

COMMON CONTRACTOR MISTAKES

Assessing the Risk and Avoiding Pitfalls in the New Year

By Matthew DeVries



One of the best ways to prepare for the new year is to identify and avoid the common mistakes on your current and upcoming construction projects. According to a recent report by consulting group FMI, surety industry respondents felt that there were a number of common mistakes made by contractors that resulted in significant risks on projects. As you review this list, consider the ways to improve your operations in 2012.

- **Failure to manage overhead.** Companies are under pressure to keep overhead costs low, while at the same time increasing resources to improve quality and service. Perhaps the greatest unspoken truth about *managing overhead is to properly plan overhead*. In 2012, you should consider performing an “overhead review” that can help identify cost savings of controllable overhead costs. Where appropriate, learn how to recapture overhead costs on particular projects. In cost-plus-a-fee contracts, make sure the cost of work includes certain reimbursable overhead costs. In lump sum contracts, make sure there are appropriate contingencies to cover these items.
- **Straying from core competencies.** In the construction industry, there is no such thing as a jack-of-all-trades. In other words, the person who chases two rabbits catches none. When you aim for everything, you end up hitting nothing. Contractors who stray from their core competencies tend to create unnecessary strains on their company. The lesson learned is to focus on what you do best, and get better. If you have already over-extended your competency, then take appropriate measures to get competent and experienced assistance, whether by direct hire or subcontract, to help you complete the project at hand.

- **Acceptance of inappropriate contract terms.** One of the best ways to improve your bottom line this year is to put project controls in place that includes a contract review process. As a construction lawyer, I can tell you that most of the disputes that go to litigation involve either lack of a contract, ambiguous terms in a contract, or heavy-handed terms in a contract. I can also tell you that a few hours of attorney time to review your contracts can save you countless hours of attorney time to litigate your dispute. Make sure you prepare a list of “hot item” provisions to review—such as the disputes clause, the changes clause, treatment of differing site conditions, payment provisions, etc. After making this list, make sure your contract managers follow the same protocol for every project.
- **Inadequate subcontractor qualification.** In this competitive environment, you have to make sure that your subcontractors are not “overpromising” in their competency, ability, or financial fortitude to successfully complete your project. You can guard against these dangers by the following: (1) build and maintain a “qualified subcontractor” list that capitalizes on the long-term relationships that you have made based on prior work; (2) perform due diligence activities during the qualification period, including background checks, review of public record filings, and making reference calls; and (3) revising your subcontract agreements to address some of the increased risks in this economic environment.

You don't have read every single industry report out there to know and understand that 2012 is going to be another year where you have to “tighten the belt” and do everything you can to avoid the common contractor mistakes. ■

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