

# Start with a plan

## Construction projects must include strong planning to achieve your goals

INTERVIEWED BY MARK SCOTT

Construction contractors understand that a project is a fluid operation requiring a great deal of planning and leadership to arrive at a finished product that meets expectations. It's a detail that companies that aren't in the construction industry can easily forget.

"Larger companies do a lot of building and expanding, so they have internal expertise on how to do it right," says James T. Dixon, a partner at Brouse McDowell.

"But middle market and smaller companies have their core competency and are focused on that. They don't have somebody in-house who knows how to build anything."

Those who don't seek help in the early stages of a project often find themselves reaching out to their legal counsel when problems arise.

"An ounce of prevention is worth many, many pounds of cure," Dixon says. "Legal should be involved at the very beginning."

*Smart Business* spoke with Dixon about the right way to manage a construction project.

### What are some keys to effectively launching a construction project?

There are a number of questions you need to ask before you move forward with a construction project. What is your goal and how are you going to get there? Be as clear as possible regarding what you want and what your constraints are in terms of budget and timing.

What is your company's internal capacity to manage this project? Take a hard look at your level of experience and sophistication when it comes to construction and then build a team around that. Put together a team that can manage the project and ensure it is moving along effectively. This team also needs to be able to respond when problems come up so that those issues can

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be addressed and the project can continue.

This region has many well-qualified companies that serve as owner's representatives and construction managers. For companies that lack sophisticated internal capacity, these professionals can steer you in the right direction.

### What are the key components of your project management team?

In addition to design and construction experience, your team is going to require legal, financial and even transactional real estate expertise.

Think hard about not just assembling the team, but once the team is in place, deciding how the project is going to be delivered. There are a wide range of options for project delivery systems. You could go with the traditional plan where you work with an architect and then a builder or use one company that handles both phases. It's another reason to get legal expertise, and more importantly project management expertise at the outset. Calling an architect or builder first, depending on their experience, can lead to a project delivery system that may not be the best fit.

### How can the contract document process create trouble?

The forms commonly used in the

construction industry do not protect the owner's interest without significant modification.

The most often used family of contract documents is developed by the American Institute of Architects. For example, the standard terms and conditions include a waiver of consequential damages that is written as a mutual waiver. But that waiver often means much more to the owner.

Let's say your project has a completion date of Dec. 31 and the builder misses that by four months. You're a manufacturing company, and during that time, you are not able to produce materials. You will have lost profit for an additional third of the year's production. If you signed a consequential damages waiver, you likely will not be able to recover that lost profit from the builder. This is just one example of how the documents must be modified to protect your interests.

### What can be done to avoid this fate?

Do as much internal analysis as you can beforehand to guide you in selecting the right team. Turn to your corporate attorney, who may have a partner experienced in real estate acquisition or construction. Or, you may know an architect or a builder who can get you some feedback. To avoid problems, create a careful plan and build the right team. ●