OVERVIEW

- BACKGROUND and OBJECTIVES
- CHALLENGES
- STRATEGIC TOOLS
OVERVIEW

• BACKGROUND and OBJECTIVES
  • COMMON PROBLEMS and PITFALLS
  • HIGHLIGHT BASIC TOPICS

• CHALLENGES
  • PROCEDURES
  • CONFLICTS
  • PEOPLE / COMMUNICATION

• STRATEGIC TOOLS
  • CONTRACT DOCUMENTS = ‘RULES of the GAME’ (read the fine print …)
  • COMMUNICATION, COLLABORATION and FAIRNESS
BACKGROUND

• CONSTRUCTION
  • is for a PURPOSE and USE
  • SIGNIFICANT INVESTMENT for at LEAST 20-50 YEARS

• COMMON PROBLEMS and PITFALLS
  • SUCCESSFUL CONSTRUCTION = MANAGES RISK
  • DEFECTIVE and NON-COMPLYING WORK
  • CLAIMS / CHANGES
  • SCHEDULES / DELAYS
CHALLENGES

- PROCEDURES
- CONFLICTS
- PEOPLE / COMMUNICATION
CHALLENGES

• PROCEDURES
  • CONTRACT DEFINED ROLES / RESPONSIBILITIES
  • OVERALL PROCESS
  • OWNER PROCURED EQUIPMENT
  • PAYMENT, RETAINAGE, WITHHOLDING
  • CLAIMS / CHANGES
  • DEFECTIVE / NON-COMPLYING WORK
CHALLENGES

• **PROCEDURES - CONTRACT DEFINED ROLES / RESPONSIBILITIES**

✓ • CONTRACTOR (GC Article 6)
  • MEANS, METHODS, TECHNIQUES, SEQUENCES
  • SAFETY
  • **DO NOT** DIRECT the CONTRACTOR HOW to DO THEIR JOB ✓

• OWNER (Art 8)

• ENGINEER (Art 9)
CHALLENGES

· PROCEDURES - OVERALL PROCESS

· PUBLIC BIDDING
  · PREQUALIFICATION STAT’S § 66.0901 and .0903
  · BIDDER’S PROOF of RESPONSIBILITY
  · PRE-BID CONFERENCE
  · RIGHT to REJECT ANY and ALL BIDS
  · ‘GRACE REVIEW PERIOD’, WITHDRAWL and SECURITIES ✓
  · CONTRACT AWARD

· CONSTRUCTION
  · SUBMITTALS TIMING

· CLOSURE and WARRANTY PERIOD
  · STARTUP, TESTING, TRAINING, O&M, DOCUMENTATION
  · WALK-THROUGH and ‘PUNCHLIST’ ✓
CHALLENGES

- PROCEDURES - OWNER PROCURED EQUIPMENT
  - COMMON PURPOSES
    - TAX EXEMPT STATUS
    - MANUFACTURE LEAD TIMES / SCHEDULES
  - RISKS
    - COORDINATION
    - TIMING / SCHEDULES and CHANGES
    - MAY SHIFT RESPONSIBILITIES to OWNER
CHALLENGES

• CONFLICTS
  • SCHEDULES, DUE DATES and DAMAGES
  • CLAIMS - DO NOT MEAN ‘STOP the WORK’
  • CONTRACT DOCUMENTS
CHALLENGES

• PEOPLE / COMMUNICATION
  • CONFLICTS - PERSONALITIES
  • STATE, CLARIFY and DOCUMENT FACTS
  • ‘POSTURING’
STRATEGIC TOOLS

✓ • COMMUNICATION, COLLABORATION (TRUST) and FAIRNESS

  • MAINTAIN ‘HEALTHY’ RELATIONSHIPS
  • THINK ‘AHEAD’ to ANTICIPATE and ‘GUIDE’ PARTIES

✓ • CONTRACT DOCUMENTS = ‘RULES of the GAME’ (read the fine print …)

