

PSMJ Resources, Inc. and XL Catlin

Provider Number #J174

Improved CA= Lower Risk + Higher Profits

Course Number: improvedca

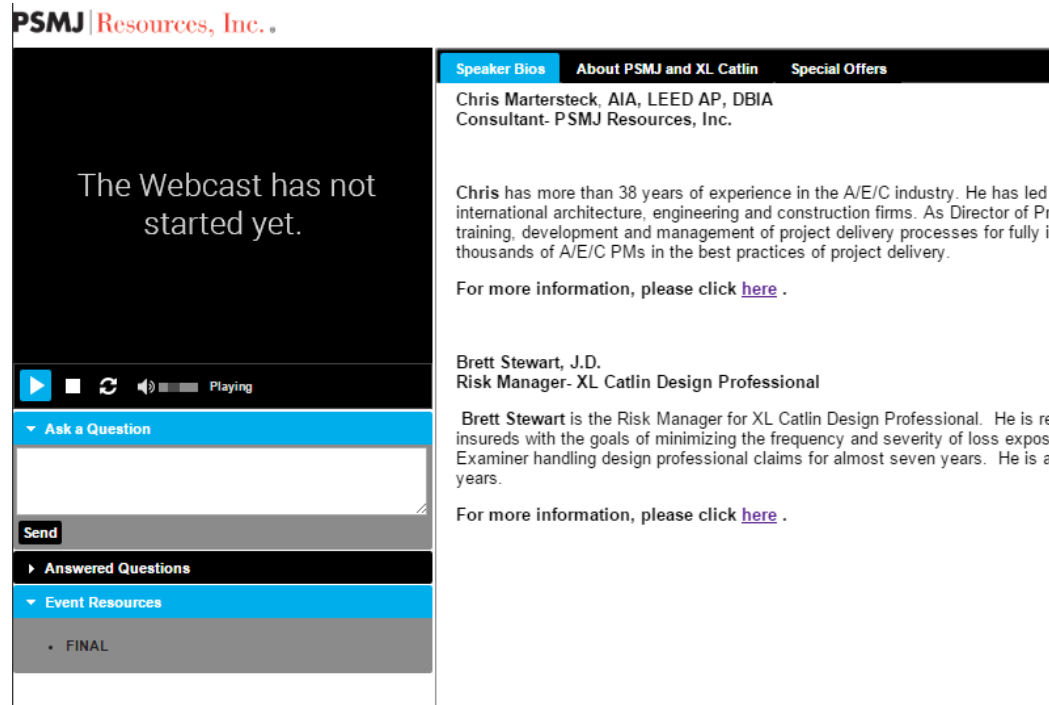
Tuesday, September 29, 2015

Brett Stewart, JD – XL Catlin Design Professional

Chris Martersteck– PSMJ Resources, Inc.

This presentation contains proprietary information protected by XL Group plc companies copyright and PSMJ copyright.
All rights reserved.





Toolbar on the left side of the screen

- Play
- Pause
- Refresh
- Switch to Adobe Flash Player
- Adjust the volume

Tabs at the top of the screen

- Slides
- Speaker Bio
- Company Info
- Special Offers



Certificates

- **Individual Certificate:** E-mailed immediately after the webinar
- **2+ attendees watching the webinar together:** E-mail the following to education@psmj.com so we can create a custom certificate for you.
 1. Name
 2. Job title
 3. E-mail address



Credits with AIA CES

Credit(s) earned on completion of this course will be reported to **AIA CES** for AIA members.

Certificates of Completion for both AIA members and non-AIA members are available upon request.

This course is registered with **AIA CES** for continuing professional education. As such, it does not include content that may be deemed or construed to be an approval or endorsement by the AIA of any material of construction or any method or manner of handling, using, distributing, or dealing in any material or product.

Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.





Credits

- **1.5 LU Hours-** E-mail your AIA number to education@psmj.com
- **1.5 PDHs-** Submit your certificate to the appropriate board.
- Not all states and license boards accept these types of credits.

Questions or Concerns?

Contact: Olivia Roma

(800) 537- PSMJ (7765)

education@psmj.com





Webinar Recording

- **Available** by Friday, October 2.
- **Free Credits:** Take and pass a brief quiz after the webinar recording to earn 1.5 LU Hours or 1.5 PDHs.
- **How to Access the Webinar Recording:**
 1. Register to become a free or paid PSMJ Member
www.psmj.co/
 2. Go to xlgroup.com/dp/OnDemand.

Questions or Concerns?

Contact: Olivia Roma

(800) 537- PSMJ (7765)

education@psmj.com



Webinar leaders



Chris Martersteck, AIA, LEED AP, DBIA

- A/E/C Project Delivery Seminar Leader & Consultant - **PSMJ Resources**
- Past Vice President & Director of Project Management - 4 top 50 A/E/C firms
- Past Chair - AIA Chicago Design-Build Knowledge Community
- Past Board Member - DBIA Great Lakes Chapter
- Design-Build Certification Course Leader - Design-Build Institute of America
- cmartersteck@psmj.com or PSMJ Resources - www.psmj.com
- Connect on LinkedIn: <http://www.linkedin.com/in/christophermartersteck>



Brett Stewart, J.D.

- Risk manager for XL Catlin Design Professional
- Develops education and loss prevention materials for architects and engineers
- 18 years in the industry handling claims and litigating design and construction cases as an attorney
- Actively involved in industry organizations to advocate on behalf of the A/E community
- Brett.stewart@xlcatalin.com
- www.xldp.com
- Connect on LinkedIn: <https://www.linkedin.com/pub/brett-stewart/4/5b/806>



About XL Catlin Design Professional unit

Specially designed risk management for today's A/E firms

40+ years of providing tailored risk management solutions that protect the assets of design firms.

Our mission is simple: to bring policyholders the resources and protection they need to run a successful business.

- Innovative professional liability insurance programs
- Industry-leading educational programs
- We work with you to reduce the cost of loss and preserve valuable business relationships

About PSMJ Resources, Inc.

- Content providers of management information
- Focused exclusively on the A/E/C industry for 40+ years

	Newsletters	Surveys & Books	Seminars & Conferences	Consulting
Strategy	✓	✓	✓	✓
Marketing	✓	✓	✓	✓
Project Delivery	✓	✓	✓	✓
Finance	✓	✓	✓	✓
Human Resources	✓	✓	✓	✓
Transition	✓	✓	✓	✓

Course Description

The A/E/C professionals that stress improving their contract administration (CA) are the ones that ultimately lower their risk and reap higher profits.

This webinar explains how firms can increase their best practices by understanding some of the risks and challenges that are inherent in performing contract administration services, and then developing tools to manage these risks in a way that will help deliver projects on time and on budget while avoiding claims and managing client expectations.



