

## ***Foundation Drilling No. 1/My Two Bits***

Construction is so afflicted by gamesmanship, it's amazing anything gets built at all. Why is it, despite so much experience to the contrary, so many industry participants still seem to believe there is such a thing as a free lunch; that something that's too good to be true may be true nonetheless? Could it be that those who know better simply go along to get along? And if that is the case, what a shame, because it would comprise nothing less than the unconditional surrender of people in a position to make a bad situation better simply by speaking up.

Start with the owners and developers. Of those you know, how many are willing to authorize the comprehensive scope of design services that can really minimize the potential for problems? scopes that start with a comprehensive geotechnical study (performed by a geotech chosen on the basis of qualifications), then move on to the qualifications-based selection of other quality-focused design firms, each working with a comprehensive, project-specific scope that includes peer plan review?

Too many designers use "owners and developers will never accept such scopes" as an excuse to stay uninvolved; to do nothing to explain why comprehensive scopes are better; how the additional cost of implementing them is but a fraction of the value of the problems they can prevent. Perhaps if designers suggested better scope and scope development options often enough, and strongly enough, some owners might change their ways. And if enough other project participants chimed in – like contractors, lenders, insurers, and sureties – even more owners might try doing it right. All would benefit, except lawyers, of course, because lawyers' job – which is woven into the very fabric of our society – is zealous advocacy of the client's position, no matter how screwy that position might be.

Regrettably, attorneys' advocacy often begins during a project's contract formation stage, when – by virtue of their education and training – they regard their owner/developer clients' service providers not so much as teammates but as adversaries. That's why they

recommend contract provisions their clients can use to “screw ‘em all.” Which explains why so many contracts include harsh indemnities designed to compensate owners or developers for the cost of repairing the damage created by the owners’ or developers’ own foolishness. Don’t get me wrong! I’m not bashing lawyers. Recommending such asinine approaches is an advocate’s job. It’s the owner’s or developer’s job to be practical; to recognize that putting a gun to someone’s head may create a distraction that erodes service quality; that forcing people to accept unfair, one-sided contract provisions encourages an equal and opposite reaction that benefits no one.

What about bidding? What’s your position on that? And I’m not talking about bidding for design professionals. I’m talking about bidding for contractors. Do you believe it’s the smart way to go? You know it isn’t! Given the extreme gamesmanship associated with bidding, it can be deadly for those so inexperienced they don’t know how much something should cost. And if you do know how much something should cost, why waste so much time and effort with a process that’s baloney to begin with, given that the price that wins the assignment is almost never the price actually paid? If contractors talk about this, they risk being called “self-serving,” a thoughtlessly derogatory comment that ignores human behavior: Scenario 1: Prepare a costly bid for each project, then engage in gamesmanship to make a profit. If you achieve quality in what you love to do it’s an accident. Scenario 2: Work on a negotiated basis with a price that considers what’s required to achieve quality. Then achieve quality, delight the client, and continue to obtain work inexpensively, without bidding, because those who rely on you know they can trust you. Gee, what a tough choice! So designers, lenders, insurers, and sureties: Speak up! Working with top-quality contractors, selected because they perform well, benefits you, too.

And while we’re talking about bidding, let’s not overlook the prime design professionals who moan and groan if they’re asked to bid, and then bid-shop their prospective subconsultants. The Hypocrites Hall of Fame has a special pedestal waiting for these good folks. I know; I helped sharpen it. Wake up, people! When you ask professionals to bid, you insult the good ones and challenge those who are far better at bidding than they

are at designing. Besides, if you want owners and developers to select you based on your qualifications, you'd be wise to be able to say, sincerely, "That's the way we do it because we know that, in the short run, it's far more satisfying and, in the long-run, it's far less expensive."

And contractors, you know the same thing. Whom would you rather deal with? Top-quality design professionals who are concerned about achieving a good outcome, or those who bought their way into a project and are looking to do as little as possible to earn a profit, and as much as possible to put you in the position of having to swallow a loss should problems emerge? If you're tired of the latter, you need to speak up for the former. Lenders, insurers, and sureties: You've got a dog in the fight, too.

Bottom line: If you must regard construction as a game, consider it one where all project participants are on the same team. The common opponent? The worst in us all. Knowing that, you can help your team win – and earn a victory for yourself – just by encouraging others to "talk up" methods they know will achieve good outcomes. It really can be as easy as that.