

2004 DPRCG Loss Prevention Convocation
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Mission: Critical
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Making A Good Project Out Of A Bad Contract

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Top Risk Management Strategies For Your Toughest Contracts
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Design Professionals Risk Control Group

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Why Do We Sign Bad Contracts?

- We don't know any better
- We're afraid to ask for changes
- We're desperate for work to keep good people busy
- We have a lot of profit in the job to cover risks
- We believe the risks are insured
- "Nothing bad like this has ever happened before"
- "These provisions are not enforceable"
- We believe it's really someone else's risk

A Few Provisions That Can Be Bad In Contracts

- **Safety**
- **Insurance**
- **Liquidated damages**
- **Stop work**
- **Fees for extended or additional services**
- **Claim's services**
- **Duplication with other participants**
- **Payment**
- **Poor definition of scope**
- **Submittals**
- **Change clauses**
- **Final "arbiter" of disputes**
- **ADR clauses**
- **Certifications**
- **Notice**
- **Indemnification**

When Must You NO-GO The Project – The Deal Breaker?

- You're betting your company on the outcome of the project
- You don't understand the risks and requirements
- You know the project cannot be a success
- After your insurance company and counsel tell you to pass
- When you don't have the right people or enough time

Techniques To Shift-Share-Minimize Risk

- **Project / program management plan**
- **Communication**
- **Documentation**
 - **Issue files**
- **Monitoring**
- **Follow-up and double-check**
- **Don't be afraid to deliver bad news to the client, i.e. "NO FEAR" – Do the right thing!**

Administering Bad Contracts To Make Money

- You cannot treat this client like you have signed a fair and equitable contract:
 - Charge for all extras, you don't need the practice
 - Allocate/assign responsibility
 - Get your work done right the first time
 - (assign your "A" team)
 - Invest extra resources into the project even if non-billable
 - Clarify the limits of circular services
 - Document events that could affect your cost, schedule, performance, scope or quality of service

Specific Steps To Minimize The Risks

- **Negotiate change orders as they occur**
 - **Scope, price and schedule**
- **Create “stand-alone” issue files**
- **Coordinate all contracts with your own contract before starting**
- **Make sure client enforces the contract provisions of all participants**
- **Independently audit / peer review your services**
- **Keep Counsel periodically apprised of the project**
- **Get your liability carrier involved early**

War Stories From “Real” Projects

- Architect and CM to “assist” with preparation of bid documents
- GC will not know if work is required until excavation contractor digs (work not in bid)
- Architect and CM must “certify” payment applications of the contractors

**Now Let's "Drill Down"
Into More Detail And Examine
"Dealing With Bad Contracts"
On A More Specific Project Basis**