

Assume too much and A-team's work ends up an F

Owners and developers usually begin projects with great optimism, enthusiastic about their design and construction team because it was hand-picked from a pool of strong firms. But this enthusiasm can cause problems if it allows the developers to overlook the fact that even the most talented A-teams can make mistakes.

The smart project owner does everything it can to facilitate design and construction team success while at the same time protecting itself. But not every owner does this. Project owners commonly make three mistaken assumptions.

• **Assumption:** "The team knows what it's doing."

Construction defects are more common than they should be, so not everyone knows what they are doing. In all good firms there are principals, project managers and superintendents who are skilled and experienced. But there are new crews, new draftsmen and foreman who have never managed a stucco project before.

How to proceed: Before selecting design and construction firms, make sure you interview the actual people who will work on your project. Do not rely on slick presentations or meetings with people who will never set foot on your project site.

Also recognize that, in multiple-crew scenarios, one crew

may do things right while another does them wrong.

Finally, leave room in your budget for mock-ups, tests and inspections in key areas such



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as soils, Americans with Disabilities Act compliance, exterior decks and the building envelope, all of which frequently are defective. Third-party consultants are increasingly hired to perform design and construction reviews in these areas.

• **Assumption:** "The contracts are standard and probably fair."

Nothing should be standard when it comes to contract language. Even if certain language is common, it's not necessarily fair.

How to proceed: American Institute of Architects or Associated General Contractors forms might not be appropriate for your particular project. Read the documents and ask yourself whether rights otherwise afforded by law should be waived by contract, whether the statute of limitations for bringing claims for defects should expire faster than it otherwise would or whether multiparty disputes should be resolved in separate

proceedings instead of one consolidated proceeding, saving time and expense.

Even the best design and construction firms offer standard forms to their clients. This is not necessarily because they know the forms are biased to their advantage. In many cases, they believe the forms are standard and fair because this is what they've heard – or used – for years.

Once the owner explains its concerns, most good firms quickly understand the issues and agree to alter the language.

Conversely, if the owner is offering its own contract, it should listen to the design or construction firm's concerns and resolve the issues fairly.

Despite the confidence in your team, make sure all parties read and understand the contract before signing it.

• **Assumption:** "This is a good firm, so its insurance must be good."

Some firms do not understand their own insurance policies. Some insurance brokers do not understand the insurance they are brokering. And many owners do not understand their property insurance will not cover construction defects or lost revenue caused by construction or design errors. New coverage exclusions are popping up rapidly, such as exclusions for synthetic stucco, residential work, for-

sale units, multifamily projects, water damage, mold and fungus, damages that began in prior policy years and claims brought by additional insureds.

How to proceed: The only way to know what you are buying is to read the policy or at least its endorsements and exclusions. Certificates of insurance contain a disclaimer of accuracy and do not list any exclusions to coverage even though such exclusions certainly exist.

Also, most firms purchase insurance on an annual basis, which means the insurance you requested and reviewed at the beginning of the project may not be in effect one year later. Each annual renewal brings a new policy with potentially different types of coverage, dollar limits and coverage exclusions. For construction defects, the policies in effect in the years after construction is completed are often the most important. Appoint someone in your firm to review policies and follow up on insurance renewals.

Don't throw away your playbook when your A-team takes the field. Careful management will help your team realize its full potential.

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