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ENSURING SUCCESS

Businesses return to the basics in this economy. BY JOHN D. CROMIE & MARK L. FLEDER

Today's economic climate presents unprecedented challenges. These obstacles can be daunting. Businesses that rely on tested business fundamentals and strategies can persevere in uncertain times.

In the construction industry, as well as other industries, a paradigm shift is underway as businesses return to basics. Despite the current economic climate, well-positioned construction companies which monitor the following problem areas will be able to take

advantage of strategic opportunities and avoid problems on construction projects.

Bid Proposal Difficulties

A construction project is no different from any other business relationship. If the venture gets off on the wrong foot with unclear objectives and participants who lack requisite expertise, a project can be doomed from the start. It is essential for all parties involved in the construction process - i.e., owners, archi-



pects, engineers and counsel – to be mindful of the risks and burdens that can accompany or beset a project. Well-drafted bid documents, including qualification requirements, are essential. Absent such a coordinated effort, the probability of a bid protest (especially in the context of a public construction project) increases dramatically. Although such a bid protest might not ultimately doom a project, these delays and impediments can have a cumulative, detrimental effect on a project in terms of delays and increased financial costs.

Contract Documents

After a project is designed and bid, it is equally as critical to the success of the project that the contract documents which will govern the relationship between and among the owner, contractor, subcontractors and if applicable, construction manager, be clearly and fairly drawn. It is inevitable that there will likely be ambiguities in the contract documents.

While it is understandable that each party will work to protect its legitimate proprietary interest, the success of any project often hinges on working cooperatively through direct document issues. These issues can include, but are not limited to, the scope of work definitions; unrealistic project schedule and time penalty provisions; payment commitments and insurance requirements. The devil is truly in the details with respect to such provisions and careful attention to detail and adherence to a sense of fundamental fairness will serve to protect the interests of all involved, as well as help to ensure the viability of the project.

Design Problems

The success of a construction project can hinge on the relations among the owner, architect and design professionals. More than one construction project has been burdened by cost overruns and delays because of miscommunication on design issues. To avoid such problems, there is no substitute for experience and communication. Participants in a construction



project are well advised to pay full attention to design issues before they become obstacles to the success of the project. These obstacles include expensive change-orders, delay and extension of time for completion issues and, in some cases, claims for consequential monetary damages.

Payment Difficulties

In some ways, financing is the lubricant which keeps the project moving forward to completion. The current economic climate has heightened the significance of this issue. Owners, both public and private, are faced with increasing pressure to ensure that their financing is both available and is being implemented from a practical point of view. Architects, design professionals and contractors must pay careful attention to payment term provisions in the approval process to ensure that financial risks of a project are being borne relative to each party's position in the project. Clear and consistent implementation of payment approval provisions in the contract documents can help to minimize such financial risks.

Project Completion/Close-Out Problems

The fact that the finish line of a construction project is in sight as the project nears completion does not eliminate the potential for a major issue. Completion and close-out problems can be as debilitating to the overall success of a construction project as any other issue. These issues often include warranties, final project documentation, and resolution of claims and change orders by various parties involved in the transaction. In the majority of construction projects, these types of issues can generally be resolved quickly and efficiently if the parties have adhered to principles of mutual respect and good communication.

The construction industry provides a unique opportunity for participants to be involved in a process where the results are tangible. A well-managed construction project in which the parties have the benefit of competent and experienced legal counsel and adhere to the guidance offered above can also serve to eliminate difficulties. ♦

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Well-positioned companies will be able to take advantage of opportunities.