

Claims and contract disputes in the construction industry wax frequent and, although an unwelcome part of the job, they require a systematic approach to management and mitigation if related costs are to be minimized.

This lecture will discuss some of the approaches used by Mr. Daley to mitigate and/or manage claims throughout the project life cycle.

The presentation will begin with basic definitions and then move into the project lifecycles of various project delivery methods from the pre-construction processes and continue until project closeout and/or issue/claim resolution and discuss methodologies on how to manage/mitigate claims.

Gabriel J. Daley – Flatiron Construction Corporation

Project Lifecycle

Claims

Disputes

Claims

Litigation

Contract vs Tort

Risk

Direction

Means and Methods

Float

Entitlement

- Source of entitlement

- Support for entitlement

Quantification of Damage

- Direct Cost Impacts

- Indirect Costs

- Other Costs

Compensable/Non Compensable – Excusable/Non-Excusable

Indirect Costs

- Time Impact Analyses

- Basis of Estimate vs. Actual (Modified Total Cost)

Direct Costs

- Basis of Estimate vs. Actual (Modified Total Cost)

- Neat Measurements

- Inefficiency Measurements

 - Measured Mile

 - Productivity factors

Other Costs

- Home Office Overhead

- Lost Profits

- Insurance

- Bond Costs

- Punitive Damages

Owner/Client

General Contractor

Sub-Contractor

Insurance/Surety

Design Due Diligence – Standard of Care

Allocation of Risk in the Contract/RFP, Perception and Public Policy

No Damage for Delays Clauses – Good Faith and Fair Dealing

Known Unknowns vs. Unknown Unknowns

Delivery Methods (alternate delivery methods)

Bid build vs. Design Build (CDA) vs. PPP vs CMAR, etc.

Risks

Crafting an RFP

Contract

Specifications

Bid Items

Communication

Pre-Bid Questions

Contractor selection Criteria

Funding considerations

Rule Number 1 of Contracting

Project/Client Selection Criteria

Project Scope

Owner/Client

Legal Considerations (venue, etc.)

RFP Review

Work Items

- Work Subsidiary to the item

- Limits of scope

- Basis for Estimate

Self Perform vs. Contract Assignment (sub-contracting)

- Quote Solicitation and Review

Bid History – (bid tabs)

Performance history

Pre-Bid Questions

Allocation of Roles and Responsibilities

How are items tracked – Man Hours, cost per unit, etc.

How are indirect costs allocated

Risks

How are risks quantified and allocated in the estimate

Owner Risk

Third Party Risks

Estimate Schedule

Cash Flow

Estimate Review Process

Subcontractor buy-out process

Project hand-over – Estimating to Operations – Estimate Conformance

Budget Creation – Cost Engineering

Project Baseline Schedule Preparation

Project Documentation – Submittals, Permits, Etc.

Project Controls

Quantification of Third Party Risk

Identification and management of changes

- Cardinal Change

- Differing Site Conditions

- Changes by Owner/Client

 - Scope Changes

 - Third Party Owner Changes

 - Design Changes

- Contractor Initiated Changes

 - Value Engineering

 - Procurement Issues

- Sub/Supplier Changes

 - Delay Performance

 - Quality Performance

Communication

Documentation

Package Preparation

Identification and management of changes

- Cardinal Change

- Differing Site Conditions

- Scope Changes by Owner/Client

 - Design Changes

 - Third Party Changes

- Contractor Initiated Changes

 - Value Engineering

 - Procurement Issues

Communication

Documentation

Package Preparation

Design Process

Approval Process

Construction Scope Buy-Out

Funding Considerations

Third Party Considerations

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Communication

Documentation

Package Preparation/Review

Design Process

Approval Process

Scope Buy-Out

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Quantification of Third Party Risk

Procurement Processes

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Communication

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Approval Process

Communication

Document Management

Identification and management of changes

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Communication

Documentation

Package Preparation/Review

Cost Engineering

Project Schedule

Documentation

Communication

To Owner/Client

Internally

To Subs/Suppliers

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- Sub/Supplier Changes

 - Schedule

 - Quality/Scope

- Design Changes

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Communication

Documentation

Package Preparation

Wins/Losses

Project Documentation

Issue Post Mortem

Caveats and disclaimers

Nosce te ipsum

Documentation

- Project Schedule
- Cost Engineering
- Project Communication
- Deadlines
 - Contractual
 - Prejudice

Deadlines for filing

- Contract
- Prejudice
- Statute of Limitations

Communication

Coordination with Legal team

- Internal vs. External Counsel
- Roles
- Venue
 - State/Local vs. Federal
- Experts

Legal Paths

Mediation

Arbitration

Litigation through the Courts

Time Frames

Cost/Cash Considerations

Litigation expense

Recovery

GAAP/IFRS

Know the contract

Project Controls Processes

Documentation – When in doubt, document

Communication – Early and Often

An ounce of prevention is worth a pound of cure (Be proactive as opposed to being reactive)

Igitur qui desiderat pacem, praeparet bellum – P.F.V. Renatus