Learning Objectives

At the end of this course, participants will be able to:

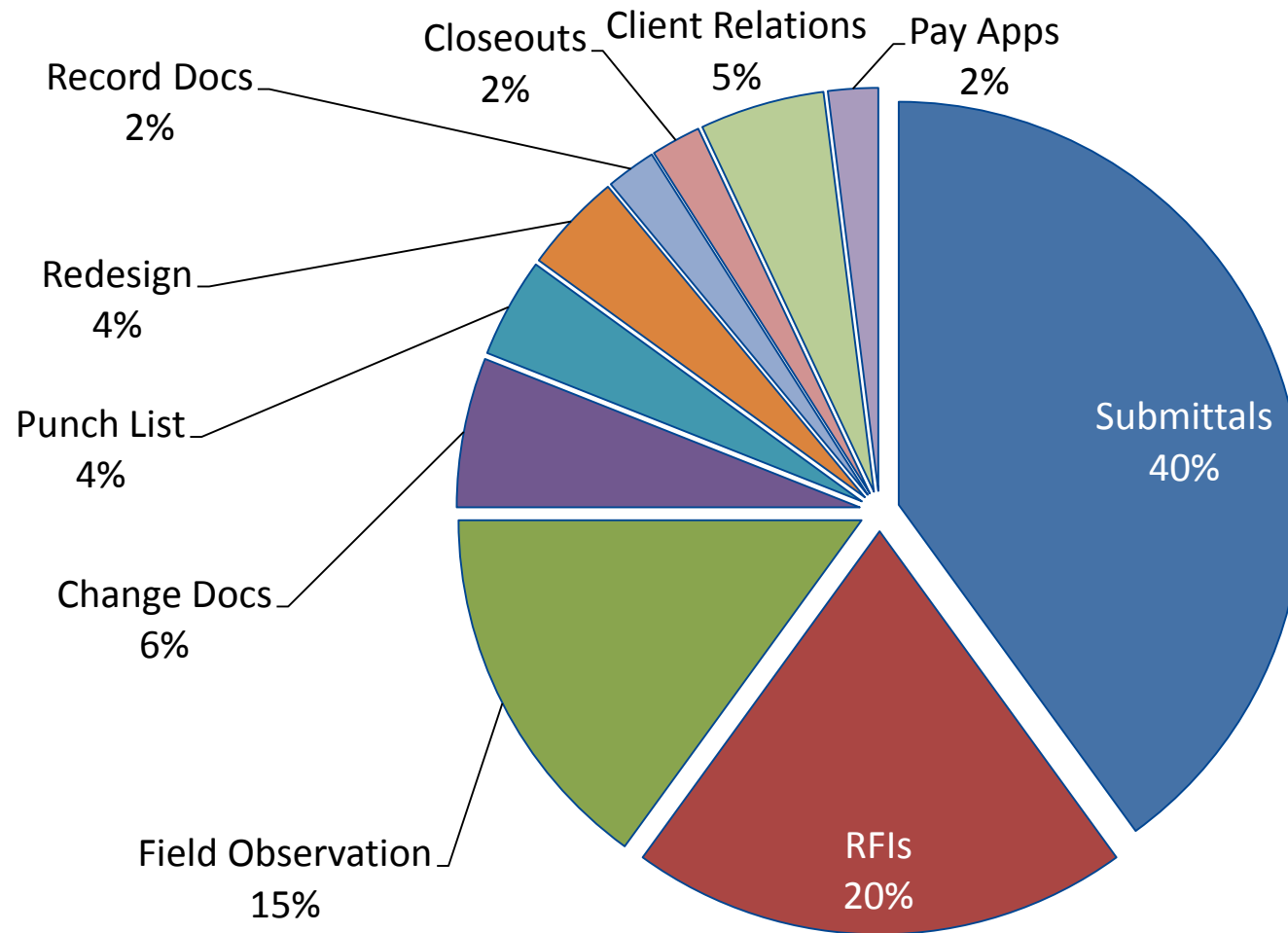
1. Be better able to create a more appropriate budget for Contract Administration phase services.
2. Learn what impacts and risks affect the CA phase from the different forms of A/E/C project delivery.
3. Find out how to more effectively deal with low-bid contractors, and be more aware of some of the biggest challenges that will likely need to be addressed to achieve success for the entire team.
4. Be able to employ specific strategies and processes to deal with the biggest time-wasters and fee-consumers in CA.



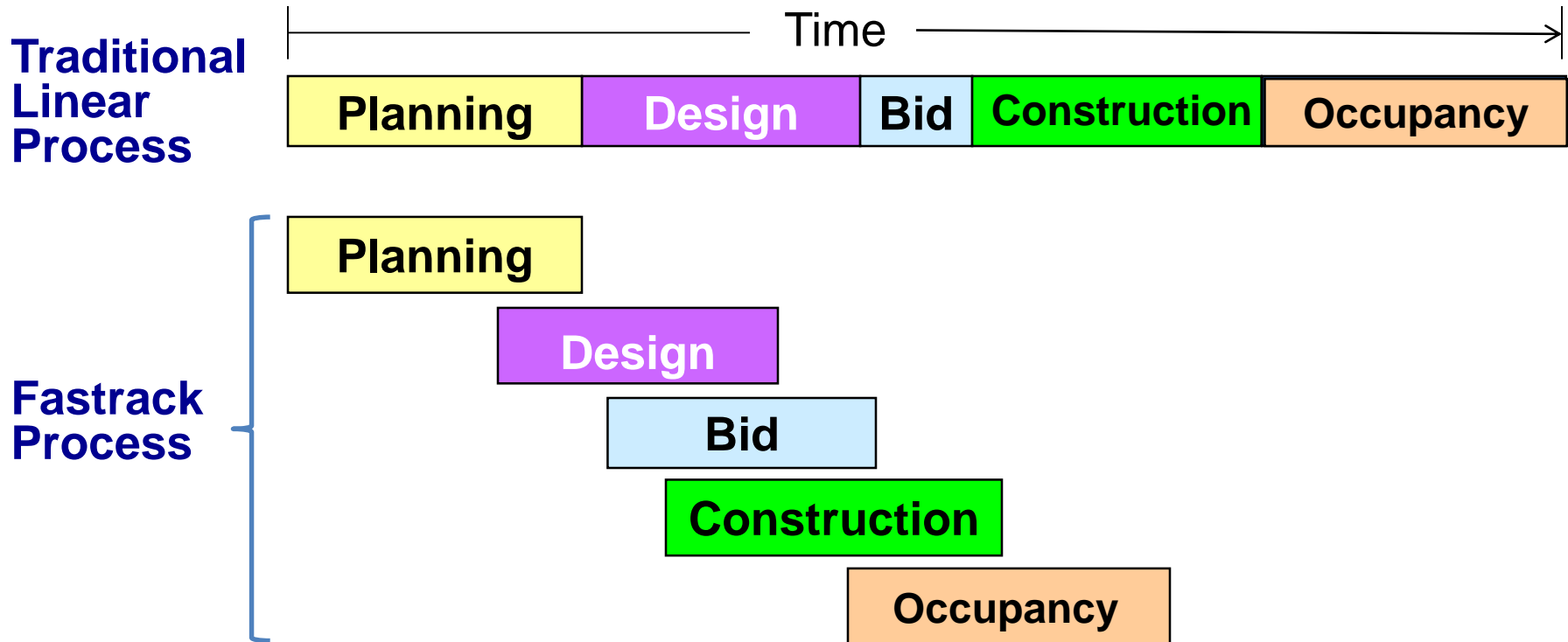
Do You Ever Find Yourself in Trouble in the CA Phase?

