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Workshop G

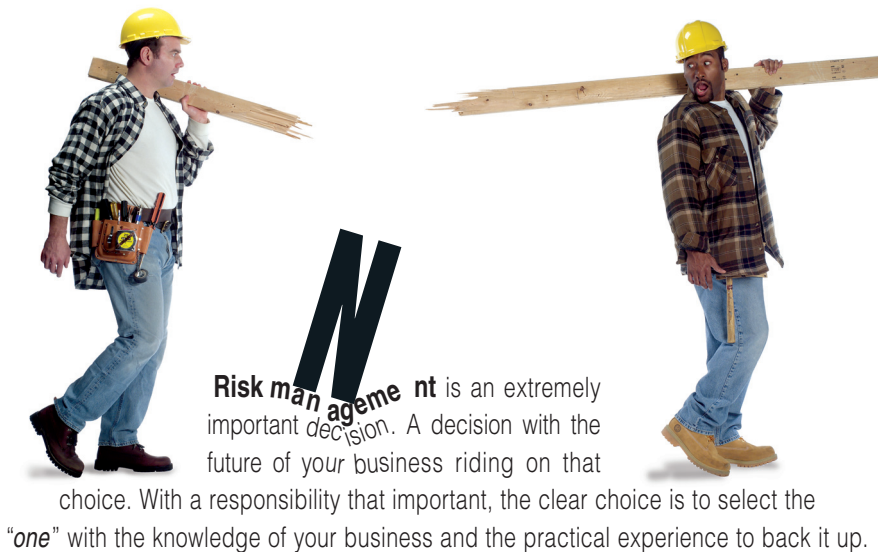
STRATEGIC CONTRACTING

Presented by

Peter G. Furst
Technical Director of Contracting
Liberty Mutual Group

Tuesday, November 9, 1:30–3:00 p.m. and 3:30–5:00 p.m.

THINKING ABOUT RISK MANAGEMENT?

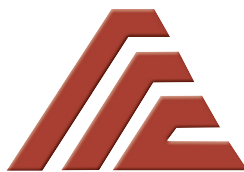


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Peter G. Furst
Technical Dir. of Contracting
Liberty Mutual Group

Mr. Furst is presenting Workshop G, "Strategic Contracting," on Tuesday afternoon. Since 1995, he has been the technical director of Contracting Services for Liberty Mutual's National Technical Center in Pleasanton, California. He is responsible for the Pacific, West, and Northwestern regions (13 states); as well as the Pacific Rim countries served by the company's International Division.

As technical director, he provides specialist support for field customer service efforts in the Contracting Service areas. Mr. Furst works directly with field loss prevention consultants and contracting customers to support the quality and quantity of service provided. He has been able to consult with numerous contracting customers, helping them manage their safety programs more efficiently, thereby substantially reducing their cost of risk.

Mr. Furst has 20 years of construction experience with a multinational general contractor. He served as estimator, project engineer, superintendent, and project manager on numerous projects varying in size from \$5 million – \$350 million, involving hundreds of craftsmen and subcontractors. He also had overall safety responsibility for projects amounting to more than \$450 million annually. Under his leadership, on average, the EMR hovered at or below 0.50. Mr. Furst has also consulted with numerous contracting firms in construction and safety management.

He is a Registered Architect, Certified Safety Professional, an Associate in Risk Management, and a Registered Environmental Assessor. Mr. Furst has a master's in business administration with emphasis in management, a bachelor of architecture, and a bachelor of science in construction. He has taught construction management and safety courses at UCLA, USC, Berkeley, Cal Poly Pomona, Cal State Long Beach, and Cal State Hayward Universities. He has lectured on construction and safety topics at conferences since 1996. Some of the organizations at whose national conferences he has spoken are IRMI, RIMS, ASSE, NSC, CSC, ACI, CSI, US, and AGC. He has also spoken numerous times at regional conferences such as the Alaska, Oregon, Alabama, and Hawaii Governor's conferences, as well as state-level conferences for the AGC, ABC, and CEA.

Mr. Furst is a past member of the San Francisco and Los Angeles chapters of the American Institute of Architects, and the National Safety Council, a member of CSI, ASSE, and AUA. He has served on the California AGC Safety, Labor Relations, Transportation, and Environmental Committees. Mr. Furst also serves as a Commissioner for the California State Board of Architectural Examiners. He is a member of a number of ANSI committees and subcommittees.

Notes

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

STRATEGIC CONTRACTING

Peter G. Furst
Liberty Mutual Group

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STRATEGIC CONTRACTING: A COMPREHENSIVE RISK MANAGEMENT PROCESS

Introduction

The way we do business in construction may expose us to claims and losses resulting from our contracting activities. To manage this potential risk effectively, we need to have a procedure in place that ensures the participants understand each other's goals, needs, and expectations, as well as a strategy that will ensure a cooperative partnership. Strategic contracting involves the coming together of like minded organizations who share the same work and safety values, have the ability to create an injury free work environment and are willing and able to actively partner to achieve this goal.

