

Tips and Traps in Construction Risk Management: Key Contract Considerations for Owners

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“It is in the extremities of evil circumstances that the possibilities of grace are more nearly perceived.”

~ Flannery O'Connor

“Wise men say, and not without reason, that whoever wished to foresee the future might consult the past.”

~ Machiavelli

*“Yesterday’s bullet won’t kill you.
Tomorrow’s bullet just might.”*

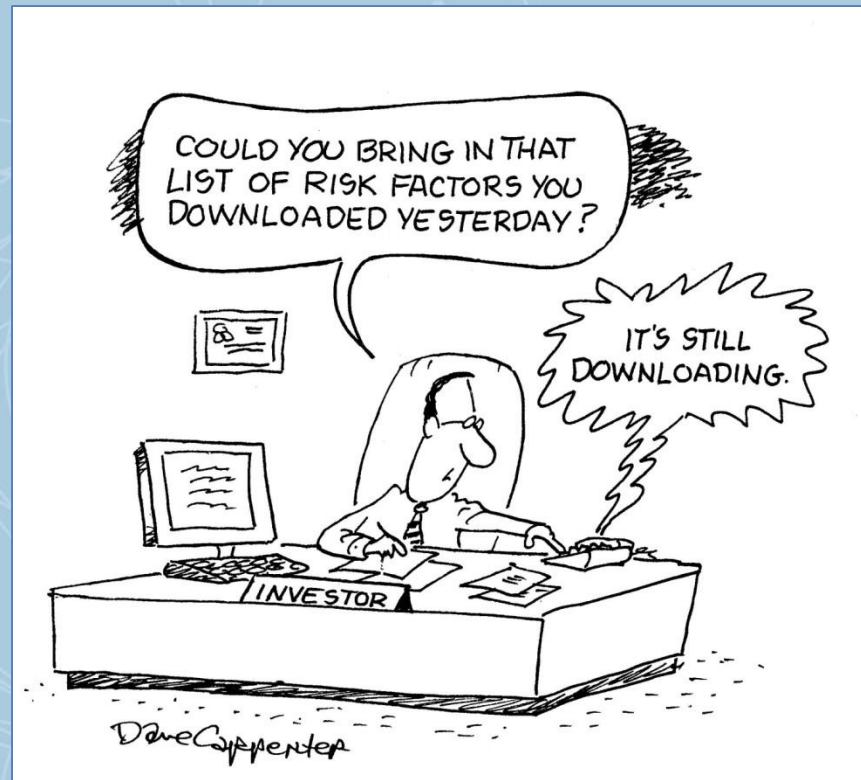
~ Attributed to Bernie Provan

“Adventure without risk is Disneyland.”

~ Douglas Coupland ²

Potential Construction Risks

- Personal Injury
- Property Damage
- Lost Revenue
- Diminished Reputation
- Unmet Expectations
 - Cost
 - Schedule
 - Quality
 - Performance



Overview

1. Defining the Scope of Work
2. Project Personnel
3. Assessing Cost Information
4. Incentives and Disincentives
5. Scheduling Considerations
6. Subcontracts and Purchase Orders
7. Insurance and Bond Issues
8. Warranty Provisions
9. Key Contractual Safeguards
10. Enforcing Contract Rights

Establishing the Owner Program

- Project Goals and Objectives
- Project Participant Involvement and Communication
- Refinement of Scope of Work
- GC or CM Selection and RFQ Vetting



Use Qualified and Experienced Project Personnel

- Internal, Design, Construction and Administration
- Investigate Credentials of Key Players
- Don't Let Talent Slip Away (Anti-Assignment Clause)

Work and Rework Cost Information

- Require Full Disclosure of Cost Estimates
- Ensure Adequate Project Funding
- Phased Pricing Advantages
- Pre-Define Rates, Formulas and Procedures
- Use of Cost-Plus + GMP

Use (and Abuse) of Incentives and Disincentives

- No-Damages-For-Delay
- Liquidated Damages
- Waiver of Consequential Damages
- Retainage
- Early-Completion Bonuses