- Not enough time
- Not enough \$\$
- Defending the quality of your documents
- Dealing with constructor challenges
- Managing client expectations

A guideline for budgeting CA services



What happens when the client wants to accelerate construction?



Some Tips

1. Analyze rework risks and apply appropriate contingency
2. Consider the word "existing" to be flexibly defined
3. Negotiate a bonus for accelerated completion

Fast track and schedule compression



Fast track – estimated 40% of projects

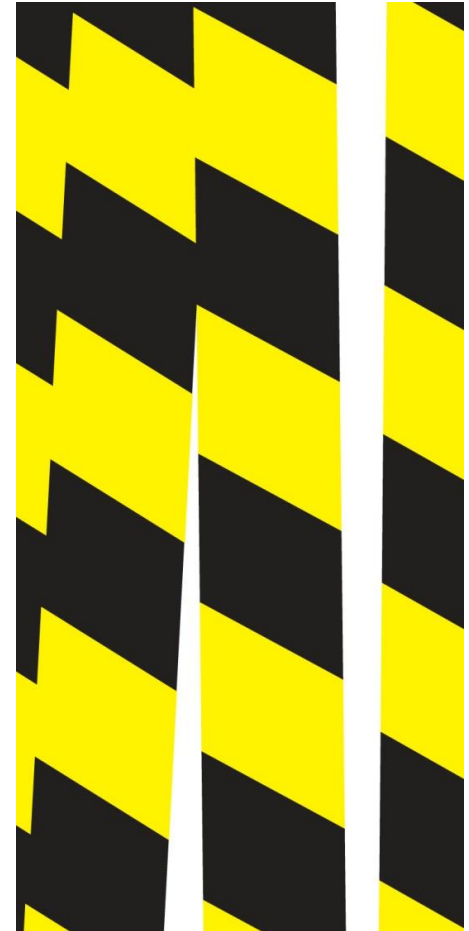
- Design decisions out of sequence
- CDs prepared before design complete

Problems

- Greater chance of errors and potential for delay
- More change orders to handle coordination issues not addressed in bid packages
- More of your time

Solutions

- Managing client expectations up front
- Contractual modifications
- Capture your time – design contingency and additional services



Contractual modifications

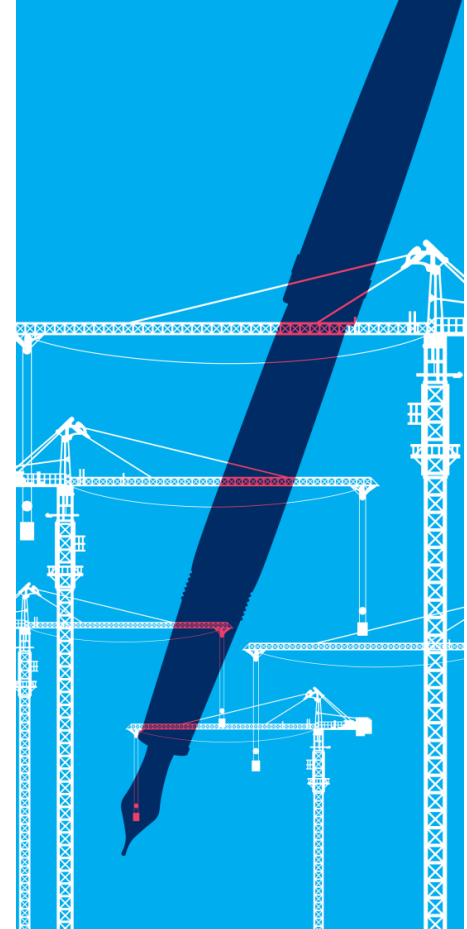


Address risks of fast track in the contract

- “In consideration of the benefits to the Client of employing the fast track process (in which some of the Consultant's design services overlap the construction work and are out of sequence with the traditional project delivery method), and in recognition of the inherent risks of fast tracking to the Consultant...”

Clearly define changed conditions extending schedule or increasing the cost

- Mechanisms to manage expectations and *capture your time*
- The contractor can be your friend



Design contingency

Consider additional design contingencies

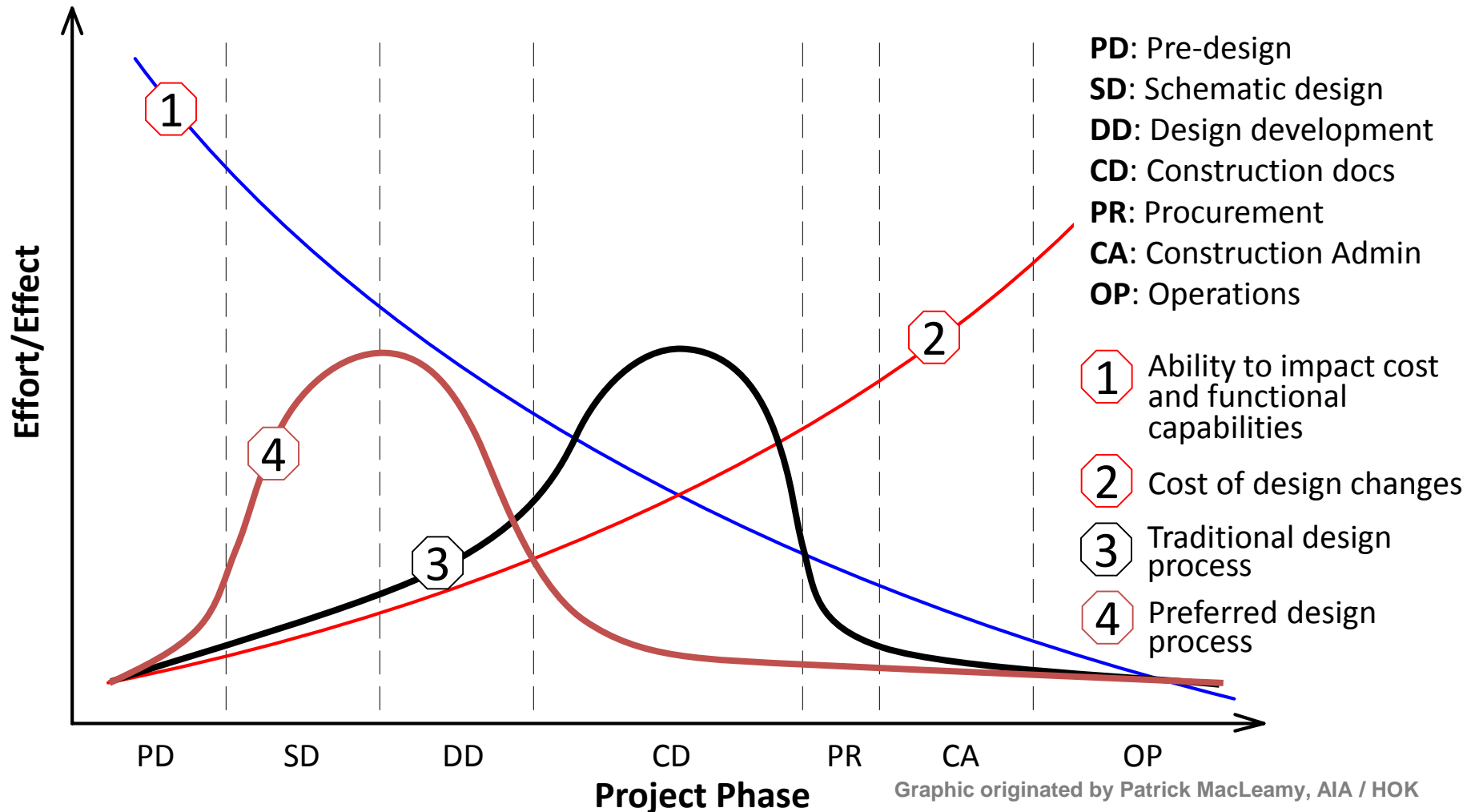
- Set the amount based on
 - Delivery model; e.g., fast track
 - Low bid contractor
 - Complexity of project
 - Client expectations re: negligible errors and omissions = no set of plans is perfect

