2018 Forum on Construction Law Annual Meeting
Taking Care of Business: A Mini-MBA Program for the Construction Lawyer

Karen Layng – MAIT Co.
Stan Simmons – Lyles Construction
Moderator – Brian Zimmerman, Hurtado Zimmerman
How is the role of construction lawyer’s changing across the construction industry?
DBB-less than 50% and shrinking

Alternative delivery greater than 50% and expanding
How does the project delivery method drive your evaluation of projects and potential profitability?
Design Bid Build
Design Build
CMAR, CMGC
Public Private Partnership
Alternative Delivery Methods
What legal issues are you looking to when reviewing initial project information?
Earlier Involvement – Starting at Proposal

Evaluate Risk Transfer-Insurable vs. non insurable

Evaluate potential for Design/Performance Disputes
Reaching to market

- Industry - risk management
- Cost of controls
- Cost of insurance - workers comp claims
- All components should be considered as overhead of any project
## Risk Analysis and Risk Matrix

<table>
<thead>
<tr>
<th>Description</th>
<th>Prob. of Occur</th>
<th>Cost Impact ($000)</th>
<th>Schedule Impact</th>
<th>Basis of Cost or Schedule Impact</th>
<th>Mitigation &amp; Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Permitting &amp; Approvals</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stormwater permit for existing overland flow</td>
<td>10%</td>
<td>$25</td>
<td>$50</td>
<td>$100</td>
<td>4 8 12</td>
</tr>
<tr>
<td>PGE Utility Fee Uncertainty</td>
<td>50%</td>
<td>Estimate of variation</td>
<td>Quality in proposal, provide allowance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delay in Owner approvals</td>
<td>25%</td>
<td>$25</td>
<td>$50</td>
<td>$100</td>
<td>1 2 4</td>
</tr>
<tr>
<td>Surface Mining permit</td>
<td>10%</td>
<td>$25</td>
<td>$50</td>
<td>$100</td>
<td>2 4 6</td>
</tr>
<tr>
<td>Delay or more burdensome requirement</td>
<td>25%</td>
<td>$50</td>
<td>$100</td>
<td>$150</td>
<td>2 4 6</td>
</tr>
<tr>
<td>Bringing existing buildings to code</td>
<td>25%</td>
<td>$50</td>
<td>$100</td>
<td>$250</td>
<td>2 4 6</td>
</tr>
<tr>
<td>Regulators add DBPs to permit</td>
<td>25%</td>
<td>$250</td>
<td>$500</td>
<td>$1,000</td>
<td>2 4 6</td>
</tr>
<tr>
<td>Third-party delay</td>
<td>10%</td>
<td>$50</td>
<td>$75</td>
<td>$100</td>
<td>2 4 6</td>
</tr>
<tr>
<td>Technical - Design Related Variations in Influent Characteristics</td>
<td>10%</td>
<td>Equipment sizing, delays in testing</td>
<td>Quality in proposal, clearly exclude responsibility.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Design cost/schedule overrun</td>
<td>25%</td>
<td>$100</td>
<td>$300</td>
<td>$1,000</td>
<td>2 4 12</td>
</tr>
<tr>
<td>Design development/scope growth (creep)</td>
<td>25%</td>
<td>$250</td>
<td>$500</td>
<td>$1,500</td>
<td>2 4 12</td>
</tr>
<tr>
<td>Design Error or Omission</td>
<td>25%</td>
<td>$250</td>
<td>$500</td>
<td>$1,500</td>
<td>2 4 12</td>
</tr>
</tbody>
</table>
What role do contract terms play in the economics of construction?
CONTRACTS:

Consequential Damages
Indemnification
Limitation of Liability
Horizontal vs. Vertical Exhaustion
How does project selection impact profitability?
Capture Strategy
Tracking Opportunities
Cost of procurement/bid
Meeting Project Goals

Understand the Financial Impact of Early Decisions
Choose the Best Project Delivery Method:
  a) Complexity
  b) Risk Allocation
  c) Evaluate Current & Future Bidding/Proposal Climate
  d) Level of Owner Control
Influence in Cost vs. Time Curves

- Planning/Conceptual Design
- Budget Feasibility
- Design
- Construction
- Installation
- Start-Up

Beginning of Project

End of Project
What impact do labor shortages, including lack of diversity of women and minorities in construction, have on the industry?
How can construction lawyers add value to construction businesses and projects?