Riding the Wave
CAPITALIZING ON THE VELOCITY OF CHANGE
44TH ANNUAL ECC CONFERENCE
Contracting Risk Management

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“I am a pretty versatile fool when it comes to contracts, and business and such things. I have signed a lot of contracts in my time, and at sometime I probably knew what the contracts meant, but six months later everything had grown dim and I could be certain of only two things, to wit:

- One, I didn't sign any contract
- Two, the contract means the opposite of what it says”
1. What does it mean to have an optimal contracting arrangement?

2. Why do owners & contractors struggle with early contractual risk identification & mitigation?

3. What are some of their typical risks?

4. Can we identify solutions early in the FEL process?

5. What tools are being used to help tackle contractual risk management?
Optimal Contract

- Each party only assumes risk:
  - They can control or influence
  - For which they can be reasonably compensated

- Provides clear understanding and agreement of:
  - Respective roles
  - Responsibilities
  - Accountability
  - Financial obligations
  - Expected results
Typical Contracting Headwinds

- Insufficient transparency
- Optimistic predictions
- Inability to collaborate
- Misaligned objectives
- Different work methods & processes
- Poor contracting strategy
- Insufficient planning
Abundance Of Common Risks

- Health, safety & environment
- **Contracting strategy**
- Scope of work
- Resources
- Schedule
- Different standards
- Different systems
- Inflation / escalation
- Frontier risk
- Stakeholder alignment
- Financing & guarantee obligations
- Market capacity
- Quality & timeliness of deliverables
The PM should be accountable to implement the risk management processes & plan - from risk identification through impact analysis & mitigation planning.
Contract Strategy – Common Risk

- Governance
- Scope Change
- Schedule Compression
- Market Volatility
- Quality
- Resourcing
Strategy Risk Mitigation Measures

- The right contractor
- The right contract structure
- Appropriate compensation
- Transparency and clarity
- Defined expected results
- Risk balanced contract
- Disciplined qualification of Prime and Sub Contractors
Other Considerations

• Joint FEED package review & acceptance
• Company rely-upon information
• Contractor acceptance of site conditions

• Title passage & risk of loss responsibility
• Line of site incentives
• Cash neutral payment structure
• Mutual waiver of consequential damage
Scope of Work (SOW) Common Risks

- Poor scope definition
- Errors & omissions
- Core team retention
- Availability / late deliverables
- Failure to define interfaces
SOW Risk Mitigation Measures

- Owner right to request a change
- Acceptance of site & subsurface conditions
- Contractor entitled to reasonable contract adjustment
- Joint FEED package review & acceptance
- Joint kick-off meetings
- Contractor review and acceptance of key documents
- Ability to novate contracts
- Contract interfaces clearly defined
Resource Risk Factors

- Poor planning
- Lack of sufficiently skilled resources
- Expanding SOW
- Schedule compression
- Competing projects
- Process training
- Pace of development
Resource Risk Mitigation Measures

- Key personnel provision
- Contract incentives
  - Retention
  - Productivity
- Resource loaded master integrated schedule & plan
Schedule Risk

- Schedule compression
- SOW growth
- Late or incomplete deliverables
- Premature construction
- Unreliable data & poor communications
Schedule Risk Mitigation Measures

- Defined project management controls
- Timely delivery of contractors’ native format schedules
- Schedules with logical deliverables between functions

- Contractual payment targeting total performance
  - Upon receipt of key deliverables
  - Mechanical completion, Ready for startup, Final completion
Contract development cannot mitigate all project risks. However, it can promote transparency, collaboration and joint problem solving to help eliminate the risks facing both Owner & Contractor.