

Project Disputes – Techniques to Avoid or Resolve Them Before or During Your Project

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Where are we

- **Young:** Best practices – legal
- **Slaughter:** Best practices – technical / relationships
- **Berman: Options**
 - 1. take your chances
 - 2. take some proactive steps (just in case)

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What is the single largest “root cause” of disputes?

Just about every
dispute and conflict on a
Major/mega project can be traced back to....

A lack of communication by one
or more parties to the contract

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Conflict During the Project...

- **Distracting** from getting the project built
- **Residual friction** among stakeholders
 - Can lead to “continuous” mistrust
 - Everything is now suspiciously scrutinized
 - Can cause future conflict on “legitimate” changes
 - Egos get in the way of progress

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Worst Case Consequences

- Project may be held **hostage** if contractor is not satisfied
 - Owner may feel obligated to “settle”
- Contractor may get **terminated**
 - Contractor may feel obligated to “settle”

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Options Before/During the Project

- Contractor and Owner select a 3rd party to review all issues as a **neutral** and facilitate a solution
- Owner engages a 3rd party to perform periodic **audits**
 - “Snap-shot” audits: *random or set intervals*
 - “Threshold” audits: *based on cumulative value or quantity of change orders*
- Project employs a **Dispute Review Board**
 - One member from the Owner and the Contractor and the two of them select a neutral third
- 10 day “**Step Negotiations**”

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Conflict Avoidance Mechanisms from Real Experience

- Reasonable apportionment of **risk**
- **Incentives** that can be earned and **penalties** that are grounded in reality
- Proper **contingency** management of time and money
- Get the **design** right – the first time!
 - Configuration management
- PM **training** for key *Project Stakeholders*
 - One topic: “What to do when a disputes arises”

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Conflict Avoidance Mechanisms from Real Experience (continued)

- **No surprises!**
 - Lack of communication is at the root of most disputes
 - Bad and good news
- **Better language for contract changes**
 - e.g. conversion from a fixed-price to a cost-plus price basis
 - “what happens if...”

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