

DIRECTORS' BRIEFING

FIT-OUT AND RE-FURBISHMENT PROJECTS – FIVE STEPS TO AVOID COSTLY DISPUTES

Tender prices are falling, lots of contractors are chasing business, so if you have cash this is probably the best time in the market to think about a refurbishment, fit-out or makeover. However, beware the golden goose!

Reports from construction lawyers are showing an escalation in disputes from breaches of contract. This is principally due to poor or inadequate building contracts mixed with the strong desire by contractors to break the contract terms, renegotiate prices and increase their margins.

In addition, and according to research by Pricewaterhouse Coopers, construction insolvencies rose 35% year on year in 2008. This has left clients further exposed to the additional risk of contractors and suppliers facing insolvency due to late payments and the withdrawal of overdraft facilities.

This toxic mix of poor contracts and exposure to contractor insolvency has all the ingredients to completely de-rail your project. Undertaking a capital project without the right contractual and market expertise can leave your business highly exposed. However, handled well not only will your risk be greatly reduced but also, you could enjoy anywhere between a 20% and 35% reduction in cost.

So how do you protect yourself whilst reaping the rewards of a greater return on your investment? Haywards recommends five main steps:

- 1. Detailed specifications with preliminaries** – You cannot hope to get the best price and minimise the risk of legal disputes without a detailed specification. This document should clearly define the framework of the building contract, how the project will be delivered and the desired standard. The absence of a detailed specification will leave you exposed. Sometimes disputes can't be avoided, but if you have one then the preliminaries will contain a mechanism that sets out the steps to reach a resolution. The detail contained within the preliminaries as well as the specification cannot be under estimated.
- 2. Financial checks – last year's accounts are not enough!** – Deteriorating market conditions in the construction industry has occurred at a frightening pace. Last year's financial accounts won't be enough. You must do due diligence. Depending on your attitude to risk, you might even consider insurance measures such as warranty protection

schemes. There are a variety of measures that could be applied. The key is – do not gloss over this vital area.

3. Employ independent experts who know building contracts and the contractor market

Their knowledge and industry experience will prove invaluable to counter those claim conscious contractors or those seeking to capitalise on client charges. They can help you put robust contracts in place that will protect you against spurious and sometimes fictitious claims.

4. Know your contractor's supply chain – Clients often come unstuck due to an inadequate

understanding of the contractors' supply chain. For example, many building contractors are securing work just to maintain cash flow. However, this precarious strategy has resulted in the building industry being littered with businesses which have failed due to late payments and their inability to fulfil financial obligations. All it takes is for one of the sub-contractors to fail and the whole supply chain could collapse.

5. Great results from good teams – Too many clients worry about paying for advice. In the

construction world there's one thing which is certain – the cost of NOT having good advice is far greater than the cost of having it! A good procurement specialist with the right industry sector experience will always outperform a lay client. This is no more apparent than in the high risk environment of fit-outs and refurbishments.

Final Thoughts

Appreciating the key dynamics will improve your chances of avoiding legal disputes as well as achieving greater cost certainty. We also know from experience the journey will be more enjoyable and far less stressed.

For Further Information

If you would like any support or advice on how to avoid the pitfalls of “costly disputes” or any other construction, fit-out or building consultancy related issues, please do not hesitate to contact Tony Oxford on 01494 488 493 or tony.oxford@haywardsllp.co.uk.

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