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Claims are a fact of life in construction. Given this reality, those who take a proactive risk-management approach to their projects are more likely to succeed than those who bury their heads to the risks.

There are many ways that claims can arise on a project. There are, however, certain common classes of claims that resonate in project after project. Careful owners and contractors alike would be well-served by taking steps at the outset of a project to avoid the following common claim scenarios.

One of the most significant sources of conflict occurs where there is ambiguity in the construction documents. Confusion and errors in construction documents will inevitably have cost and scheduling impacts.

Whether the ambiguity arises in the plans or specifications, the scope of work or the underlying construction contract, ambiguity is a fast track to disputes, claims and, sometimes, disaster.

Accordingly, investing the time and resources at the outset of the project to ensure that all parties have a common understanding of what is required by the contract is well worth the significant investment.

A second common source of claims is the changed condition. Changed-condition disputes can relate to physical conditions found on site or even the state of construction at any given point.

The determination at the outset of the project as to what constitutes a changed condition and who bears the risk (both the time risk and the money risk) is essential.

The failure to anticipate the discovery of a significant change can be a major source of claims if the contract in question does not clearly allocate that risk.

A third recurrent source of claims is the failure to accurately anticipate the time and cost of the work. This is often the result of the classic tension at the heart of the traditional construction project where the owner is seeking to minimize project costs and the contractor seeks to maximize profit.

The failure to realistically estimate the cost of a contract can force project participants to cut corners, insist on strict contract formalities, or exaggerate project conditions to recoup losses—none of which is conducive to a harmonious and successful project.

Owners in particular need to be careful in seizing a perceived opportunity to snap up a “too good to be true” bid.

Finally, intangible, albeit

real, sources of disputes in projects are the personalities and capabilities of project participants.

While this risk is potentially harder to avoid from the outset, contractors, owners, and design professionals need to realistically assess the personalities and capabilities of those they are considering contracting with prior to agreeing to a project.

Despite a realistic assessment, if incompatible personalities emerge during the course of a project, parties need to proactively deal with that incompatibility before it seriously threatens the profitability of the contract.

Given the wide variety of construction project risks and rewards, and the accompanying impact those risks and rewards may have on profitability, those who reasonably anticipate where the most significant sources of risk lie with a particular project are the most likely to have a long and profitable life in the construction industry. ♦

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