



## Top 5 Risk Avoidance Strategies for Contractors



## Construction Projects Are Inherently Risky

**Every project is unique:**

Prototypes

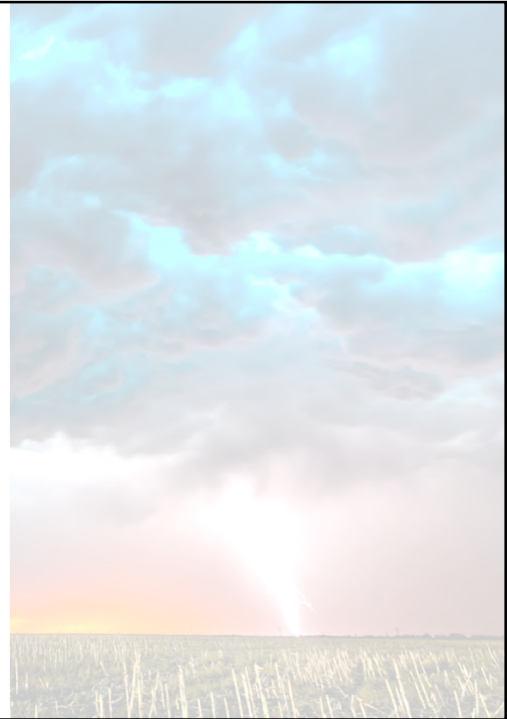
Varying site conditions

Local codes and ordinances

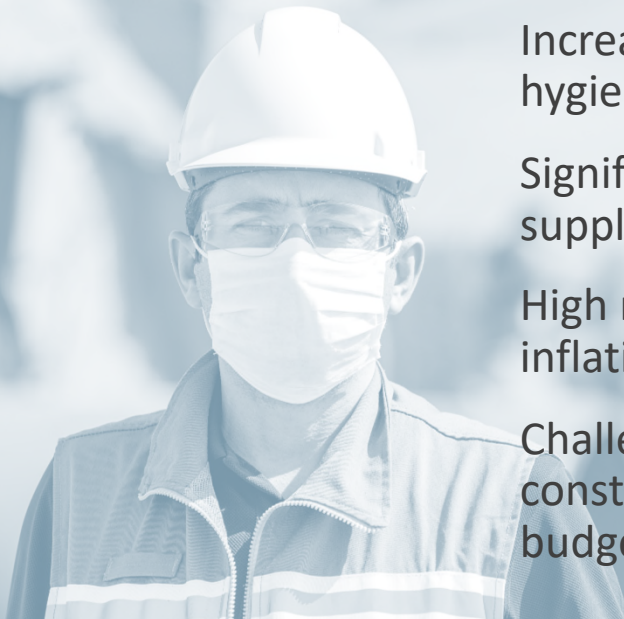
Unpredictable nature of design and construction

## Projects Continue to Evolve in Complexity

- Increasing owner expectations
- Elevating standards for severe weather events
- Acceleration of project schedules
- Insufficient budgets



## Covid-19 Impacts



Disruption of access


Increased sanitation and hygiene

Significant disruption in the supply chain

High rates of construction inflation

Challenges to meet construction and project budgets

### Risk Allocation



Primary beneficiaries = owner and users

Design firms get paid a fee for services

Contractors and CMs earn profit as a component of construction cost

### Risk Allocation



Owner must accept the majority of risk on a project

*Contractor and design team are part of the owner's risk management team*



# A Contractor's Risk/Reward Balance

**RISK:** Obligation to construct the project in accordance with plans and specs at an agreed-upon price

**CONDITION:** Strong leadership and business management practices with a commitment to quality construction

**REWARD:** A reasonable, even significant, profit in balance with the risks



## Establish a Risk Management Plan

- Essential element of loss prevention
- Key ingredient of financial success
- Significant positive impact on business performance

**Paper and Recorded Webinar Available at:**

[BerkleyCP.com/risk-management](http://BerkleyCP.com/risk-management)

### The Risk Management Plan: A Fundamental for Business Success

**Establish a Risk Management Policy and Plan**  
**Key Year Construction Plan**  
 Risk is inherent in the construction process. The Risk Management Plan is a key component of the business plan. It is a document that outlines the contractor's approach to identifying, assessing, and managing risk. The plan should be developed in consultation with the contractor's insurance broker and legal counsel. The plan should be updated regularly to reflect changes in the contractor's business and the construction industry.

