Time well spent
Minimize project disputes through patient, thorough planning

INTERVIEWED BY ADAM BURROUGHS

The progress and success of a construction project is often defined by time well spent in the early planning and preparation process. Too often, however, developers, contractors and design professionals rush to start a project and do not spend the time needed in those critical phases.

“Thorough scope discussions and extensive contract negotiations will often yield a better understanding for the parties and their respective roles and responsibilities,” says Edward B. Gentilcore, Shareholder and Director of Sherrard, German & Kelly, P.C. and Chair of its Construction Services Group. “Patience in planning and preparation is the key to later success.”

Smart Business spoke with Gentilcore about the planning and contracting process, and what should be defined before starting actual project construction.

What needs to be determined during the planning and contracting process?

First and foremost, the project requirements and scope of the project need to be defined. Specifying Contractor and Owner Performance Expectations (aka SCOPE) are fundamental to establishing what is to be performed. That is why engaging counsel’s assistance sooner may reap benefits of earlier resolution of project contentions.

It should also be determined who will take the lead on developing the execution plan for project aspects such as design, and responsibilities of each party in the project’s early stages of a project. Defining more precisely the roles and responsibilities of each party in the process reduces the likelihood of uncertainty and of conflict. So the earlier that parties can mitigate costs by not contacting counsel. That is often counterintuitive. If the dispute escalates to an arbitration or court proceeding, costs are going to be much more significant and not likely accounted for in initial budget projections.

A party should serve as a reference point that defines responsibilities and expectations.

How should companies respond to disputes?

If disputes occur, look at the contract first and determine what relief there is to claim, the obligations of providing notice, and whether those notice provisions have been fulfilled. If proper and timely notice is not provided, a party must then justify why it didn’t give notice. In these situations, the needed focus is not on the impact, but rather contention over why contractual obligations to provide notice were not met.

What can construction project participants do to mitigate claims?

Hopefully, when a party realizes it needs to make a claim, information about the claim has been accumulated in the form of notes, emails, photos, etc. Counsel should be alerted and engaged early with an issue because they can help ensure contractual nuances are followed, notices are met and a sound information collection process is undertaken. To the extent that there could be a formal claim, communications over information collection can be made privileged if counsel is involved.

When transitioning into a dispute phase, there is the belief that parties can mitigate costs by not contacting counsel. That is often counterintuitive. If the dispute escalates to an arbitration or court proceeding, costs are going to be much more significant and not likely accounted for in initial budget projections. That is why engaging counsel’s assistance sooner may reap benefits of earlier resolution of project conflict. The best dispute resolution occurs at the earliest stages of a project. Defining more precisely the roles and responsibilities of each party in the process reduces the likelihood of uncertainty and of conflict. So patient and proper planning should always precede actual project performance.