



Contract Risk—Four Things You Can Do to Mitigate It

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Over the years, I have seen skilled subcontractors do outstanding work and then not get paid for it. It could be disputes that drag on for months, unforeseen delays, missed contractual deadlines or even a misunderstanding that escalated. For some owners and GCs, holding payment is the quickest and easiest way to get a trade contractor's attention or to even hold it ransom to get what they want in a dispute. Mitigating risk starts with the contract; knowing what is in it and being able to comply if challenges arise.

There are four key areas that affect risk and payment that you have little control over unless the GC and owner are willing to negotiate:

1. Timelines
2. Change processes
3. Billing processes
4. Dispute resolution

And there are two things you have control over:

1. Your internal processes to properly address the contractual requirements
2. Your internal process to determine if you should even bid the project due to known issues with the client, GC, or designers. Hope is not a plan. Be realistic. If things go south, ask yourself, "Can we afford to go through the pain physically and financially?"

Think about being a builder in everything you do, not just in construction, but everything else around it. You will need to build knowledge, relationships, systems, and processes to be successful.

Let's explore what you should be looking for in the contracts and examine where systems and processes can be used to help mitigate risk. My hope is that you can take these items and turn them into a positive impact on your company tomorrow. "Discipline Equals Freedom" – Jocko Willink. Have the discipline to review the contract documents and plan how you will handle them if challenges occur.

Know Your Timelines and Notifications: Submittals, RFIs, Delays and Response Windows

Time is one of your most valuable assets on a project. Contracts define timeframes that affect your schedule, your procurement, and your liability. Understanding the requirements and hitting those target dates can help mitigate your liability.

- Submittal timeframes: When are submittals due, and how long does the design team have to review them? Is it built into your procurement schedule?
- RFI response timeframes: Unanswered RFIs can stall work and create claims. Know how many days the contract allows for response.
- Cost notification requirements: How quickly must you notify the owner or GC? Does
- Delay notifications: When weather, late deliveries, or owner-caused impacts delay your work, does your team have the tools to track and notify in a timely manner?

- Rain day and weather procedures: Many contracts have specific requirements for how weather delays are documented and claimed. Do you have a process to track rain and mud delays?.

For all the items noted above, create a calendar or task system for weekly follow-up to confirm proper dates are met.

Change Order Processes and Who can Approve/Authorize

It is critical to understand the process for changes on the project in addition to the timelines, what format, overhead and profit allowed, time and material procedures, and force account work. There are owners and GCs that play the game to hold approval as long as possible. It's not right, but it happens.

Do not proceed with work until there is a meeting of minds. This could be an approved change order, direction to proceed on time and material, or direction on force account. In any case, negotiate the change order, time, and payment terms for the work (especially if there is over a month of work to be performed). This can dramatically affect your cash flow.

Payment Processes

One of the most common challenges is treating payment as something that happens to you rather than something you can control. You do the work, you submit the pay app, and then you wait. Sixty days... Ninety days go by. You follow up once, maybe twice, and then you are sitting

in a cash flow crisis wondering what happened.

That is not a billing problem. That is a systems problem. You must build a payment follow-up process and implement it the same way you track a look-ahead schedule, submittals, and RFIs. Consistently, with accountability, every week.

- Know your pay application deadlines: There is a hard cutoff date for submitting pay applications each month. If you miss it, you may lose an entire billing cycle. Assign a person to track them by putting those dates in your project calendar and strive to be early each month.
- Review every week: Each week, your team should know the status of every outstanding invoice. Who has it? When is it due? What is holding it up? Treat aging receivables urgently, the same way you treat an overdue change order.
- Follow up at 20-30 days, not 60: If a pay app has not been processed within 30 days, pick up the phone. A professional, proactive call is not aggressive, it is leadership. It signals that you run a tight operation and you are helping in every way possible to keep things on track.

Know the Rules of Engagement: Disputes, Claims, and Disputed Work

Disputes happen on construction projects. That is not a failure, it is a reality. What matters is that you understand the rules before you are sitting in the middle of one.

- Dispute resolution process: Does the contract require mediation before arbitration or litigation? Is there a defined escalation path?

- Claim notification requirements: Most contracts require formal written notice within a specific timeframe for claims to be valid. DO you have a process to track it?
- Proceeding with disputed work: Many contracts include a “proceed and protest” requirement, meaning you must continue performing disputed work while the claim is being resolved.

Selecting the Project

Before you find yourself in a challenging situation, decide if it is a good project for your company. Here are some key questions to ask that may give you insight into building a good project selection process.

1. Have you worked with the design team and client in the past? Was it a good outcome?
2. Do you have the right team to lead this project?
3. Can the risk items in the contract be overcome and at what cost?
4. Is the project within your normal territory and can you provide proper oversight if it's not?
5. Do you have the working capital to do the project without stressing the company's financials?
6. Have you performed similar projects in the past successfully?
7. Have you performed past projects successfully with this delivery method?

If you answered no to more than a couple of these, you may want to reconsider pursuing the project. Hope and optimism are great but again, hope is not a plan.

Build It Before You Need It

There is a trend emerging across the country with skilled builders. They

know how to read drawings, manage crews, and deliver quality work. But the contract terms, timeframes for notifications, and responses may go unmanaged. Building with paper as well as materials has become just as important these days. They go hand in hand. Without paper approvals, responses and authorizations, materials cannot be installed. Knowing the requirements and putting a process in place with weekly follow-up could eliminate 80% of your challenges.

Again, “Discipline Equals Freedom.” Treat contract review as a preconstruction activity, not an administrative formality. Build a system to track and follow through with items each week. The builders who lead their industry are not the ones who react the fastest to problems. They are the ones who build systems to prevent those problems in the first place.

I challenge you to be a builder: build trust, build systems, build accountability. They all become tools within you that you can use to mitigate risk for your company.

About the Author

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