Establish procedures

- Early warning procedures – QA/QC
- Prompt notification requirements for client and contractor
- ADR provisions in contract
- Determine how and when contingency used – add services



Owners & Contractors want to move the curve forward



Does IPD offer some hope?

PSMJ | Resources, Inc.®

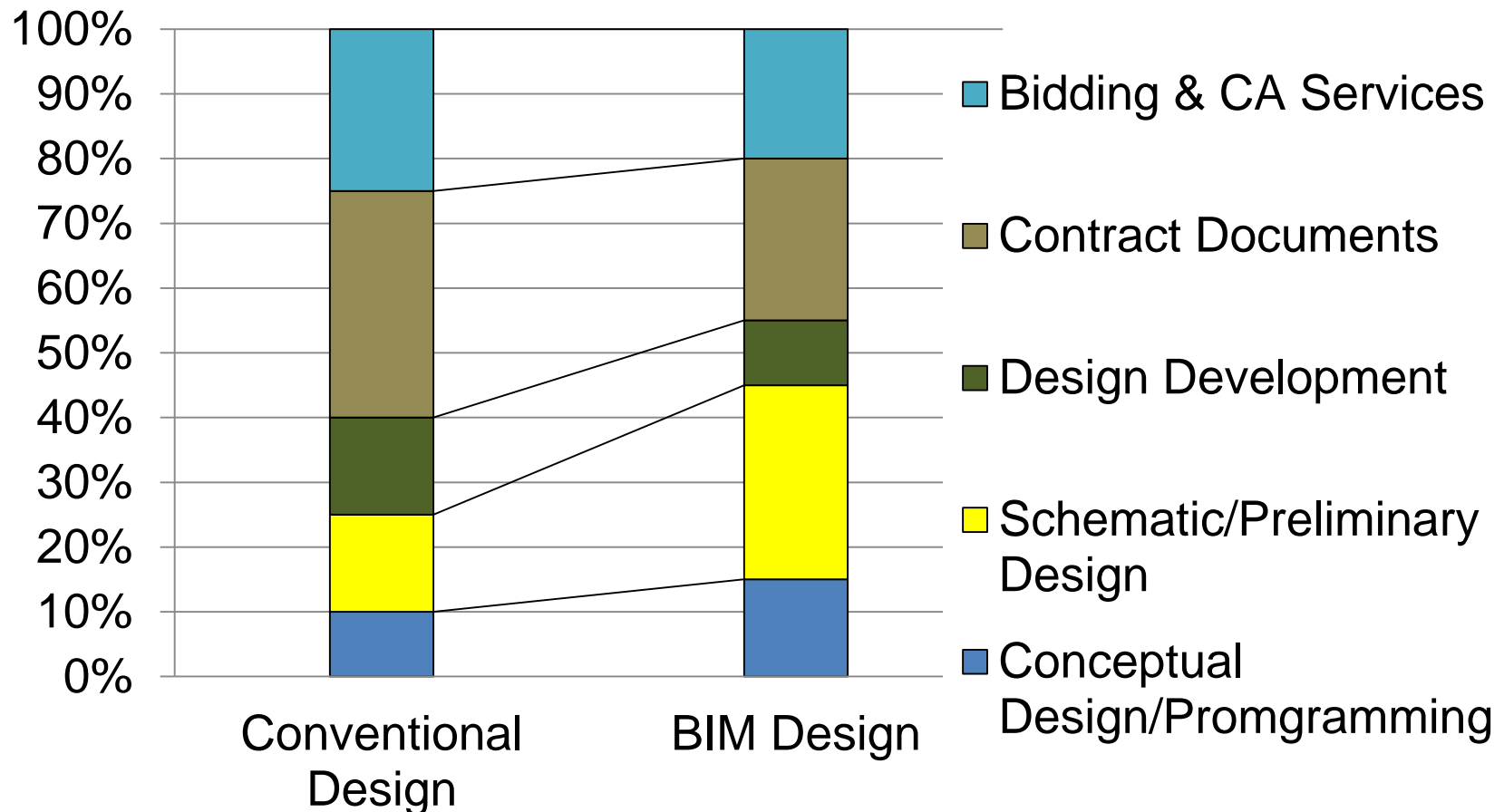
(IPD = Integrated Project Delivery)

- Earlier team-building
- Detailed goals tied to performance incentives
- Focused responsibility and accountability
- More knowledgeable project delivery team
- Mutual respect and trust all members of the project team
- Shared risk and rewards



Percent of effort also varies through the CA phase

PSMJ | Resources, Inc.®



When using BIM, front-end load your % complete milestones

Discipline	Concept Design	SDs (30% Submittal)	DDs (60% Submittal)	CDs (90% Submittal)
Civil	Conv. = 10% BIM = 20%	Conv. = 60% BIM = 60%	Conv. = 90% BIM = 90%	Conv. = 95% BIM = 95%
Structural	Conv. = 5% BIM = 15%	Conv. = 30% BIM = 50%	Conv. = 60% BIM = 80%	Conv. = 90% BIM = 95%
Architectural	Conv. = 25% BIM = 25%	Conv. = 35% BIM = 45%	Conv. = 65% BIM = 75%	Conv. = 95% BIM = 95%
Mechanical/ Plumbing	Conv. = 5% BIM = 10%	Conv. = 15% BIM = 25%	Conv. = 50% BIM = 65%	Conv. = 85% BIM = 95%
Electrical/FP/ Telecom	Conv. = 5% BIM = 5%	Conv. = 5% BIM = 10%	Conv. = 20% BIM = 50%	Conv. = 80% BIM = 90%

How do you deal with low-bid contractors?

