Restoration Projects

Dealing with More than Just the Noise

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Structural concrete restoration is a unique area of construction that has become more common in South Florida as buildings begin to age. This is a very specialized area of construction that requires specialized equipment, materials, processes and procedures, and management. Not only is the work specialized, but the contracts, billing formats, and warranties that apply in general construction simply do not work very well for concrete restoration projects. Over the years, the cooperation of community association managers, general contractors, structural engineers, and construction attorneys has resulted in a body of documents,
contracts, and specifications that are commonly used today in concrete restoration. This article will address the concrete restoration process, from bidding through contracting through billing, and also will provide advice for associations that may be contemplating concrete repairs.

Generally, the concrete repair process begins when a board of directors hires a structural engineer to evaluate the condition of the building, to determine the extent of the concrete damage, and to submit a report to the board explaining his findings and recommendations. Permits are issued by the local building department, but most building departments are not equipped to perform inspections for concrete repair projects; therefore, the association’s engineer will normally act as a “special inspector” to perform inspections and submit weekly inspection reports to the building department. Once the association decides to proceed with concrete repairs, the engineer will solicit bids for the estimated scope of work to qualified contractors. After the contractors have submitted bids, there is commonly an on-site, pre-bid meeting with the engineer and the contractors to review the scope of work and inspect the characteristics of the building. The contractors are required to bid the work in accordance with the engineer’s specifications, which ensures that the contractors submit bids based on the same scope of work and material, giving the association an “apples to apples” comparison of bids. Contractor bids should include a corporate resume that contains a brief history of the company, copies of state licenses, insurance coverage’s, bonding capacity (this should be requested even if a bond is not required—it is an indication of the contractor’s financial stability), a list of past and current projects, and recommendation letters from clients.

After the bids are received and reviewed by the engineer and the board, it is common for three contractors to be selected for individual interviews. This gives the board an opportunity to discuss the bid, the project schedule, and the manpower and equipment that will be used on the project. It is also very important to find out more about the contractors’ experience and the management team that will be involved with the project on-site or off-site, as well as any other concerns the board may have. The key to a successful project is communication between all parties and the interview will give the board members a
discuss a future meeting schedule, and address any other issues or concerns.

Before beginning work on the building, the contractor should perform an existing condition survey of the building—usually done in video and written form. This documents the condition of the building and surrounding areas, such as landscaping, and eliminates any question as to the existing condition of areas later claimed to have been damaged during the progress of the work. This protects the association as well as the contractor.

The association’s engineer will mark where the contractor is to make repairs. For the repairs to be covered by the contractor’s warranty, the repairs must be made in accordance with the International Concrete Repair Institute (ICRI) standards, which specifies how and to what extent concrete repairs are made. The engineer performs additional inspections as the repaired areas are being prepped and new concrete is poured and cured.

Testing of repaired concrete is also performed by an outside, independent testing firm to ensure that the concrete has reached its required strength before additional work can be performed on those areas. There are times unit owners may wonder why it appears that work has stopped on a balcony and the contractor has started working on another area. This question usually occurs during the curing/testing period.

Contract

A standard stipulated sum contract simply does not work for concrete restoration projects.
While the scope of work is known, the actual “quantity” of the concrete requiring repair is just an estimate, based on the engineer’s inspection; the actual extent of the damage cannot be determined with any accuracy until the damaged concrete is chipped away. Because of this uncertainty a “unit cost” contract has become the standard contract billing format for concrete restoration work. Under this type of billing, the owner pays only for repairs actually completed based on square footage, linear footage, or, in some repairs, cubic footage of concrete. The contract language will normally be negotiated between the association’s attorney and the contractor’s attorney and then is approved by the board of directors and the contractor. This ensures that the best interests of both parties are protected. In a typical construction project, an American Institute of Architects (AIA) Contract form is used. While AIA contracts can be adapted for use in a concrete restoration project, more typical is the use of a “scripted” or custom-drafted contract that addresses the special demands and requirements of a concrete restoration project. Many attorneys who specialize in this area have drafted and reviewed numerous such contracts in the past and the “negotiation” of terms can often be completed in a few exchanges of e-mails. Both parties can save substantial legal expenses when they employ attorneys with experience in concrete restoration projects. The contract normally consists of four parts:

- **The Main Contract**—Will always address the parties to the contract, the estimated contract sum, retainage, estimated time to complete the project, how to address change orders in the scope of work (The contractor must get any change orders with all relative information to the engineer and the owner in a timely manner, so that it can be reviewed and approved quickly for the least amount of negative impact to the project schedule), insurance requirements, billing procedure, payment terms, and warranty. There may be other items that are unique to a specific project.