**Risk Management = Business Management = Project Management = Company Success**

**Risk Management Approach for the Construction Professional**

The contractor's risk management approach should be based on the contractor's business plan and the construction industry. The contractor should identify the risks that are most likely to affect the business and develop strategies to manage those risks. The contractor should also develop a risk management plan that outlines the contractor's approach to identifying, assessing, and managing risk.

**Professional Liability Risk and Contract/CM Role in Risk Management**

The contractor's risk management approach should be based on the contractor's business plan and the construction industry. The contractor should identify the risks that are most likely to affect the business and develop strategies to manage those risks. The contractor should also develop a risk management plan that outlines the contractor's approach to identifying, assessing, and managing risk.



**The Risk Management Plan: A Fundamental for Business Success**

**Goals of Risk Management**

- Identify and assess the contractor's risks
- Develop strategies to manage those risks
- Monitor and report on the contractor's risk management performance

**Components of the Risk Management Plan for Construction Professionals**

1. Identification of risks
2. Assessment of risks
3. Development of risk management strategies
4. Implementation of risk management strategies
5. Monitoring and reporting on risk management performance

**Professional Liability Risk and Contract/CM Role in Risk Management**

The contractor's risk management approach should be based on the contractor's business plan and the construction industry. The contractor should identify the risks that are most likely to affect the business and develop strategies to manage those risks. The contractor should also develop a risk management plan that outlines the contractor's approach to identifying, assessing, and managing risk.



## Presented by



**Andrew D. Mendelson, FAIA**  
EVP, Chief Risk Management Officer

- Licensed architect with 36+ years in practice
- PM, Market Leader, Contract Officer, CFO, Director of Practice Management
- Member of the AIA Documents Committee 2003-2017, LFRT Legal Committee 2000-2010, ACEC Risk Management Committee
- Risk Management education from the practitioner's perspective



**Edward L. Sheiffele, Jr.**  
Executive Vice President

- Nearly 30 years of experience underwriting construction professional and environmental liability insurance
- Ed has authored several construction professional and environment liability articles and frequently speaks on that those topics

© 2022 Berkley Construction Professional 9



## Berkley Construction Professional

Our mission is to be the leading provider of specialized construction professional insurance and pollution coverage for construction-related industry exposures. In addition, we offer leading edge risk management services so that our insureds continue to be best-in-class in avoidance of potential claims.

- Dedicated to the Construction Industry
- Expert Underwriters
- Expert Claims Service
- Real-world Risk Management Education

*Berkley Construction Professional is a division of Berkley Alliance Managers which is a member company of Berkley whose rated insurance company members are assigned an A+ (Superior) rating by A.M. Best Company. W. R. Berkley Corporation is an insurance holding company that is among the largest commercial lines writers in the United States and operates worldwide in two segments of the property casualty insurance business: Insurance and Reinsurance & Monoline Excess.*

*Products and services described above are provided through various surplus lines insurance company subsidiaries of W. R. Berkley Corporation and offered through licensed surplus lines brokers. Not all products and services may be available in all jurisdictions, and the coverage provided by any insurer is subject to the actual terms and conditions of the policies issued. Surplus lines insurance carriers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.*

