



How To Control The Owner's Risk in Construction

By Joe Cleves and Kelly Gindele

Controlling the risks inherent in a commercial construction project can be daunting, even for experienced owners. And the challenges are greater in today's economic environment. Experience shows that the risk of contractor failure does not go away, and may briefly intensify, as economic recovery begins.

An owner can best start controlling its risk in the selection of the contractor. While price is always a factor, it should not be the only determinant. It is true that many quality contractors are aggressively bidding for work. However, some will bid low and scrimp on effort and materials, or cleverly play a game with change orders so as to "make it up."

Careful examination of past performance is vital if an owner is to receive a quality job within budget. In particular, the contractor's ability to execute a project on par with the current project should be demonstrated. A history of success with \$1 million strip centers is not indicative of the ability to build a \$10 million school or hotel.

The makeup, experience, and personalities of the contractor's team also need to be evaluated. These individuals should be interviewed to assess their abilities, experience and compatibility with the owner. The owner should pay close attention to their ability to listen, communicate and follow through. Once the contractor and its team have been selected, the parties need to sign a contract before work begins. The contract needs to specify that the contractor's project manager cannot be changed without the owner's consent.

The second area of importance is the project's scope. Failure to clearly define the work to be performed is the leading and most expensive source of construction disputes. The owner needs to make sure that the architect carefully and accurately documents, through plans and specifications, what is to be built. In some instances, the architect may recommend use of performance specifications for particular aspects of the work. This method can be used where highly specialized equipment is required, and the people with the greatest design expertise are the installers. Where appropriate, the contract should reference industry standards for workmanship and installation, as well as requirements for manufacturer's warranties.

The contract price will be addressed in the contract. This can be fixed as a lump sum, or based on the cost of the work or material unit prices. On cost of work jobs, the owner must have a clearly defined mechanism for auditing those costs. On all jobs, the contractor will submit a monthly application for payment. The owner must be able to verify that the work completed has a value equal to that shown on the application.

A good contract can help manage risk in how it addresses the relationship between architect and contractor. It should establish a way for potential design changes to be identified as early as possible. This can be accomplished by requiring frequent meetings

between architect and contractor. Such collaboration will help facilitate vital information flow and inevitable adjustments in seamless fashion.

Minimizing construction risk is not best achieved by aggressive contract terms which pin as much responsibility on the contractor as possible. Rather, thoughtfully addressing important issues as identified above and treating the contractor as an ally in an unpredictable arena produces better results.