

CROSS-CONNECTION

HOT TOPICS

RESOLVE DISPUTES IN REAL TIME

Real-time claims analysis can give owners and project teams a much-needed vaccine against costly litigation and disputes. Instead of waiting until all change orders are submitted at the end of a project, owners are looking to an expert claims professional to offer advice and insight at the first sign of a claim or potential change order.

The process typically evolves from weekly project meetings where an owner might note that a particular element of a project is not getting resolved. The claims analyst, working on retainer, would evaluate and analyze the merits of the claim and then offer ideas for resolution. We're even seeing real-time claims analysts brought in before a contractor submits a change order request. The real advantage is that the overall project continues forward and problems are resolved in the course of the project while the key points are fresh.

Particularly on more complex projects, a project - neutral consultant is retained. This neutral party is agreed to by all involved and their responsibilities are set forth in the contract. A skilled neutral is expensive, but an expert skilled in construction claims can offer opinions and resolutions that forestall a lot of potentially costly and project-ending disputes.

Whichever dispute resolution practice works for you, it's a good standard of practice to document dispute prevention mechanisms in the contract phase.



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PREPARING FOR PRIVATE FINANCING INITIATIVES

Even with federal stimulus support and other funding sources, state and local governments will not have the necessary dollars to facilitate much-needed infrastructure improvements. There is an urgent need for our industry to take advantage of public private partnerships (PPP) and private financing initiatives. While most states do not yet have the statutory basis to facilitate PPPs, it's coming.

However, PPPs change the relationship between contractors and their customers. The customer is now a capital investment group that is likely not a U.S.-based firm. The contracts between investor consortiums and their contractors are very different, as is risk allocation, than contracts many contractors are accustomed to. Successful execution requires a substantial understanding of those differences on the part of U.S. contractors. If there are disputes within the consortium, they will be handled far differently than traditional design/bid/build or even design/build contracts.

PPP's could bring great opportunity to the construction industry. Don't avoid them, but clearly understand the risks and the rewards.



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