© 2022 Berkley Construction Professional



## Legal Notice - Disclaimer

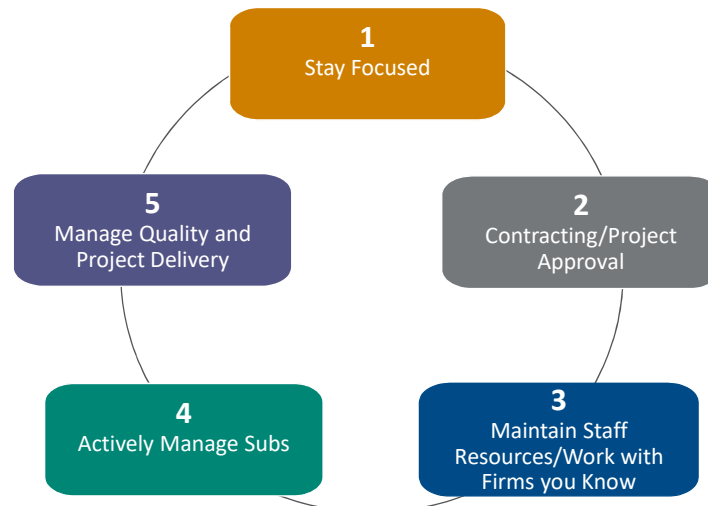
*Information provided by Berkley Construction Professional is for general interest and risk management purposes only and should not be construed as legal advice nor confirmation of insurance coverage. As laws regarding the use and enforceability of the information contained herein will vary depending upon jurisdiction, the user of the information should consult with an attorney experienced in the laws and regulations of the appropriate jurisdiction for the full legal implications of the information.*

*Practice management recommendations should be carefully reviewed and adapted for the particular project requirements, firm standards and protocols established by the construction professional.*

© 2022 Berkley Construction Professional 11



## Workshop Outline – 5 Risk Avoidance Strategies



© 2022 Berkley Construction Professional 12



## 1 Stay Focused

- Seek projects that are a fit with your experience and expertise
- Take on projects for which you have adequate capacity of leadership and staff
- Work with owners that you know and trust to have the capability to implement the project type in the location where it will be built
- Partner with owners that treat contractors, CMs, and design professionals fairly



© 2022 Berkley Construction Professional 13



## 1 Stay Focused

- Think globally – act regionally
  - Know your markets and the legal/regulatory environment
  - Identify potential long-term relationships with owners who build multiple projects
  - Develop company policies, processes, and protocols—as well as an integration plan—to facilitate quality and financial success for satellite offices or acquired companies as well as the home office
  - Maintain strength and presence in your local market

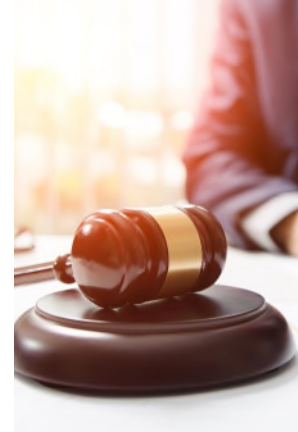


© 2022 Berkley Construction Professional 14



## 2 Control Your Contracting and Project Approval Process

- Establish a standard process for authorship, review, and approval of proposals and contracts
- Seek and allow time for legal review and advice on contracts
- Consistently follow and enforce your protocols
- Define the intent and parameters of the project
  - Scope, schedule, budget (project, construction)
  - Project team: designers (A/E); owner’s rep, other consultants; contractor/CM members
  - Other criteria such as a sustainable goal, entitlements or other financing criteria, public approval process



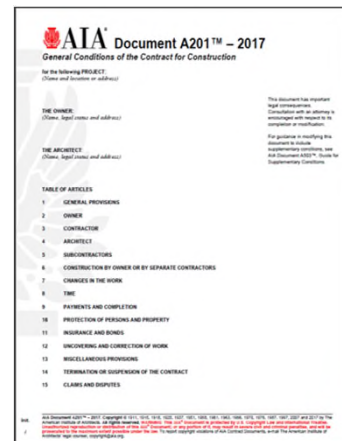
© 2022 Berkley Construction Professional 15



## 2 Control Your Contracting and Project Approval Process

### Risk Allocation: The Contractor’s Risk

- Fulfill requirements of the Contract Documents
- Responsibility for the means, methods and procedures of construction
- Site safety
- Warranties and guarantees for the Work
- Timeliness of performance
- Subcontractors



