

## A BRIEF HISTORY OF CONSTRUCTION CONTRACTING: PROBLEMS AND REACTIONS--THE CONTEXT

Construction management processes in the residential construction industry are adaptations of processes that have been drawn from the commercial, industrial and civil construction industry. Typically those processes have not been well applied, as a reduction in scale is believed not to require the same organizational structure.

Reduction in project scale between commercial and residential construction makes projects more manageable with fewer staff. All components of effective construction management, however, are still required. There is, therefore, effectively no difference between commercial and residential construction from a management perspective.

Problems that existed in the commercial industry gave rise to reflection, study, and ultimately, access to higher education in construction management which has positively transformed the management of construction in the United States over the past 15 years. Unfortunately, the residential industry has been slow to adopt this structure.

The most common form of contractual relationship between Owner and General Contractor has been a fixed price for a defined scope of work. General contractors were normally chosen by submitting the lowest bid. Although this form of contractor selection and contract type still exist in the commercial industry, new ways of selecting contractors and new contract types have gained popularity over the years as a reaction to many problems that exist with the former.

The Idea behind selecting the lowest contractor bid for a fixed price is that the Owner gets the project completed for the lowest possible cost. This is rarely the result. If a contractor is required to submit the lowest bid to be awarded the project, he will do so and try to qualify the number with language that will in turn allow a submission of change orders for additional work. The Contractor is relying on those change orders to make money on the project. The process of negotiating change orders during the construction process increases the cost of the project far beyond the face value of the change order itself, by extending the construction schedule, disrupting flow of operations and ultimately extending the life of the construction loan. Under these circumstances, morale goes down on the jobsite, quality decreases and causes the lifetime maintenance cost of the building to increase. Too often this scenario ends up in the courtroom where real time, money, and relationships are lost.

An adversarial relationship has been created between Owner and Contractor from the very beginning through a selection and contractual process that reflects a common misconception that it is advantageous for Owners to spend as little

money as possible on the front-end of their projects.

In reaction to these problems smart Owners have learned to spend more money during the design (pre-construction) process by involving a Contractor early in the design process.

This can be achieved by using a separate pre-construction contract that is not tied to being awarded a construction contract. Under this contract, an experienced construction manager can help influence the design to help make the details more buildable and cost effective. This process is called "Value Engineering". Several preliminary cost estimates can be created during this process, and the design can be adapted to the owner's budget.

As a result, the contractor becomes familiar with the project, a relationship of trust is created between owner and contractor, and the construction contract is primed for success. Other types of negotiated contracts, of which there are many, can then be used for the construction process that allow for transparency and cooperation.

## OWNER'S REPRESENTATION

On large commercial, industrial and civil construction projects, owners, who are normally businesses or municipalities, typically hire "Owner's Representatives" to interface and negotiate on their behalf during the construction process.

This entity is contracted directly with the Owner for a fee and does not hold contracts with other parties involved in the construction process. The Owner is contracted additionally with Architects, Engineers and a General Contractor. The General Contractor in turn holds all other contracts with Subcontractors and suppliers.

In the residential industry (excluding large apartment buildings or condos) owners are typically left to deal directly with lenders, architects and contractors.

Homeowners building a new house or remodeling an existing one often do not have the knowledge and experience to participate wisely with architects and contractors.

They are often misled by the design whims of architects and the indifference of contractors.

There are countless stories of residential construction projects gone bad and the image of the industry, particularly General Contracting, has suffered as a result.

The residential construction industry would do well by adopting the methods and processes passed down from the commercial industry and a direct argument can

be made that owner's representation in the residential industry is worth while.

## PROJECT MANAGEMENT AND OWNER'S REPRESENTATION FOR AN ADU OR RESIDENTIAL INCREASE-IN-DENSITY SOLUTION

The "Accessory Dwelling Unit" is the smallest scale residential construction project that exists. To apply all of the previously stated systems and players is surely overkill for a building of this scale and simplicity. However small, it will still need to be managed effectively, and the process does not change.

Proposed here is a contractual system that will perform well for an ADU, or other small density solution.

Because the scope of work of a construction project of this size is limited, and because the building is relatively simple, a qualified Owner's Representative (OR) can help the owner to take over liability for the project and thereby sidestep the typical general contractor's role. The OR works for a fixed rate, for a defined period of time (his fee is not tied to project cost), so it is in his interest to work transparently and to drive the project costs down while developing the best possible product for the owner.

Use the Owner/Builder system wherein the homeowner plays the roll of general contractor. Most lenders will approve as long as the owner hires a qualified representative. The OR performs all management functions of the project, while the Owner contracts directly with Subcontractors and suppliers. Since the OR knows exactly how much money he will be making, he can do whatever it takes to insure the success of the project and control cost. In this scenario, the Owner theoretically takes on more risk; the experience of the construction manager, however, mitigates the owners risk significantly and concurrently eliminates a large margin of profit made by the General Contractor.

Many large residential construction projects have worked very well this way and the ADU is a perfect candidate for this framework