Construction Contracts and Pricing for the Developer: A Primer

Alan Razak

ATHENIANRAZAK LLC

Urban Land Institute
Understanding the Real Estate Development Process

About ULI Education Programs

• In-person and online workshops, seminars and webinars

• Topics in real estate development, finance, entrepreneurship and leadership
  – Process
  – Analysis
  – Management

For more information:
www.uli.org/programs/education

Or contact
Dave Mulvihill at:
David.Mulvihill@ULI.org
Topics Covered

- Contract Basics
- Procurement Methods
- Contract Types
- Components of a Construction Contract
- How the Numbers Work
# Development Process

## Task Timeline

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Risk & Cash Flow

[Graph showing the relationship between time, money, and stages such as land acquisition and construction.]
Design/Construction Process

- Design Process
- Contracting
- Permits
- Commencement
- Payments
- Completion
- Occupancy
Organization: Development

Acquisition
Finance
Disposition

Production
(Design & Construction)

Owner/Developer

Construction Financing Provider
Permanent Financing Source(s)
Mortgage Broker
Legal

Tenants/Buyers

Sales & Marketing

Leasing/Sales Team
Brokers
Marketing/Feasibility Consultant
Design/Advertising

Owner/Developer

A&E

Owner Consultants
General Contractor/Construction Mgr

Subs
Owner's Contractors

Security
AV
Acoustics
Landscape

Civil
Structural
M/E/F/P

Data/Telecom

Environmental
Geotech

Finance

Provider

Marketing/Feasibility Consultant

Leasing/Sales Team

UltraHold Institute
Business Law 101 – What Contracts Specify

- Who
- What
- When
- How Much
- Allocation of Risk
  - What’s my Exposure?
Managing Design & Construction is Risk Management

- Identify
- Analyze
- Respond
  - Ignore
  - Avoid
  - Accept
  - Transfer
  - Insure
- Monitor

TAKING RISK

a fine line between taking a calculated risk and doing something dumb.
Design and Contracting Methods

- Conventional (Design/Bid/Build)
- Single Source (Design/Build)
- Hybrid (CM at Risk)
- Integrated Project Delivery (Collaborative Contracting)
Fixed Price

Contract Types

Lump Sum

Guaranteed Maximum Price

Cost Plus

Low Risk to Owner

Mod

High Risk to Contractor

Low Risk to Contractor

High Cost Reimbursement
### Comparative Timelines

#### Conventional/Lump Sum

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#### Hybrid/GMP

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Complete Construction

Comparative Timelines

- Time Saved through Condensed Schedule
- Construction Starts
- Complete Construction

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![Image](https://via.placeholder.com/150)
Contract Documents

- Agreement
- General Conditions
- Drawings
- Specifications
- Clarifications and Changes
Contract Documents

- Template vs home-grown
- American Institute of Architects
  - AIA Contract Documents
- Association of General Contractors
  - ConcensusDOCS
- AGC vs AIA
  - Purportedly less designer-centric than AIA documents
  - Purportedly more collaborative, stressing communication
  - Significant differences in key areas
    - Dispute resolution
    - Role of architect
Innovations - IPD

- Integrated Project Delivery
- a/k/a Collaborative Contracting/Alliancing
- Untraditional contractual relationships between Owner, Design Professional and Contractor
- Risks and rewards of performance or “pain or gain” shared by all
  - Not necessarily based on contractual rights and responsibilities
- Collaborative Project Delivery Team may include prime subs
Innovations – Design & Construction Process

• Goals
  – Keep work flowing so that crews are always productive
  – Reduce inventory of material and tools
  – Reduce costs

• Tools
  – Target Value Design
  – Last Planner System
  – Lean Project Delivery
Agreement Components

- Agreement
  - Usually short
  - Statements of Fact vs Terms & Conditions
  - Stipulates Guarantee Type
  - Names Parties
  - Payment Amount and Timing
  - Definition of Cost (in Reimbursement Contracts)
  - Schedule (Key Dates)
  - Enumeration of Documents
  - Definition of Price
Contract Terms

- The Work
- Cost of the Work
- Contract Sum
  - This is the Price in a Lump Sum Contract
  - In At-Risk Cost-reimbursement Contracts, this is one half of the equation
    - Cost
    - Guaranteee
Structure & Building Systems
(Self-performance and Subcontracts)

+ General Conditions
  - Insurance & Taxes
  - Bonds
  - Permits

Cost of the Work

+ Fee (OH & P)

Contract Sum
Elements of GMP

Total Estimated Cost + Fee
(Contract Sum from previous slide)

+ Allowances
+ Contingency

Guaranteed Maximum Price
General Conditions

• Generic Provisions Applicable to All Contract Types
  – Intended to be “One Size Fits All”
  – Provisions Extend to Other Team Members (so they get to see it too)

• “Boilerplate” detail
  – Roles of Participants
  – Procedures
    • Subcontracting
    • Payment
    • Changes
    • Dispute Resolution
    • Working with Owner Contractors
  – Insurance & Indemnification
  – Termination
Drawings

- Plans
- Elevations
- Sections
- Details
Specifications

- Narrative Descriptions of
  - Products
  - Procedures
  - Performance Requirements
- Front End (Division 00)
  - General Requirements
  - Dovetails with General Conditions
Clarifications and Changes

- Addenda
- Shop Drawings
- Submittals
- Requests for Information
- Architect’s Supplementary Instructions
- Proposal Requests/Bulletins
- Change Orders
Construction Contractors

- GC/CM’s: managers, not constructors
- Procuring GC/CM services
- How GC/CM organizes job
- Procuring subcontractors
- Working with Owner’s contractors
Managing Change

- Set up process to manage change so it doesn’t manage you
- Authority to Direct
- In-Scope vs. Out-of-Scope
  - In Lump Sum contracts, all changes are out of scope
  - In GMP, some aren’t
FIN