Many organizations that hire contractors and many contractors that subcontract major portions of the work have a pre-qualification process. The extent of the prequalification process may involve a review of EMR and LTIR rates. Some organizations take a more in-depth approach to this. This may include such items as fall protection at exposures of more than six feet, site specific orientation, programmed inspections, specific safety training for safety coordinators, etc. Owner depend too much on the contract to ensure safe work practices, when in fact all the contract ensures is that the owner will have a legal instrument with which to hold the contractor accountable. One glaring shortcoming usually is the fact the owner does not ascertain if the contractor is in fact capable of, and set up to comply with the owner's requirements. Another shortcoming is that most owner do not make a project risk assessment to ascertain what risk exist and potentially what the owner can do to minimize these to begin with.

On the other side it is rather uncommon for contractors to pre-qualify owners, and subcontractors to pre-qualify contractors as to having a positive impact on, or fostering a safe work environment.

Fundamental Issues

Since the owner is the key player in this process, it is the owner that sets the tone for the project from start to finish. The project participants are selected by the owner and they will "act" according to what they knew and perceive the owner wants. These are going to be transmitted to all the players by written, stated and actions of the owner. So the owner must initially spell out what it is it is trying to accomplish, and how to accomplish this.

The owner must start the process by defining its values and its vision for the project. This will become the basis for all decisions made in the future. Having done that the next step is to set the strategy for accomplishing this vision. That is differentiating activities that need to happen in order to ensure success. The operational part of this process involves the all important goals and objective setting, the establishment of measures and indices and the acceptable targets for the project.

The vision might be to meet or exceed the project goals which might involve, achieving exemplary quality, or creating and maintaining an injury free environment, while fostering excellence in safety.

The objectives should spell out how we propose to make the vision come true. Lets look at the injury free environment as an example to accomplish this the staff may need a certain level of knowledge, certain tools and equipment, parameters within which to accomplish things, an understanding to the other parties processes and deadlines, an understanding of the overall parameters with which they can operate, certain level in independent decision making authority, etc. Having defined these they then become the basis for future measurement.

Performance metrics involve a number of measures. Metrics fall into various categories such as trending metrics, control metrics, diagnostic metrics, planning metrics and of course baseline metrics. The job specific measures may include outcome, process and progress measures. There are a number of other ones such as input, and output measures that can be used to drive performance. Of course for many measurement to be meaningful a baseline must be established from which to measure and drive future performance.

Pre-selection Aspects

So if the traditional approach is not enough, what do these organizations have to do to achieve an injury free work environment on their next capital project? The strategic contracting process has three major basic components.

- Pre-selection component

- Bid/contract component

- Execution component

The most important and the one that requires the most effort is the pre-selection activities. These set the overall "tone" and potential level of achievement for the project.

The whole process starts with the owner making a risk assessment of the project to determine the level of existing risk. The next step is for the owner to see to what extent these risks can be eliminated through the design process. The contractor selection process may be accomplished in two steps. The first part would look at the contractor pool and select a few who meet the owner's safety performance requirements. The prequalification process includes:

- Completion of a questionnaire

- Historical safety results data

- Submission of safety performance program and standards

 - Risk assessment procedures

 - Planning processes

 - Injury free environment strategies

 - Performance metrics

- Documentation of:

 - Organizational support of injury free work environment

 - Internal processes alignment

 - Learning and innovation

The owner also needs to determine the inherent level of risk in the contractor's means and methods, the project staffing, and the extent of subcontracting. All the key subcontractors need to be scrutinized for their compliance with the owner's safety requirements as well.

The owner's selection committee should have a methodology to evaluate and rate the submissions. The selected few who meet the required "score" are then placed on the potential bidders list.

Another key aspect of this process involves performance measurement. The old frequency and severity rates, LTIR, OSHA recordables are all lagging indicators and not of much value in real-time management. To foster an injury free environment leading indicators are necessary. Since these are not common in the industry the parties have to agree of the metrics they are going to use to measure success and more importantly to deploy strategy. The measures that can be used include:

- Input measures

- Process measures

- Progress measures

Having established the strategy for achieving an injury free environment, it follows that objectives can be set for how to accomplish this. Once the objectives are set then creating metrics to measure success follows. These measures should fall in the above three categories. The input measures would look for things that should be done to achieve the goal. The process metrics look at the way things are done of the systems that produce the results and how well they are doing. The progress measures start from a baseline measure and assess the degree and rate of improvement.

To ensure that the safety interventions are not only creating a safe work environment but are also supporting a productive work processed we need the following metrics as well.

- Outcome measures

- Output measures

The outcome measure will indicate the level at which the residual risks are being controlled and the output (production) measures will indicate their impact on the construction process. A well designed risk mitigation process must positively impact the output results! This is a "real world" check and balance of the whole process.