- **General Conditions**—Will always address standards of work, licenses, property damage and personal liability, insurance requirements,
workforce standards, provisions of facilities and services, safety, work hours, and indemnification. There may be other items that are unique to a specific project.

- **Unit Price List**—List of repair items, unit measurement (s.f., l.f., c.f.), unit price, estimated quantities, and costs of mobilization and other lump sum items, such as special shoring requirements. This is usually a direct copy of the contractor’s unit price proposal in response to the bid solicitation.

- **Engineer’s Project Manual**—This is the project manual written by the association’s engineer, usually a duplicate of the instructions to bidders and specifications that the contractors received prior to bidding the project. An efficient contractor will prepare a packet of documents to be executed with the contract, including a Notice of Commencement Form (must be signed by the “owner” and recorded at the courthouse), Permit Application prepared by contractor, a letter to the building department on the association’s letterhead stating that it has hired the contractor to perform concrete repairs, and a letter to the building department on the association’s letterhead stating that it has hired the engineer. With these documents, the contractor can apply for the permit immediately.

**Billing Forms**

Because contract sum is not based on a stipulated sum, billing on a percentage of completion is not applicable to concrete restoration projects. Lump sum items such as mobilization, general conditions, and permit can be billed on a percentage, but are often billed in full, particularly permit fees. For billing of completed concrete repairs, a detailed schedule of values will show
the quantity of specific unit priced items completed during the billing period and to date.

The forms used to bill restoration projects look very similar to the standard AIA billing forms, except instead of a percentage of completion for line items, it reflects the unit quantities completed.

The first page is a summary with the first part reflecting the original contract amount, any increases or decreases to the contract amount by change orders, increase/decrease of quantities, and adjusted contract amount.

The second section of the summary page shows the total amount of work completed to date, the amount of retainer being held, the total value of work performed less retainer, total of previous payments made to the contractor, and the amount of the payment due for the current payment requisition (draw).

The next page is a detail page. You will notice that the column titles are different from the normal AIA detail page. Table 1 is an example of how the columns may be titled in a concrete restoration draw.

With new construction, basically, everything is covered by the contractor’s warranty; however, in restoration projects only the repaired areas are covered under warranty. Many times an association will complain several years after completion of work that additional concrete is damaged. Unless that specific area was repaired in the previous project, the new damage will not be covered by warranty.

The best way to ensure the association’s warranty applies to the exact area repaired is to require the contractor to include with each payment application the summary page, the detail page, and spreadsheet for each unit showing measurements of each repair and a balcony

<table>
<thead>
<tr>
<th>Description</th>
<th>Original Estimate Quantity</th>
<th>Unit</th>
<th>Unit Price</th>
<th>Previous Quantity</th>
<th>Quantity This Period</th>
<th>Total Quantity Billed</th>
<th>Previous Amount Billed</th>
<th>Amount This Period</th>
<th>Total Billed to Date</th>
</tr>
</thead>
</table>

**TABLE 1**

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**We’ve Set Sail with a New Partner**

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drawing showing the location and nature of each repair made. This would be the equivalent of an “as built” drawing on new construction. This drawing also protects the contractor against unwarranted claims of defective work.

**Warranties**

The warranty on concrete restoration projects is normally five years on the concrete repairs and waterproofing. Alteration of the repairs, however, may void a warranty. If a unit owner installs tile or carpeting or penetrates the surface of the concrete to install items on a balcony, the warranty will likely be voided. Associations should provide copies of the warranty to all unit owners requiring them to sign as having received it. If the unit owner does anything to void the warranty without prior approval from the association, the unit owner will be responsible for damage not covered by warranty exclusions.

If other types of work are done in conjunction with concrete repairs, the warranties for that work can vary, depending on the type of work done and the products that are used. In addition, if the restoration project includes sliding glass doors, railings, and exterior painting, the association should also receive warranties directly from the manufacturer, which are provided by the contractor with its final payment application.

**Other Important Forms**

- **Waiver and Release of Liens**—With each payment requisition the association should receive a partial waiver and release of lien from the contractor (for the same as the billing period), and partial waiver and release of lien from all contractors and suppliers that served a

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