



Protecting Your Project from Rising Construction Costs:

What every owner should know about cost structuring, allocation of risk and contract drafting



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June 7, 2006

Washington, DC | New York, NY

Agenda

I. Market Conditions

II. Protections

- Planning / Pre-Construction

III. Contractual Issues

- Design Professional Obligations
- Contractor Obligations

IV. Questions & Answers

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Part I:
Market Conditions



David J. Pfeffer

Why Are Construction Costs Rising?

- **International Construction Demand**
- **National Issues**
- **Forecast**

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Part II: **Protections**



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Planning / Pre-Construction

- **Establishing the Owner's Initial Budget**
- **Cost Estimates**
 - Using Owner's Design Professionals & Builder
 - Independent Cost Estimates
 - Value Engineering
- **Owner's Representative**
- **Project Team Due Diligence**
- **Elimination of DD phase for certain projects**

Planning / Pre-Construction

- **Pricing & Delivery Methods**
- **Negotiating Strategies**
 - Maintaining bargaining power – second option
 - Know your market
 - Lender requirements
 - Owner forms

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Part III: **Contractual Issues**



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Design Professional Obligations

Construction Administration

- Design professional involvement protects owners
- Notification of schedule, price issues
- Change Orders – documentation & investigation
- Requisitions

Contractor Obligations

Cost Increases & Risk Allocation *Who is Responsible?*

Increased Material & Labor Costs

- Obligate contractor for pricing
- Early purchase – owner pays for offsite storage
- Contractor to obligate subs/suppliers to lock in prices
- Bulk discounts for certain owners
- Escalation clauses
- Beware of broad claims provisions (e.g. AIA forms)

Monthly Reporting of Claims

Contractor Obligations

Cost Increases & Risk Allocation *Who is Responsible?*

Delay – Unavoidable

- Notice & Waiver
- Substantiation & Owner Investigation
- Critical Path Only
- As-built schedules
- Beware of broad claims/delay provisions (e.g. AIA forms)

Change Orders

- Notice Requirements
- Waiver of impact claims
- Forward Pricing

Contractor Obligations

Contractor Incentives

- Buyout savings
- Contingency savings
- Early completion bonus

General Conditions & Other Cost Issues

- General conditions
- Subcontractor line item deducts
- Wrap-up Insurance / OCIP (single and multi-project)
- Subcontractor Default Insurance - Subguard
- Dispute Resolution & “No Hostage” provision



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Questions & Answers

Visit www.arentfox.com/webinarcentral on Friday to download this presentation.

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Firm Profile

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