The Bid/Contract

The specific contractor selection takes place at this time. The "approved" contractors are asked to submit a bid with additional project specific information. The submission should address the residual risk of the project to determine the level and extent to which it exists. The contractors need to determine means of mitigation, or loss prevention interventions required to minimize the adverse effects of these risks. The submission should include the following components:

- Submission of a project specific safety plan

- Project residual risk assessment

- Prioritization of intervention techniques

- Selection of the best mitigation and preventive measures

- A project operational plan

- Planning process of all major activities and tasks

Defining best work methods and training procedures for workers

Auditing and inspecting for conformances

Record keeping and reporting techniques

The owner will have to have, a selection committee who has a methodology to evaluate and rate the submissions. The selected contractor will not only have to meet the pricing requirement but will also have to set out how they are going to go about meeting all the other project objectives.

Obviously the bid process and the resulting contract are a key activity and have to be tailored to define the legal component of the pr. During the bid process the contractors are informed of the specific requirements that they have to incorporate into the project so as to achieve an injury free environment. This then is reflected in the terms of the contract.

Execution Aspects

As stated before the owner has the greatest impact on the project and its outcomes. The owner controls the design, the specifications, the selection of the architect and an engineer, the time to complete, establishes the budget, writes most of the contract terms, and to some degree oversees the building process. So the owner has a lot to do with setting "the tone" for the project going forward.

To address strategic contracting effectively we need to look at the goals and objectives of not only the owner but the other key parties involved, with an understanding of accepted general practices and the dynamics that come into play on a construction project. The parties involved may have their own views of the roles and responsibilities of the others involved in the process. Historically, and in many cases in practice, the relationship is neutral or even adversarial. So to strategically manage the building process we not only have to have a program with which to manage it but we also must understand the needs and expectations of the key player in the process, have a system in place to foster willing cooperation, enthusiastic teamwork, and a strategy for excellence in performance.

As a result we need to first identify what it is we are trying to accomplish, with an eye on the project's unique requirements. Then we need to define the roles and responsibilities of all the key players, with an understanding of their specific needs and expectation of each of the other parties in order for them to be able to achieve the project goals. Then a mechanism must be devised with which to ensure the project's successful outcome. The players that may be involved in a construction project include the owner, the architect and its consultants, possibly a construction or program manager, the general contractor, subcontractors and possibly lower tier subcontractors as well as vendors and suppliers, independent testing companies, public agency inspectors, along with others that may be peripherally involved. For the purposes of this paper we will look at the key player groups. This includes the owner and its consultants and inspectors, the general contractor and the subcontractor group.

Partnering Issues

Partnering is a technique that has been applied to construction projects in the past with mixed results. Some have had good outcomes while other did not quite live up to the expectations. Most of these could be attributed to insufficient preliminary work in the selection process. If the parties have similar values and a strong commitment to the injury free environment vision and a cooperative attitude, then project stands a real good chance of being successful.

The partnering process is pretty straight forward. The parties meet to discuss the project. There needs to be a neutral facilitator. The key elements of partnering are:

The Charter

Commitment—commitment to partnering must come from senior management of all parties. The jointly developed partnership charter is not so much of a contract as it is a symbol of cooperation and commitment.

Equity—All stakeholders' interests are considered in creating the mutual goals and objectives, with a "win-win" outlook. A commitment is made to satisfying all stakeholders' requirements for achieving a successful project.

Trust—Trust is a key ingredient of open and cooperative teamwork. Through the development of personal relationships and open communication about each stakeholders' risks and goals there is better understanding and appreciation of each parties key success factors. With better understanding and open communication comes trust and trust paves the road to a synergistic relationship.

Roles/Concerns—The parties should discuss their roles, and what makes the job successful for that role (what the individual needs and when/why/how it is needed). The players also need to table both good and bad experiences so the rest may better understand the issues. An understanding of where each party "fits" into the picture and the impact of actions on others helps clarify and crystallize a cooperative outlook.

The Process

Development of mutual goals and objectives—At the partnering workshop each stakeholder lists their respective goals for the project and identifies those which overlap the interests of the others. These jointly-developed and mutually agreed upon goals will include key project success factors, such as achieving excellence in safety performance and fostering an injury free environment.

Developing an issue resolution process—The partners develop a system for resolving issues that may arise on the project. Potential problems are reviewed and methods for resolving them are devised. Problems that are complex are escalated to the next higher level until it is expeditiously resolved.

Development of a joint evaluation process—To ensure success, the process needs to be jointly evaluated by the stakeholders. Meetings are held on a regular basis to review and evaluate the positive accomplishments and correct areas that are not performing at optimum levels.

The Benefits

For the owner—a reduction in exposure to litigation, lower risk, better quality, increased opportunity for innovation, greater assurance of successful completion

For the contractor—reduced exposure to litigation, lower risk, better quality, increased opportunity for innovation, greater assurance of successful completion

Summary

Strategic contracting is a process in which all the key players come together based on an understanding of common values, strategies and an open and cooperative partnering outlook. Though there is a contract between them, they rely more upon a proactive approach of equity, trust, cooperation and a problem solving posture. Energies are channeled into positive rather than adversarial venues. Strategic contracting changes mind-sets. It has the potential of helps us focus our energies on real issues associates with achieving the ultimate goal of a successful outcome.