PSMJ | Resources, Inc.®



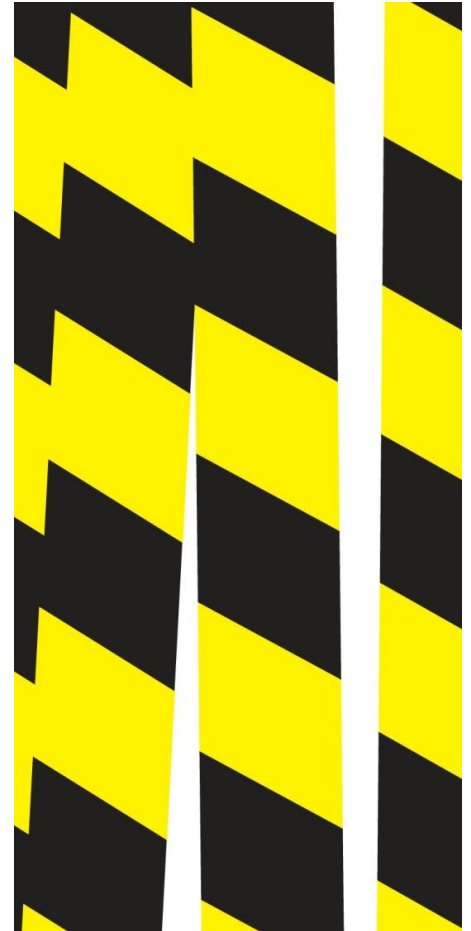
Recognize the warning signs



Recipe for claims

- Public projects require low bid by law
 - How to deal with a bid that is “way off”
- Contractor reputation for underbidding projects and abuse of RFIs
- Result in change orders due to “design errors”
- A/E not on site enough to defend itself
 - Contractor controls the narrative

CA is also a tool to manage your own risk



Is CA phase more profitable for engineer primes or architects?

PSMJ | Resources, Inc.®

Why is this guy smiling?



And this guy isn't?



Benefits of on-site construction observation

- Faster turnaround of shop drawings and RFIs
- Reduced costs for office CA work
- Rapport with contractor
- Face time with owner during site visits



Importance of controlling the narrative



Lack of communication is #1 non-technical risk driver

Stay in front of the message / control the narrative with the owner

Most claims manifest during CA

Catching contractor mistakes early benefits:

- Schedule
- Cost
- Your loss history
 - Many types of delays are not covered by a contractor's CGL policy
 - Bonds can be very punitive and will face contractor resistance

Client needs to be convinced of the benefit of spending “extra” money on CA



Convincing Owners to Include CA



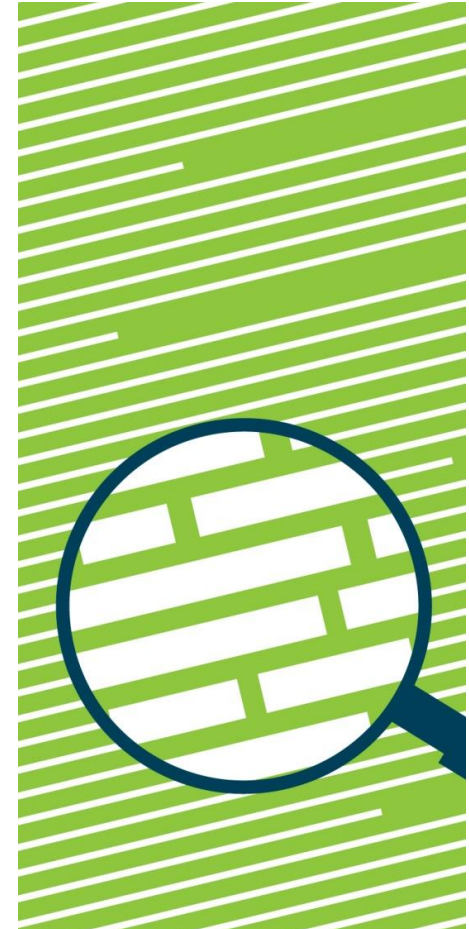
- Use standard professional association agreements
- Provide cost / benefit analysis
- Underscore that such services can help:
 - Minimize delays and mistakes
 - Preserve the integrity of the design
 - Lead to more efficient project schedule and successful completion
 - Compared to the overall construction cost, CA is minor



Mind your contracts



- Your contract should manage client expectations and keep you within coverage
 - Good language:
 - regular visits at appropriate stages of construction in order to observe the progress of the work
 - to determine if the work is proceeding in accordance with the Contract Documents and the general design intent
 - Disclaim:
 - Warranties or guarantees that you are inspecting the construction to ensure that the project is built in strict conformance with the Contract Documents
 - Responsibility for supervision of the contractor or control of construction means and methods
 - Safety
 - Do not overstep your bounds, waive contract terms and increase liability



How do you deal with these common **PSMJ** | Resources, Inc.® problems during CA?

- Contractor delays in the field cause you to go over budget on CA services
- The contractor constantly criticizes your design to the owner
- You keep blowing your CA budgets for shop drawing reviews and RFIs
- Other CA problems???