  • EJCDC - ENGINEERING JOINT CONTRACT DOCUMENTS COMMITTEE
STRATEGIC TOOLS

• CONTRACT DOCUMENTS (Art 3)
  • AGREEMENT
    • SCOPE of WORK SUMMARIZED
    • COMPLETION DATES, TIMING
    • LIQUIDATED DAMAGES
    ✔ • NOT a ‘PENALTY’
    • REASONABLE RELATIONSHIP to ANTICIPATED COSTS

• INSURANCE CERTIFICATE (Art 5)
  • OWNER typically is ‘HOLDER’
  • ‘ADDITIONAL INSUREDS’ at least OWNER and ENGINEER
  • OWNER and PROPERTY INSURANCE
  • SPECIAL NEEDS

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STRATEGIC TOOLS

- **CONTRACT DOCUMENTS**
  - ✔ PERFORMANCE and PAYMENT BONDS REQUIRED (§ 66, Art 5)
    - OWNER’S ‘INSURANCE’ PURCHASED by CONTRACTOR for
      - ACCEPTABLY COMPLETING WORK
      - CONTRACTOR PAYING their BILLS
    - COMMON TRIGGERS
      - SCHEDULES
      - DEFECTS, NON-COMPLYING WORK
      - 3rd PARTY CLAIMS (SUBCONTRACTORS, SUPPLIERS)
    - ‘PRELIMINARY NOTICE’ NORMALLY GETS ‘BACK on TRACK’
      - FORM → EJCDC
      - TERMS (the ‘fine print’) …
    - BOND COMPANIES (§ ‘A’ RATING) ≠ NOT ALL are ‘EQUAL’ ✔
STRATEGIC TOOLS

• CONTRACT DOCUMENTS

✓ • PAYMENT (Art’s 11 and 14)
  • APPLICATIONS / CERTIFICATES
  • RETAINAGE - TYPICALLY 2.5%

✓ • ADDITIONAL WITHHOLDING based on DEFECTS, NON-COMPLYING and INCOMPLETE WORK
  • COMPENSATE USING ‘SCHEDULE of VALUES’ or UNIT PRICE WORK
  • LIEN WAIVERS REQUIRED (§ 66)
  • DOCUMENT . . .
STRAIGHTIC TOOLS

- **Contract Documents**
  - **General Conditions** of the Construction Contract
  - Timing
  - Defects
    - Owner’s Right to be Made ‘Whole’

- **Contract Closure**
  - Walkthrough and ‘Punchlist’ of Remaining / Corrective Work
  - Certificate of Substantial Completion
  - Begin Warranty Period (1 Year Typical)
    - Corrected Work Renews their Period
  - Observe / Document Before Warranty Expires
STRATEGIC TOOLS

• CONTRACT DOCUMENTS
  • DEFECTS and RESOLUTION (Art 13)
    • GENERALLY for
      • DEFECTS
      • NON-COMPLYING WORK
      • DOCUMENT CONDITIONS
  ✔ • CONTRACTOR FIRST RIGHT to CORRECT

• CLAIMS / CHANGES (Art’s 10 and 12)
  • TIME + / -
  • VALUE $
  • the ‘GAME’ of ‘R F I’ (REQUESTS for INFORMATION)
STRATEGIC TOOLS

• **CONTRACT DOCUMENTS**
  - SUSPENSION, TERMINATION and DISPUTES (Art’s 15 and 16)
  - OWNER’S RIGHTS
  - DISPUTE RESOLUTION - generally by
    - NEGOTIATION
    - MEDIATION
    - ARBITRATION
    - LITIGATION - COURT SYSTEM
STRATEGIC TOOLS

• SUMMARY

• CHALLENGES
  • PEOPLE / COMMUNICATION
  • DEFECTS
  • CHANGES / CLAIMS

• STRATEGIC TOOLS
  • COMMUNICATION
  • CONTRACT DOCUMENTS
DISCUSSION and QUESTIONS

the end

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THANK YOU …

see

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for UPDATED HANDOUTS