

# What is R.I.S.C. on a Public Works Project

????? ???????

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# Overview

Risk

Avoidance

Risk

Management

Risk

Control

# **R.I.S.C. OVERVIEW**

**Every construction project has risks:  
political;  
pragmatic; and  
financial.**

**How do you as a public entity owner  
plan and deal with them?**

# R.I.S.C. OVERVIEW

## Political Risk:

Community; Special Interests; Internal?

## Pragmatic Risk:

Quality; On Time; Within Your Budget?

## Financial Risk:

Exposure to Third Parties

# R.I.S.C. OVERVIEW

## R.I.S.C.

... is a comprehensive method that blends pragmatic planning & problem solving with applicable legal principles to achieve reasonable, fair, and firm results to help ensure your projects' success.

# R.I.S.C. OVERVIEW

**Webster defines success as -**

**“the satisfactory completion of something.”**

**How do you define satisfactory completion on your projects?**

**Done on time, within budget,  
without claims & litigation!**

# R.I.S.C. OVERVIEW

■ How do you get there?

Use the R.I.S.C. method

# R.I.S.C. Defined

■ Research

■ Initiative

■ Selection

■ Contracts

**Execute well in these areas and succeed**



# RESEARCH

**Facilities Master Plan needs to support  
your Educational Master Plan**

**(Do you have? Reviewed? By Whom?)**

**(What are current and future demographics?)**

**Available Funding Lines for Projects**

**(Who is researching for you?)**

**Available Construction Delivery Methods**

**(Which ones can you use?) (See Handout)**

# Initiative

## **Brainstorm All Available Options**

(Do not just “send it out to bid”)

## **See Big Picture – Start to Finish**

(Envision all that may occur and plan for it)

## **Make Ownership Meaningful**

(You are the only party with real power-power unexercised leads to chaos)

# Initiative

- Public Outreach (respect counts)
  - At this point in the process, it is the perfect opportunity to pull in the constituents, end users, and other potentially affected by the construction project. Do not miss this opportunity.
  - Lay it out and take in all the comments.
  - Follow up with a written response.

# **S**election

**Choosing the right project participants**  
**(A critical upfront step often botched)**

**Selection Methodology**

**(How to hire the right architect, engineers, construction manager, inspectors, testing company, contractors, labor compliance personnel, ... etc.)**

# Contracts

## Coordinated Set of Contracts

(architect, engineers, construction manager, inspectors, testing company, contractors, labor compliance personnel, ... etc.)

**This is absolutely critical !!!**

**Fail here and you are truly at risk!**

# Contracts (continued)

- **Given California law, a public entity owner can draft a very stringent contract running in its favor. However, most quality contractors would refuse to do business with such owners.**
- **Many public entity owners use their own construction contracts, but use contracts for the architect and other vendors drafted by those third parties. Guess who those contracts protect?**
- **Many public entity owners use bond forms drafted by surety companies, guess who those bonds favor?**

# Contracts (continued)

- **At inception, the Public Entity Owner is the one entity that:**
  1. holds the contracts with all the other key players;
  2. has the option and power to apportion risk fairly;
  3. controls the money.

**Use or Lose the Opportunity at your peril.**

# Contracts (continued)

## Using Uncoordinated contract documents produce:

- Un-delegated authority and obligations;
- Conflicting authority & confusion on site;
- Failure to properly apportion the risks;
- Paying more than one professional service vendor to do the same task;
- Lack of a financial incentive to perform; and
- Many more disputes, conflicts and risk!



# IMPLEMENTING R.I.S.C.

- TO SUCCESSFULLY IMPLEMENT THE R.I.S.C. METHOD, YOU MUST UNDERSTAND THE **FOUR MAIN REASONS** THAT CONSTRUCTION PROJECTS FAIL.

# Four Main Reasons Projects Fail

**Poor Drawings**

**Poor Contracts**



**Poor Execution**

**Poor Cash Flow**

# Poor Drawings and Contracts

Poor drawings and poor contracts are pre-bid and/or pre-contract award activities that proper advance planning can address.

By failing to realize this and failing to act upon it, the owner is likely to spend much more money than it would otherwise have had to had there been proper advance planning and action.

