal. Platform slopes to be less than 1%. Access includes adequate ramps at suitable levels and should be available to Subcontractor at the time and to the extent necessary to meet Subcontractor's scheduled operations. The access ways and ramps are to be suitable for Subcontractor's large drill rigs.
 - a) The working platform at each shaft must cover the interior area of the shafts inside of the guidewalls. It also must cover the area around the shafts starting at the outer edge of the guidewall for a minimum of _ ft.
 - b) Working platform shall be all-weather and be free draining. Working platforms should be at least ____ feet above mean ground water level and use filter fabric and/or geo-grid for stabilization and separation in soft ground conditions. At least ____ inches of well graded and compacted stone OR crane mats are required for working platform. Access ramps are to be a minimum of ____ feet wide with a maximum slope of ____% with intermediate leveling and/or grading, dewatering, and/or compaction of platform.
 - c) The working platform should be sufficient to allow equipment to move under their own power with a bearing capacity of approximately ____ psi. The platform shall be backfilled and compacted with ____" minus materials.

KEY LEGAL CONSIDERATIONS FOR SAFE PLATFORMS

ADDITIONAL CONSIDERATIONS

- Reserve the right to stop work at cost to the prime contractor or owner if a suitable site is not provided.
- Provide a standby rate.
- Reserve the right to provide a notice of non-conformance to the prime contractor or owner and then supplement equipment and labor to provide a safe and suitable accessible work platform area at the cost of the prime contractor or owner.

KEY LEGAL CONSIDERATIONS FOR SAFE PLATFORMS

PROPOSED CLAUSES FROM A THIRD PROMINENT ADSC CONTRACTOR

- Site Access: Preparation and maintenance of clear, well drained, uninterrupted access ways and working platform suitable for SUBCONTRACTOR equipment moving under its own power. Access includes adequate ramps at suitable levels and should be available at the time and to the extent necessary to suit SUBCONTRACTOR's operations.
- Site Work and Access: Preparation and maintenance of clear, well drained, uninterrupted access ways and level working platform suitable for SUBCONTRACTOR equipment moving under its own power. Access includes adequate ramps at suitable levels and should be available to us at the time and to the extent necessary to suit SUBCONTRACTOR's operations including stone delivery. The work under this proposal does not include any excavation, grading or sealing work required on the site to establish a working platform or to restore the site to the original or finished grade. All such work is to be furnished by others in a timely manner, so as not to impede the progress of the work or cause damage to the finished work. Please note that generally only 3% grade is allowed for moving crane with boom. It is Owner's/Contractor's responsibility to provide adequate ramps (and/or additional support) for getting our crane into the excavated area (if any).

KEY LEGAL CONSIDERATIONS FOR SAFE PLATFORMS

PROPOSED CLAUSES FROM A THIRD PROMINENT ADSC SUBCONTRACTOR

SUBCONTRACTOR Drilled Shaft Access Term:

- Unobstructed level (minimum 40' wide by 100' high) access to and from each drilled shaft location for a drill rig, service crane, concrete trucks, and support equipment, including adequate ramps, temporary roads and stabilization of sub-grades, structures, and utilities, as required. Unobstructed level working pad (minimum dimensions of 40' width) with a mutually agreed upon site configuration.

SUBCONTRACTOR Work Pad:

- (Rigid Inclusions or RIs) SUBCONTRACTOR intends to work from approximate slab subgrade elevation. The work pad will be prepared (By Contractor or Others) such that SUBCONTRACTORs equipment can set up at each RI location under its own power without the use of cranes or crane mats and such that concrete truck delivery is accessible to within 100 linear feet of the RI drill rig.
- (Sheet Piles) Clear and safe access for equipment and material deliveries including a **30' wide stable level work platform** immediately adjacent to all excavation support system for install and removal at no more than a 4% maximum grade on a horizontal or vertical grade.

TNT Crane & Rigging, Inc. v. OSHA, 2020 U.S. App. Lexis 24470 (5th Cir.)

- 29 CFR 1926.1402(b) requires that the controlling entity “ensure that ground preparations necessary to meet the requirements in paragraph (b) of this subsection be provided.”
- While paragraph (c) (1) requires that the controlling entity provide necessary preparations and (c) (1) requires controlling entity “to inform the user of the equipment and the operator of the location of hazards beneath the equipment set-up area” the equipment operator still has a duty to correctly assemble and use the equipment even if not the controlling entity.
- Still a duty to follow manufacturer specifications and OSHA including providing supporting materials.

Shiel Sexton Co. v. Towe, 154 NE 2d 827 (Ind. App. 2020)

- Subcontract required that “Subcontractor shall provide and pay for all labor, materials, equipment, tools, construction, equipment, and machinery and other services necessary to comply with 29 CFR 1926.1402 relating to ground conditions and supporting material. The Subcontractor shall be deemed the controlling entity as that term is defined in 29 CFR 1926.1401.
- Subcontractor responsible for personal injury accident.
- General contractor dismissed from lawsuit via a motion for summary judgment due to contractual insulation.

Conclusion

- What truly matters?
- Who is responsible person.
- Access to site.
- Responsibility and compensation for delays.
- Safety.

Discussion

Questions?

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