

Daily Commercial News reports on panel with Michael Swartz on managing risk in construction contracts

July 31, 2020

Partner Michael Swartz spoke on the Canadian Institute's July 16, 2020 webinar on Managing Risk in Construction Contracts and Projects. The session is discussed in the article, "Panel explores risks contractors face in contracts" by the *Daily Commercial News*.

Most construction projects include risks and taking calculated risks is expected by all parties. It is the unexpected or unforeseen risks that keep contractors, consultants and owners up at night. One of those risks is weather.

"(It is) among one of the biggest sources of contention when it comes to delayed claims or impact claims," says Swartz.

Swartz, whose advice is to build in enough float in your contract to account for inclement weather, said that keeping detailed weather notes such as reports by Environment Canada on rainfall amounts and also having a plan in place early in the project on how to deal with that weather is key to minimizing construction delays.

He said Ministry of Transportation contracts often include a formula for production that, if not met, might count as a lost weather day.

The article goes on to discuss other risk factors such as limited geotechnical testing, personnel turnover and inaccurate or vague documentation.

Placing all of the "dirt risk" on the contractor's shoulders can backfire on owners in court, said Swartz, noting court rulings could place liability on owners who expect contractors to conduct extensive soil tests in the short time they have to prepare a bid for tender.

Swartz said projects that run smoothly usually don't have a lot of personnel turnover — particularly in leadership roles and the smart stakeholders might identify those leaders in the contracts. Having key backup personnel is another strategy that ensures project continuity, particularly on large or lengthy projects.

Swartz said contractors might be ambivalent about requesting information at the tendering stage on cost estimating, for fear of giving a heads up to their competitors, but even a small estimating or scheduling error can have a "profound impact."

[Click here to read the full article by Don Proctor.](#)

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