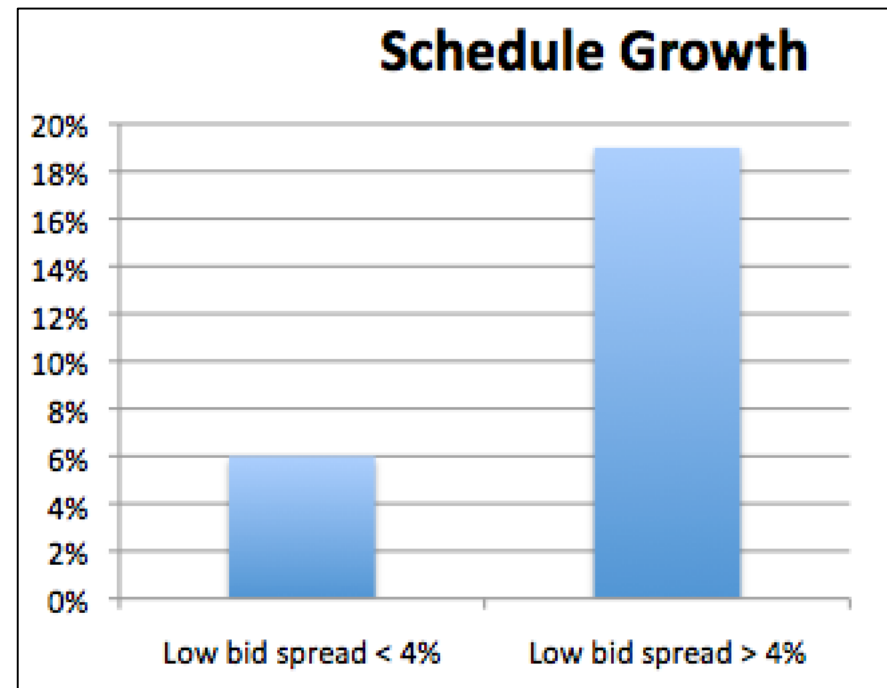
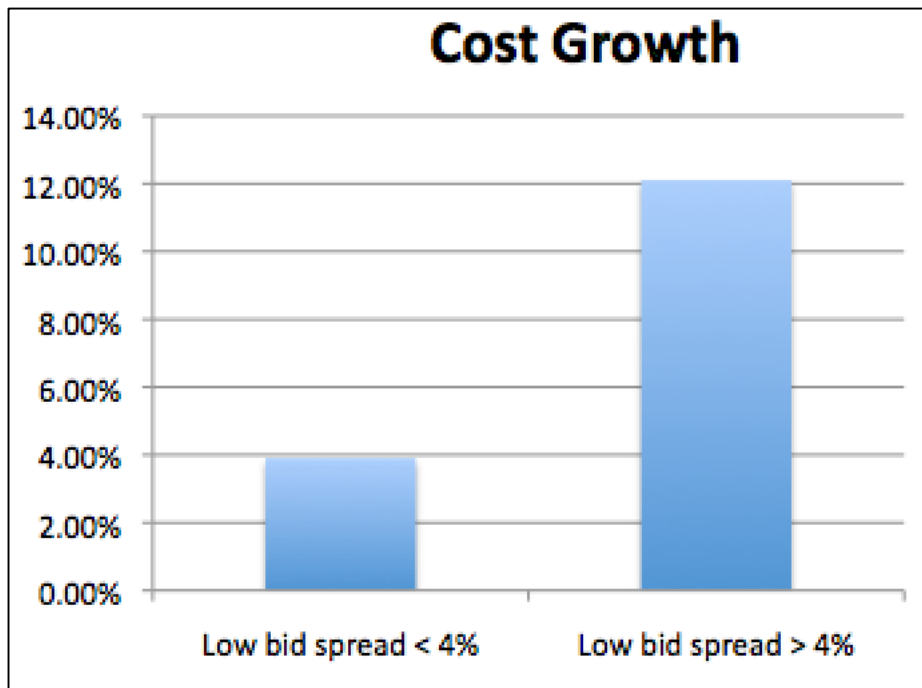
Effective contract administration

- Meetings: If possible, chair all progress and site meetings, prepare agendas and circulate minutes
- Unless the contractor has done it, prepare a progress schedule with milestones
- Get contractor's agreement to the construction schedule or revise until you can get signoff
- Get admin help for all routine logging, filing and similar duties (This is not an overhead cost.)



If the lowest 2 bids are spread $>4\%$... **PSMJ** | Resources, Inc.®

Contractor may be "buying the job" or made a bidding error.
Warn the client!



Based on research by Garald Oberlender, PE, PhD, Oklahoma State University, on 106 public and private projects; 1989.

Bid invitation strategies

1. Package bid structure to **ensure** that anticipated bids are less than client's budget
2. Use only add (never deduct) alternatives
3. Client can select from any combination of alternatives, in any order
4. Require bidders to submit a schedule of subcontractors and their fees
5. Require submission of a list of any known items that would result in an RFI
6. Bid **all** weather delay on a unit basis (no allowance)



Successful contract negotiation

- Check all exclusions against other bids; where possible, agree pricing on exclusions; bring them into the contract
- Check all subcontractor bids against other bidders to reduce/eliminate job shopping
- Resolve list of potential RFI items prior to a final bid – if it increases significantly, invite other low bidders to adjust their prices and rebid



Most forms of contracts impose requirements on designers to respond to contractual requests within a fixed time period

Failure to comply opens the door to claims for delay and consequential damages, for which the client will blame you – and rightly so

Prepare and maintain a list of all such time-sensitive issues and note the deadline for responding in the Submissions Log

Do you need somebody in the trailer during the construction phase?

PSMJ | Resources, Inc.®

If you're not on site every day...

- You have no control over how your design is implemented
- You have high liability for changes made during construction

Your person in the field can...

- Turn around RFIs and shop drawings much faster (and with less effort from your office staff)
- Establish a rapport with the contractor's PM



Do contractors submit too many RFIs?

There are 3 types of RFIs:

Legitimate: Requests for clarification where drawings are inconsistent, unclear or where the plans and specs contradict each other.

Nuisance: Contractor doesn't want to read the drawings, so asks multiple questions without researching the documents.

Malicious: Used as weapons to create delay claims - creating so many RFIs that you can't respond in a timely manner



Controlling RFIs

You need contract language:

- To reduce or prevent nuisance and malicious RFIs
- To stop ambit claims for delay and cost increase
- To recover cost of processing unnecessary RFIs

Learning from RFI management:

- Analyze Legitimate RFIs to improve QC
- Analyze Unnecessary RFIs to improve risk management and qualify contractors



Risk management tips for dealing with RFIs



Involvement at the contract negotiation stage

- Low bid with focus on quality
- Does a track record for litigation matter?

Increase your game

- Better communication
- Focus on quality
- Respond in a timely manner – no matter what

Manage client expectations: Define an RFI

- An RFI should be issued only when information is either missing from the CDs or is ambiguous
- Bogus RFI = add service or contractual penalty for contractor

Contractor must use due diligence in trying to find the answer

Sample RFI contract language



- “...if the information requested by the Contractor is apparent from field observations, is contained in the Contract Documents or is reasonably inferable from them, the Contractor shall be responsible to the Client for all reasonable costs charged by the Consultant to the Client for the Additional Services required to provide such information.”
- Need buy in from the Client
- Can you charge an add service in your contract with the client?
- Note: a valid RFI is not a negligent error or omission
 - Do not admit liability in characterizing RFIs!
 - “CO approved – valid design error”