© 2022 Berkley Construction Professional 16





## 2 Control Your Contracting and Project Approval Process

- Define your scope of services and responsibilities
  - Clearly state the services and duties you will provide and those you won't provide, including pre-construction (if any)
  - List applicable construction/contract documents
  - Create a change management protocol and approval process if project criteria or duties are modified
  - Disclaim services that belong to others: owner, design professionals retained by owner, governmental agencies, and other authorities having jurisdiction over the project
  - Be able to rely upon owner-provided information (surveys, geotech, environmental, CMT)
  - When bidding public work, be responsive to contract and bidding document requirements



## 2 Control Your Contracting and Project Approval Process

- Keep an eye on certain contract clauses:
  - **Indemnification:** Be wary of them and know the anti-indemnity statutes, which vary by state
  - **Limitation of Liability:** Utilize this strategy to balance risk/reward considerations particularly when your services are limited in scope
  - **Waiver of Consequential Damages:** Include this important clause to control your potential liability
  - **Waiver of Subrogation:** Use this clause to minimize lawsuits and claims among the parties relating to property loss
- Manage fast-track and innovative product/system risk
- Don't work without a contract!



2

## Control Your Contracting and Project Approval Process

### AIA Construction Agreement Components



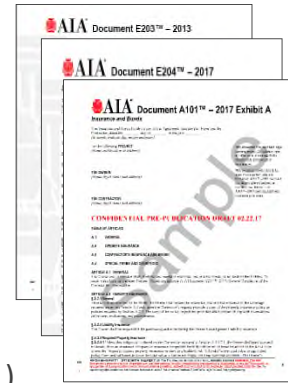
Agreement  
A101, A102, A103

+



General Conditions (A201)  
and any Supplementary Conditions

+



Exhibits

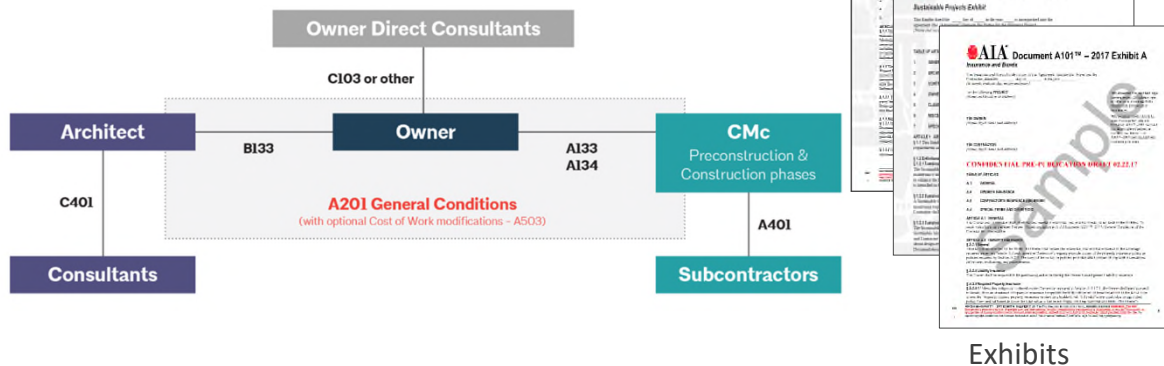
© 2022 Berkley Construction Professional 19



2

## Control Your Contracting and Project Approval Process

### AIA CMc (2019) Contract Relationships



Source: AIA Contract Relationship Diagrams

© 2022 Berkley Construction Professional 20



3

### Maintain Staff Resources, Work with Firms You Know

- Maintain continuity of management at the project level – assign experienced project leader(s)
- Provide sufficient presence and support at the executive level
- Provide an attractive and supportive work environment through your company culture, vision/mission, facilities, and benefits
- Develop and nurture staff through training and development
- Embed quality management in company culture, core values, and project delivery



© 2022 Berkley Construction Professional 21



3

### Work with Firms You Know

- Enhance the odds for project success by working with design professionals, subcontractors, and others that have experience and expertise in the project type
- Don't be afraid to make a "no go" decision when the project, client or other team members are not the right fit for your practical and strategic goals

