

Control Construction Cost Disputes With a Proactive Approach to Risk Management

By John Seek

Risk management is activity directed toward assessing, mitigating and monitoring risks. In construction contracting, risk management is often associated as the insurance function and disregarded when it comes to other contract management functions. The result is that many owners and developers do not identify or fully understand their risk in using any particular contractor.

For instance, how many owners conduct a financial prequalification of their construction contractors? Of those owners who complete a prequalification, how many understand what information they should request and know how to analyze the information? Similarly, how many owners or developers have a process in place to audit change orders or requisitions during construction? While some owners and developers have sophisticated departments to accomplish one or all of the construction risk management activities, the process often does not result in all of the desired objectives.

Limited assessing, mitigating and monitoring of construction contracts and construction in progress often results in contract disputes. Frequently, these disputes arise when standard forms of construction contracts were used and modified without the review or comment by a reputable construction industry attorney and accountant. Too often there are last-minute modifications to the contract that are not reviewed. In many cases, this results in conflicting or unclear terms dealing with costs, billing and audit provisions.

Other areas that typically are not properly monitored throughout the construction period involve the requisition and change order processes. Many requisitions and change orders are approved - without proper documentation or review - by the owner or project manager in an attempt to bring the project to completion. Cost audits conducted at the completion of unmonitored construction projects are cumbersome at best, often because one does not know what has been approved and any proposed audit findings or adjustments reflect negatively on the owner's project manager.

To avoid unnecessary conflict, delay and expense, risk management for construction projects should involve a proactive approach, including independent qualified professionals in all facets of the structure, execution and duration of the contract. With an independent monitoring process in place throughout the contract period, many conflicts can be avoided and resolved as they are identified, not years after the project's completion.