Guidelines for substitutions



Educate client about the process

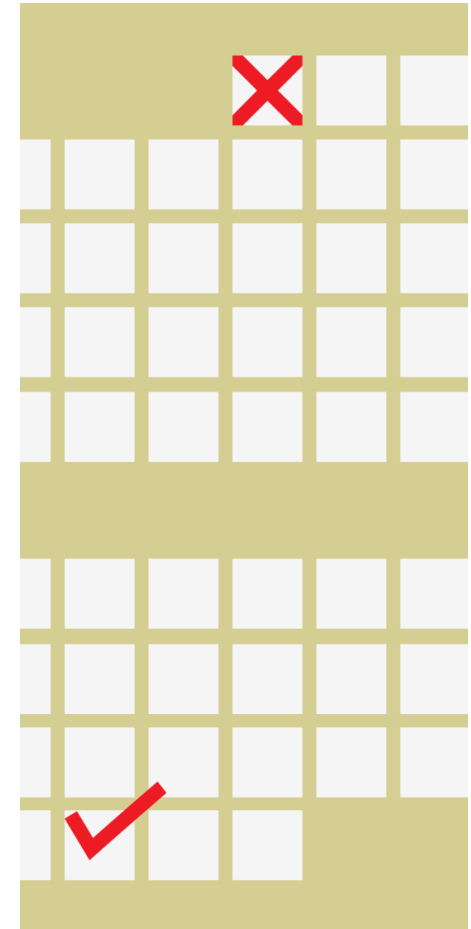
- Savings in one place may cost more in another
- Potential for inferior / untested products

Substitutions to consider

- Extended delivery time will impact critical path
- Item no longer manufactured
- Substitution offers significant savings without a change in functionality or quality

How do you bill for this?

- Check your contract
 - Additional services
 - Additional time



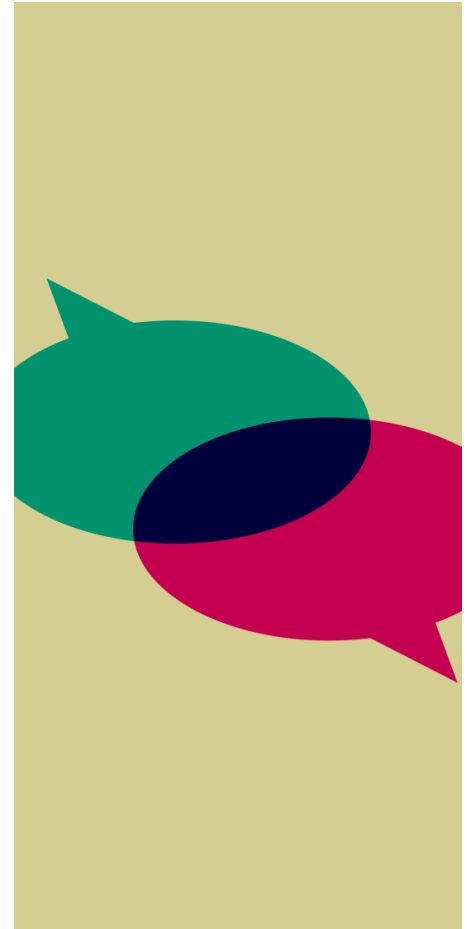
Substitution Approval Request Form



Have the contractor identify the following:

- Scope of substitution
- Specification references
- Drawing references
- Reasons for the proposed substitution
- Savings to the owner
- Impact on project schedule
- Impact on guarantees and warranties
- Coordination required with adjacent materials and related systems
- Deviations from specified requirements

This will force the contractor to analyze the full impact and take responsibility



Shop Drawing Review



- Shop drawing review is critical
- Set forth procedures for review
 - Don't accept from subcontractors
 - Don't review for completeness of details, dimensions, means and methods, etc.
 - Require review and approval by contractor first
 - Allow time to review
 - Develop internal quality control procedures; e.g., second set of eyes
- Assign to experienced staff – don't cut corners
- Shop drawing stamp – limit your review and stick to it
- Claim example: Inexperienced architect who stamped “approved” when intended for the mechanical engineer

Recognizing the warning signs and resolving disputes



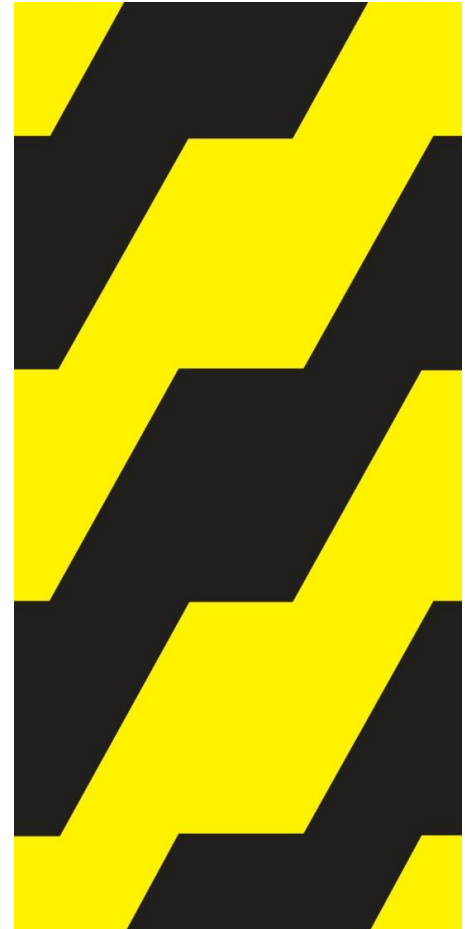
Communication breakdowns

- Fees not being paid
- Attitude or behavior change
- Failure to follow agreed-upon procedures
- Change of key personnel by the contractor
- Abuse of the RFI process

Providing CA services will help you see these issues early, and get in front of them

Be mindful of the contractor's coverage

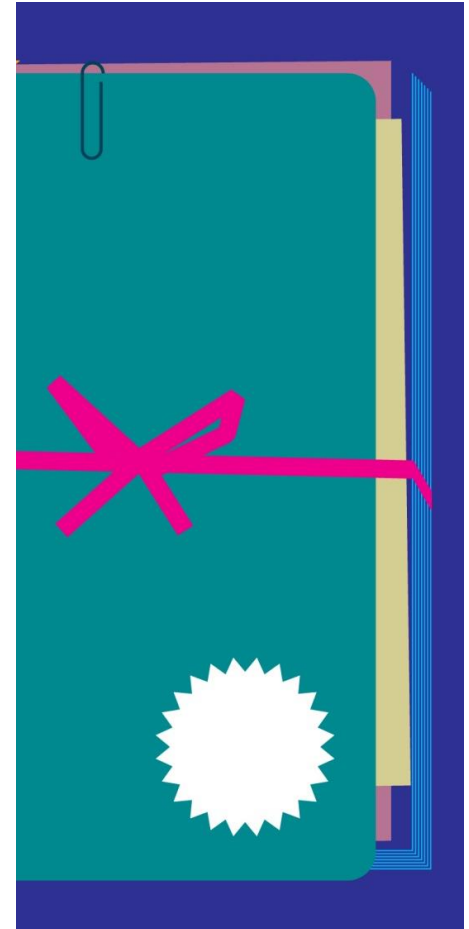
- CGL covers consequential property damage
- Compare to delay claims



What to do if a problem arises



- Make a commitment to alternative dispute resolution
- Create a protocol to escalate issues
- Gather and document all facts relevant to the problem (Project Manager responsibility)
- Do not assume fault



Even if you did make a mistake



There are two sides to every story.