Require Schedules to Include Milestones

- Establish Clear Schedule for Design & Construction
- Interim Milestone Importance
- Be Realistic and Collaborate with Contractor and A/E

Scrutinize Subcontracts and Purchase Orders



- Maintain Consistency Between Prime and Subs/Suppliers Contracts
- “Flow Down” Responsibilities and Incorporate By Reference Prime Contract
- Early RFP Considerations

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Assess Risks, Benefits, & Limitations of Insurance & Bonds

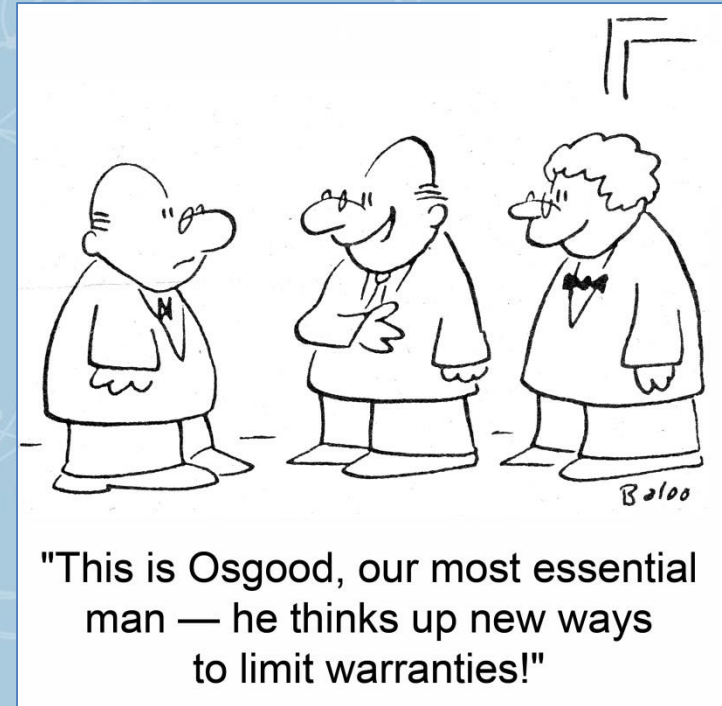
- Contractor Insurance--CGL/WC/Employers/Auto
- A/E Insurance--Professional Liability
- Additional Insured Endorsements
- Certificates of Insurance
- Waivers of Subrogation



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Warranty Provisions

- Negotiate Terms of Warranties
- Seek “Additional Insured” Status as Named Beneficiary



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Establish Contractual Safeguards (Within Reason and With Consistency)

- Indemnification Clauses
- Lien and Bond Claim Waivers and Releases



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Establish More Contractual Safeguards . . .



- Change Orders
- Dispute Resolution Provisions
- Claim Notice and Filing Requirements
- Attorneys' Fees

Enforce Contract Rights!

- Adhere to Contract Terms
- Remain Consistent
- Avoid Waiver of Terms

Questions, Comments, Lessons Learned

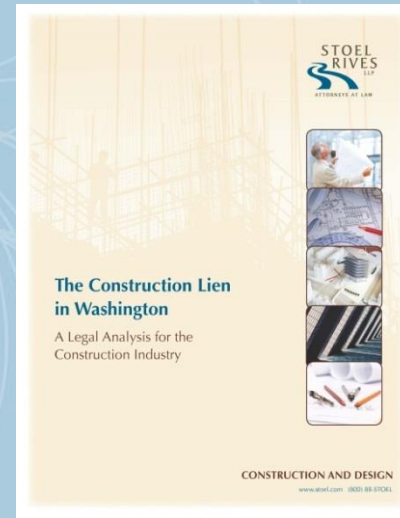
NOTE: The foregoing presentation and related materials represent a general overview of the legal risks relative to design and construction projects, should not be considered or used as legal advice or a legal opinion on specific facts and circumstances and are intended for informational purposes only.

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Resource Information



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