CONSTRUCTION CONTRACTS AND DISPUTE RESOLUTION

Contracts as part of the project delivery system, components of a construction contract, intended and unintended contract changes, payment process, alternative dispute resolution, mechanics lien, risk management through insurance.

Course Syllabus

1. Course Overview
   Construction Contract Types
   - Lump Sum
   - Cost Plus
   - Guaranteed Maximum Price (GMP)
   - Construction Management vs. General Contractor
   - Design Build
   - Consultant
   Industry Standard Agreements (AIA/AGC)
   Subcontracts in general

2. What is a Contract?
   - Elements
   - Enforceability
   - Quasi-Contract / Quantum Meruit Theory
   - Goals
   - Privity of Contract
   - Precedence

3. Breaking down the “Dirty Dozen” of Construction Contracts
   - Design Liability
     - Design vs. Performance Specification
     - “Designer of Record”
     - Value Engineering
     - Recommendations During Preconstruction
     - Code Requirements
     - Review of Plans and Specifications
   - Changes / Contingency
     - Are We Obligated to Perform Them?
     - How is the Contract Adjusted?
     - Procedure Identified
     - What is Included?
     - Dispute Resolution
4. The “Dirty Dozen” Continued
   • Costs to be Reimbursed
     o Clearly Defined
     o Does it Include Everything?
   • Contract Documents
     o Is the Work Clearly Defined?
     o How do the Qualifications and Assumptions Function as a Limitation of Scope?
     o Errors and Omissions
     o What is “Reasonably Inferable and Consistent with”?

5. The “Dirty Dozen” Continued
   • Indemnification
     o Broad Form Hold Harmless Clause
     o Limit Exposure to:
       • Bodily Injury & Property Damage (other than the Work itself)
       • Arising Out of Work Only
       • “Gross Negligence” and/or “Willful Misconduct”
       • Not Architect Professional Liability
   • Insurance / Bonds
     o Builders Risk
       • In Place prior to Construction
       • Waiver of Subrogation
       • Who is Responsible for Deductibles?
     o General Liability
     o Worker’s Compensation
     o Efficacy
     o Subguard
     o CCIP/OCIP

6. The “Dirty Dozen” Continued
   • Damages – Delay / Negligence / Breach / Default
     o Time is of the Essence
     o Excusable Delays
     o Compensible Delays
     o Consequential Damages
   • Site Conditions
     o Whose Site is it?
     o Construction Risk vs. Owner Risk
     o Responsibility to Investigate
     o Hazardous Material – Who is Responsible?
7. The “Dirty Dozen” Continued
   - Payment Terms / Liens
     - Right to Payment Tied to Objective Standards?
     - Retainage Held in General Conditions and Fee?
     - When is Retainage Released?
     - What are the Contractor’s Lien Responsibilities?
     - Limited Lien Release to only What has been Paid
     - Limited Lien Protection to Parties Contractor is Responsible for

8. The “Dirty Dozen” Continued
   - Substantial Completion
     - Clearly Defined
     - Are the Requirements within Contractor’s Control
   - Termination
     - What are the Mechanisms?
     - Contractor’s Rights
     - Owner’s Rights
     - What are the Consequences?

   - Generalist Approach
   - Steps to Risk Management and how they relate to the Contract
   - Understanding the Types of Risks
   - Seven Cardinal Rules to effective Risk Management
   - Avoiding Litigation

10. Alternative Dispute Resolution (ADR)

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Grading:
   - Class Participation  20%
   - Midterm Exam 30%
   - Final Exam 50%