



RHarper Consulting Update

Note to Self..... Things to Do Differently During the Next Construction Boom

Perhaps the “green shoots” of the recovery are sprouting; perhaps it’s just the “eye of the storm.” Nevertheless, it has prompted thoughts about what we might change when (not if) the next construction boom comes. The construction industry in the United States is approximately \$1.23 trillion in annual volume, and it is estimated that there is waste of \$123 billion. Let’s consider what we might do differently to make the development, design and construction process more successful – delivering projects within budget, on time, and without a hangover of claims and disputes.

Where Does the Fast Track Really Lead?

I have been a participant and advocate in many projects that were constructed and designed using a “fast track” process. Design and permitting were completed in progressive stages in order to facilitate an early construction start; in retrospect, those decisions were always undertaken for the seemingly “compelling need” to get the project to market, or to reduce the interest cost during the construction period. I have always wondered if, after the project is complete, a final, honest accounting of the additional costs of fast tracking would validate the “compelling need.” When you consider the change orders due to incomplete pricing documents or lack of design coordination, delays due to inadequate lead time for materials and fabrication, and the ever-present “it wasn’t on the bid set” cost changes, you have to wonder if there is ever any reason, short of natural catastrophe or national defense, to undertake a project on fast track.

Let’s Level the Playing Field of Information

Once a contractor is awarded a bid, the advantage shifts almost completely in his or her favor. Perhaps a more cynical way to put it is that contractors don’t compete for the delivery of the best buildings at the best price, but rather compete for the opportunity to increase their price and protect their profit regardless of the completion of the project. The contractor’s bid may be intentionally low in anticipation of weakness in the construction documents that will allow profit to be gained on change orders. Certainly, the fast track process is wide open to this type of abuse. Once the contract is awarded, the owner has no practical leverage to counter the contractor’s claim for additional cost or time other than dispute the proposed changes. Terminating the contractor and re-



Roger Harper,
Principal of
[RHarper Consulting Group](#), provides development consulting services to the senior housing industry.

For more information on RHarper Consulting Group please call 615-218-4102 Or rharper@rharperconsulting.com

bidding the project is rarely a feasible alternative. The contractor's superior access and control of pricing information places the owner at a severe disadvantage. The solution is a complete "open book" by the contractor, and the owner must have qualified representation and expertise on his or her side to absorb, interpret and question the contractor's proposed changes in a professional, competent manner.

How Do We Get Truly Fixed-Price Contracts?

The risks of a construction project are borne by all the parties and they are unavoidable. The most effective agreement are those aligning the interests and incentives of the parties. One possible alignment of incentives is; if in return for removing the profit incentive from change orders, the contractor's profit of his contracted bid is reasonably protected. How far would that go in reducing disputes and claims? In other words, as long as I (the owner) am not changing the overall scope and beneficial use of my project, and the changes are unanticipated and necessary for the original intent, then I pay only the direct cost of those changes. If you (the contractor) need more time to complete the project or incur additional overhead to implement those changes, I will pay those documentable costs. The contractor's profit is still at risk for buyout and timely completion as originally bid, but the incentive to generate change orders burdened by profit, overhead and fees is removed. In today's construction market, these provisions are attainable.

Conclusion

I believe we have an opportunity to "reset" the construction industry by shifting the paradigm away from adversarial relationships toward a more equitable allocation and sharing of risks between Owner, Contractor and Designer. Let's create methods to place at least as much focus on reducing costs and controlling schedules, as we do now on crafting damage clauses. As we move into the recovery and projects begin to flow once again, let's consider some "out of the box" ideas to make our industry more efficient and create more value in the resulting built environment.

For more information please contact:

Roger Harper

615-218-4102

rharp@rharperconsulting.com

www.rharperconsulting.com

RHarper Consulting Group provides development consulting, program management, and owner representation services focused on the senior living and mixed use sectors. In addition, Mr. Harper is a listed mediator and arbitrator and provides dispute resolution services for the construction and real estate industries.

To [unsubscribe](#)