Claim example

- “We are embarrassed by our design errors”
- “We don’t have enough qualified engineers to staff this project”
- “We need to increase the value of our work scope variances as much as possible without getting caught”

Q&A

Get More.

XL Catlin's Contract eGuide for Design Professionals



Test drive our ***Contract eGuide***—
copy/paste recommended contract
language directly into your documents.

xlgroup.com/dp/eGuide

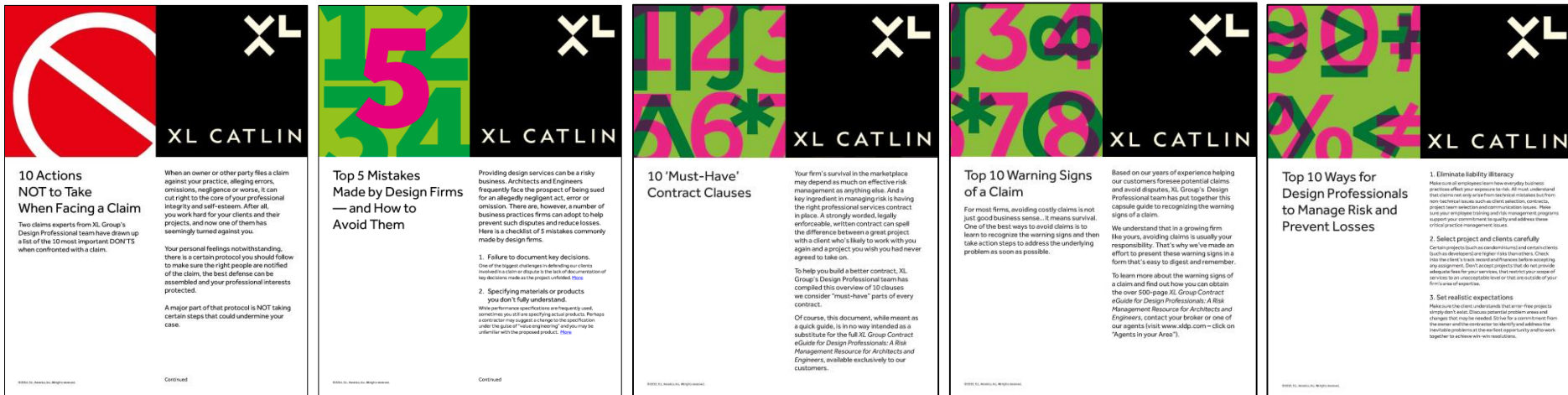


Learn More.

Visit our Loss Prevention Library



Browse through 35 topics!
xlgroup.com/dp/library



Download them all!



December 3-4, 2015 San Francisco, CA

COME FACE-TO-FACE WITH THE FUTURE OF THE A/E/C BUSINESS!

PSMJ's A/E/C Industry Summit brings together some of the brightest minds and the most successful firms in our industry to share experiences, to examine where future opportunities lie, and to articulate a clear picture what sustainable growth looks like.

SPECIAL OFFER FOR WEBINAR ATTENDEES

We will be extending the most recent registration fee of \$1600 until **COB Friday, October 16 (SAVE \$300!)**

VIP code EXTEND1600

Please click [here](#) for more information, call (800) 537-PSMJ or e-mail education@psmj.com to register.

Note: This can't be applied to previously registered attendees.



- **Individual Certificate:** E-mailed immediately after the webinar
- **2+ attendees watching the webinar together:** E-mail the following to education@psmj.com so we can create a custom certificate for you.
 1. Name
 2. Job title
 3. E-mail address



- **1.5 LU Hours-** E-mail your AIA number to education@psmj.com
- **1.5 PDHs-** Submit your certificate to the appropriate board.
- Not all states and license boards accept these types of credits.

Questions or Concerns?

Contact: Olivia Roma

(800) 537- PSMJ (7765)

education@psmj.com





- **Available** by Friday, October 2.
- **Free Credits:** Take and pass a brief quiz after the webinar recording to earn 1.5 LU Hours or 1.5 PDHs.
- **How to Access the Webinar Recording:**
 1. Register to become a free or paid PSMJ Member www.psmj.co/
 2. Go to xlgroup.com/dp/OnDemand.

Questions or Concerns?

Contact: Olivia Roma

(800) 537- PSMJ (7765)

education@psmj.com



Q&A

Questions?

PSMJ | Resources, Inc.®



Questions about the content:

Chris Martersteck, PSMJ Resources, Inc.

Phone: (312) 925-3191

E-mail: cmartersteck@psmj.com

LinkedIn: www.linkedin.com/in/christophermartersteck

Brett Stewart, XL Catlin

Phone: (925) 658-1344

E-mail: Brett.stewart@xlcatlin.com

Questions about the credits, certificates, webinar recording, etc.:

Olivia Roma, PSMJ Resources, Inc.

Phone: (800) 537-PSMJ (7765)

E-mail: education@psmj.com

Thank you!

Legal Disclaimer

US



- *In the US, the insurance companies of XL Group plc are: Catlin Indemnity Company, Catlin Insurance Company, Inc., Catlin Specialty Insurance Company, Greenwich Insurance Company, Indian Harbor Insurance Company, XL Insurance America, Inc., XL Insurance Company of New York, Inc., and XL Specialty Insurance Company. Not all of the insurers do business in all jurisdictions nor is coverage available in all jurisdictions.*
- *This presentation is intended for informational purposes only and does not constitute legal advice. For legal advice, seek the services of a competent attorney.*
- *Any descriptions of insurance provisions are general overviews only. THE INSURANCE POLICIES, NOT THIS PRESENTATION, FORM THE CONTRACT BETWEEN THE INSURED AND THE INSURANCE COMPANY. Insurance coverage in any particular case will depend upon the type of policy in effect, the terms, conditions and exclusions in any such policy, and the facts of each unique situation. No representation is made that any specific insurance coverage would apply in the circumstances outlined herein. Please refer to the individual policy forms for specific coverage details. All coverages are subject to individual underwriting judgments and to state legal requirements.*
- *XL Catlin is the global brand used by XL Group plc's insurance subsidiaries.*

XL and **MAKE YOUR WORLD GO** are trademarks of XL Group plc companies

This concludes The American Institute of Architects Continuing Education Systems Course

PSMJ Resources, Inc.

Olivia Roma, Meetings Manager

(800) 537- PSMJ (7765)

education@psmj.com

