2018 Forum on Construction Law Fall Meeting

It’s Lonely At The Top: Building a Successful Team with the Owner

PLENARY SESSION 4

The Art of Living Together: How Owners Can Improve Their Chances for a Successful Project
Selecting the Best Project Delivery Method for Success & Crafting a Unified Focus for Success

**Tip #1**
Know your strengths and weaknesses and know when to ask for help.

**Tip #2**
Understand the industry forms and kinds of delivery methods.
Selecting the Right Designer & Contractor

Tip #3: In choosing a designer, don’t skimp on good design or contract administration.

Tip #4: A designer’s name recognition isn’t everything.

Tip #5: The lowest bid is not always the best bet.

Tip #6: Quality relationships are crucial to project success.

Tip #7: Track records must be considered.

Tip #8: Make sure you’ve got the A Team.
Developing & Updating a Reasonable Project Budget, Including Handling Issues with Contingency

Tip #9: Unreasonable expectation make for an unreasonable budget.

Tip #10: You're going to need an owner’s rep.

Tip #11: Location, location, location.

Tip #12: You can’t have a contingency plan for a contingency.
Making Payments, Retainage, & Protecting the Project

- **Tip #13**: Prompt payments are the “life blood of the project.”
- **Tip #14**: If you withhold payments, do it reasonably and equitably.
- **Tip #15**: Payment cycles must be realistic.
- **Tip #16**: Consider stepped retainage.
Selecting the Right Designer & Contractor

**Tip #17**
The schedule cannot be unrealistic or too aggressive.

**Tip #18**
Do not be fooled into setting steep liquidated damages.

**Tip #19**
You must put pressure on your contractors for timely submittals and on your designer for timely responses to submittals and RFIs.

**Tip #20**
Incentives clauses are not really that incentivizing.

**Tip #21**
Are no-damages-for-delay clauses reasonable or unreasonable?
Administering Claims & Change Orders & Resolving Disputes

Tip #22 Timely resolving claims and change orders keeps morale up and costs low.

Tip #23 Short notice provisions encourage discord and constant letter-writing campaigns.

Tip #24 Employ interim decision-making processes.

Tip #25 Seek advice of counsel when picking arbitration versus litigation.
Transferring Risk, Limiting Liability, Indemnifying, & Waiving Consequential Damages

**Tip #26**
Passing on all risk to contractors has hidden costs elsewhere.

**Tip #27**
Indemnity for third-party claims is the only real way to go.

**Tip #28**
If you do agree to waive consequential damages, you better define them.

**Tip #29**
Avoid limitation of liability clauses in your contracts.
Insuring & Bonding the Project

**Tip #30** Beware of subguard.

**Tip #31** Bond your project but consider using your own bond forms.

**Tip #32** You’re not an insurance expert, so don’t be afraid to get help.
CONCLUSION