# Proper v. Poor Execution

- Owner: proper execution includes ...
  - have an employee “own” the project
  - follow and enforce the contract
  - stay away from owner “adds”
  - stay out of the Contractor’s way
  - have a firm, fair and reasonable mindset
  - process payments promptly
  - ensure Contractor’s questions answered promptly and properly
  - do not be afraid to use the “big stick,” if needed

# Poor Cash Flow

- Contracts involved in a construction project are like arteries that bring life to the project, or not.
- Cash is the lifeblood of construction.
- Cash either flows through the contracts or it does not.

# Poor Cash Flow

- When disputes reach an impasse over errors, omissions, conflicts in the drawings, whether something is an extra (warranting a change order (i.e., more money to the contractor), the contractor and subcontractors are obligated to continue with the disputed work. However, this leads to acrimony and the sub-contractor (who proceeds) actually ends up financing the disputed work. Not good.

# Poor Cash Flow

- An owner keeps cash flowing by .....
- **having a good coordinated set of professional service contracts;**
- **promptly paying all supported portions of a progress payment application (rejecting only the unsupported portions);**
- **having retention release provisions in the prime contract so sub-contractors who are finished early in the job can receive their retention (instead of waiting 1-2 years);**
- **requiring stop notice/mechanics' lien release bonds from the prime contractor whenever stop notices or liens are filed;**
- **using the “partial agreement change order” process;**  
**and**
- **promptly releasing all undisputed retention.**

# PARTIAL AGREEMENT CHANGE ORDER

## Disputed Extras:

- \*clog the cash pipeline;
- \*slow down progress or stop work;
- \*negatively impact other work;
- \*cause subcontractors to finance job;
- \*cause large claim situations at end;
- \*lead to all kinds of other problems.



# PARTIAL AGREEMENT CHANGE ORDER

- Traditional Change Orders require mutual consent to every aspect of the change order. This is a source of many of the problems, the least of which is the money stops flowing.
- Partial Agreement Change Orders permit the parties to agree on what they agree, keep the money flowing; require the contractor to take remaining portion to claim resolution immediately or lose the disputed balance.

# PARTIAL AGREEMENT CHANGE ORDER

## ■ Example:

### – Traditional Change Order

Contractor submits change order request. Asks for \$100,000.00. Owner agrees it's a change, but believes value is only \$75,000.00. Contractor insists on \$100,000.00. Result: Contractor proceeds under protest, has sub do and pay for the work. Contractor gets \$0 from Owner. Begins claim file that accumulates interest till end of job and beyond.

# PARTIAL AGREEMENT CHANGE ORDER

## ■ Example:

### – Partial Agreement Change Order

Contractor submits change order request. Asks for \$100,000.00. Owner agrees it's a change, but believes value is only \$75,000.00. Result: Contractor receives change order for \$75,000.00, pays the subcontractor who does the work, cuts off any interest claim. Contractor is then obligated to take the \$25,000.00 balance to claim under an expedited claim process to resolve or lose the \$25,000.00.

# Expedited Claim Process

- Uses an expansive pricing definition for “disputed extra work” and “impact items.”
- Establishes in the Bid Documents/Contract that the process is mandatory.
- Used with the Partial Agreement Change Order process.
- Decisions reduced to change order and claim is resolved before project finishes.

# In Closing

- No, we are not done just yet!!!!
- Too many construction projects do not pay enough attention to the “Close Out” process. Yet this is a critical part of the project for so many reasons. Not done properly exposes the public entity owner to all types of harm and risk.

# In Closing

- Requires Much Upfront Planning.
- Must be specifically addressed in the project schedule and contract language.
- Consequences on the contractor for failing to do so must also be specifically set out in the contract (remember the term “Backcharge”).
- Abide by PCC section 7107/retention statutes.
- Put the onus on the performance bond surety.
- Use the back charge option and retention to get your project done.
- include “emergency” option in your docs.

# R.I.S.C. Methodology

■ R esearch

■ I nitiative

■ S election

■ C ontracts

**Execute well in these areas and succeed**

# Parting Thoughts

- You can have the best contracts and process in the world, and that is critical, however, it all comes down to who you have involved in your projects.
- People do and can make a difference.
- Words count, but people count more!



# THANK YOU

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