We had a call from a contractor who said an owner told him that he was overcharging for his work, and they were not going to make the final payment. What causes our customers to treat us this way? And where do they get the idea that we are overcharging for our work? Part of the problem is the perception that remodeling contractors have an “industry standard” of 20 percent overhead and 10 percent profit, and new home building contractors have a standard of 10 percent overhead and profit. If the contractor puts language in his contract or an additional work order contrary to that so-called standard, the owners go ballistic.

I think part of it is that contractors have a false reputation for not being well educated, and the owners think they can bluff their way into new terms for the agreement. They may have worked with another contractor who gave freebies, so they think that’s how the game is played. Whatever the reason, without proper wording in your contracts, this can happen to you. The solutions I offer are based on my own experience and that of a number of other contractors and attorneys. (But there are always exceptions.)

First, you must decide if he qualifies to buy from you. Watch for telltale remarks that alert you to problems to come. One that comes to mind is the potential customer telling me what he thinks the job should cost. If you hear comments like that, you might want to reconsider working with this customer.

If the person is a potential customer, you must take a position on what you are and are not willing to do. You should be prepared to state your position very clearly, and put that position in your contract. Your contract should tell your customer what he is getting for the sales price you quote, what you expect from him, what he can expect from you, and a very detailed payment schedule. Then you also include language that tells the customer what you will do if he doesn’t perform his portion of the agreement.

If an owner pulls this stunt on you, is it worth fighting over? It depends on how good your contract is. If you write a good, clear contract, force the issue and get your money. If you don’t have a good contract, then get out as quickly and cheaply as you can. I can tell you from many years of seeing this happen, this type of thing happens far more often to contractors with one- or two-page contracts. Those who write good solid contracts (lump sum contracts, I might add), seldom, if ever, run into these problems.

What are some of the things you can put in a contract to prevent owners from trying to avoid paying monies rightfully due? First, have a binding arbitration clause that specifies a non-attorney as an arbitrator. The arbitration clause should also state that you or the owner could invoke the arbitration process within three calendar days of notification to the other party. Your best bet is an arbitrator who knows construction.

Second, have language in the contract that states if you retain an attorney or a collection agency, the owners will pay all collection and attorney fees.

Third, have a clause in the contract that states there are certain fees and costs in your quote that are non-negotiable.

There are other subjects like hidden conditions, code violations, owners visiting job sites, owners talking to subs or employees, charges for change orders, animals and children in the work areas, fees and recovery right to file liens, etc. These are the issues that lead to misunderstandings and the owner deciding that you are now a bad person, and that’s why he doesn’t have to pay you.

You may be the nicest person in the world and do the best construction work within 500 miles of your office, but if you don’t put the language you need in your contracts, it could come back to haunt you. Write a good contract, have your attorney check it, and do the jobs with the confidence that you will be paid.

About the Author
Michael C. Stone is with Construction Programs & Results, Washougal, Wash. He also is the author of the top selling book, Markup and Profit: A Contractor’s Guide.