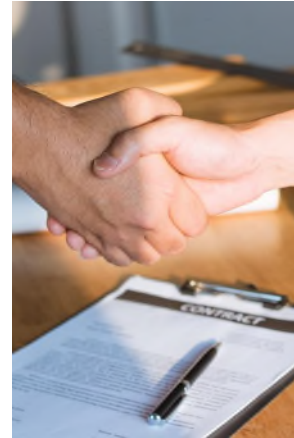
Go/No Go Checklist available on <https://www.berkleydp.com/risk-management/risk-resources/>

© 2022 Berkley Construction Professional 22



### 3 Work with Firms You Know

- Ask these questions when considering design team members, in particular:
  - Does the lead design firm work in a collaborative manner with contractors and CMs in pre-construction phases and respond in a timely manner to submittals, RFIs, and change requests during construction?
  - Do the design firms address review and processing of change orders fairly?
- Proactively expand and enhance relationships with leading design firms in the project types and locations of your business



© 2022 Berkley Construction Professional 23



### 4 Actively Manage Your Subs

- Make certain your subs live by the same rules that you do in these key areas:
  - Quality construction and diligent client service
  - Contractual responsibilities and terms and conditions, including flow-down provisions
    - Don't limit subcontractor or subconsultant liability unless you have similar contractual protection
  - Promoting a safe and collaborative work environment
  - Appreciation for the big picture—not just limited to a certain trade or area
- Require your consultants, subconsultants, and subcontractors to be properly insured for CGL, Environmental, Pollution and PLI – establish criteria for policy limits and track compliance with insurance requirements



© 2022 Berkley Construction Professional 24





5

## Manage Quality and Project Delivery

- Establish robust quality standards and controls
- Foster an environment where meeting client expectations and contractual responsibilities are primary
- Make sure your team knows that quality is top priority, even if it means accepting financial compromise in the short term in order to protect your reputation and client relationship over the long term
- Encourage thorough communication and sharing of best practices
- Consider peer reviews to be performed within your firm
- Rotate the responsibility for reviewing the work to offer fresh perspectives

© 2022 Berkley Construction Professional 25



5

## Manage Quality and Project Delivery

- Document the project process and establish the project record
- Understand and manage elevated risks (Risk Register)
  - Fast-Track projects frequently require field changes that may result in unintended consequences
  - Projects that involve untested technologies or cutting-edge design can be inherently risky
  - While challenging projects can be exciting, test your firm's skills, and keep your firm sharp, you need to fully understand and be prepared to diligently manage the associated risks
  - Establish internal contingencies

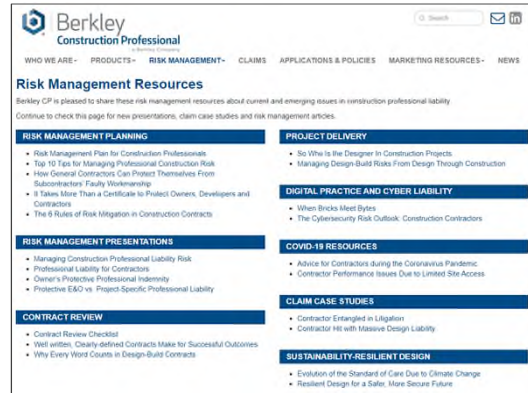


© 2022 Berkley Construction Professional 26



## Summary

- Stay Focused
- Control Contracting and Project Approval
- Maintain Staff Resources and Work with Firms you Know
- Actively Manage Your Subs
- Manage Quality and Project Delivery



<https://www.berkeleycp.com/risk-management/>

© 2022 Berkley Construction Professional 27



## Questions

**Andrew D. Mendelson, FAIA**  
 EVP, Chief Risk Management Officer  
 312.340.3475  
 amendelson@berkeleyalliance.com

**Edward L. Sheffele, Jr.**  
 Executive Vice President  
 973.775.7492  
 esheffele@berkeleycp.com