

# Construction

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# Recession Reduces Impact of Construction Disputes

**P**roving every cloud has a silver lining, the recent economic downturn has helped contractors, owners and construction managers improve management practices to reduce construction disputes and their impact on the bottom line. Essentially, increased competition for construction dollars forced improvements in project management, resulting in a substantial decrease in claims and disputes.

A recent study by consulting firm EC Harris determined U.S. construction claims that reached litigation (arbitration included) fell from 2010 to 2011, with the average value of disputes decreasing from \$64.5 million to \$10.5 million. This shift in the number and value of disputes and claims is due to economic, market and technical changes.

First, less construction activity means fewer projects on which disputes can arise. Second, the paucity of projects means more competition and lower bids. These factors could have led to more claims as contractors under-bid work. Instead, the industry emphasized preventing and resolving disputes before they reach litigation, saving a significant amount of money and time.

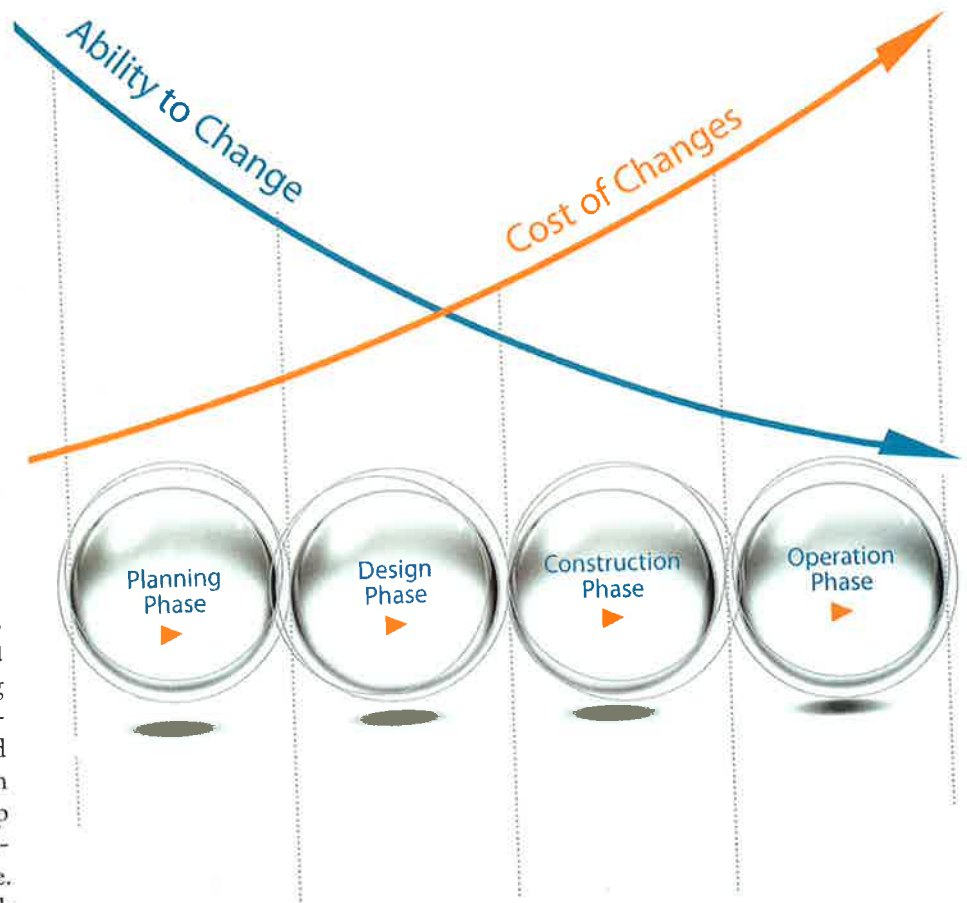
Following are eight ways the changes to project management—and resulting claims—have been manifested in the construction industry.

**1. Alternative project delivery methods.** While traditional design-bid-build is still the most common contracting system, design-build, fast-track construction, lean construction, integrated project delivery, guaranteed maximum price and public-private partnership delivery methods offer distinct advantages—and the industry is taking notice. These systems alter the traditional risk

allocation between the parties, usually making eventual total cost and delivery time more predictable.

**2. Integrating risk assessment.** Reviewing procedures and planned work methods helps identify potential risk areas and how to eliminate or control them, who is best prepared to assume the risk and ways to mitigate the risk if it arises. Experts in the field armed with software can analyze schedule and cost risks and produce a clearer picture of potential dangers before work begins.

**3. Constructability reviews.** The increased use of constructability reviews assures the design can be built economically and in alignment with the design intent. Carefully reviewing design documents at various stages of development and conducting value engineering studies improve the cost-effectiveness of the design. These review comments assist designers in developing realistic projects. Additionally, the expanding use of building information modeling (BIM) by designers and contractors



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reduces coordination conflicts before a constructability review is performed. Simply put, when documents such as contracts, designs, plans, specifications and schedules are coordinated, fewer opportunities exist for conflicts in the field, guesses in the bids and requests for more money.

- 4. Claim prevention policies.** Including claim prevention policies in contracts and management procedures—such as prompt schedule and claims reviews, active change order processing and active change negotiation—can reduce the impact of a cost or time risk event. Usually, the construction manager, owner and contractor meet informally to resolve issues before they become full-blown disputes.
- 5. Better project management.** Quick identification and resolution of issues is essential to eliminating decision-making bottlenecks and controlling costs. Prompt decisions on owner issues and quick resolution of RFIs mean fewer unknowns for the contractor. Owners are now more aware of their responsibility to make timely decisions.
- 6. Critical path method scheduling.** Contractors are planning and scheduling work with greater care, monitoring activity performance to identify issues early and taking corrective steps as soon as possible to prevent delays or other impacts. Initial (baseline) schedules, particularly when resource loaded, usually indicate the contractor has carefully considered its work plan and has the financial, material and manpower resources to adhere to the plan. Regular schedule updates allow the contractor and owner to better understand the evolution of the project plan and adapt to the inevitable events that were not included in the schedule.
- 7. Technology.** Documenting events on a construction project is always important, and new hardware and software assure it is collected more completely and quickly. In addition to CPM schedules, integrated project management software permits contractors and owners to automate many functions, keep track of events, document occurrences and respond to changes in scope. The widespread use of BIM better assures changes are integrated into the

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design, thus reducing conflicts. Coupled with the Internet, these software programs speed submittal submission and approval, RFI resolution and change order review. Continuous video and photography assures events onsite are captured for review and analysis. Tablet computers eliminate double entry and speed information transmission in the field, and email access allows for faster management communication.

- 8. Real-time dispute resolution.** When potential disputes arise, prompt change order processing and approval ensure lower costs. Many owners and contractors recognize compromising and paying a few dollars during the job to resolve a potential dispute is cheaper than winning at litigation several years later. Dispute Review Boards and expert neutrals provide an impartial and potentially quick resolution to disputes that cannot be resolved at the management level. Better documentation and regular schedule updates make quickly analyzing delay-related disputes easier so they, too, can be resolved amicably.

The financial downturn has compelled owners, construction managers and contractors to use all available tools to lower project costs. Analyzing and identifying potential risks during the planning phases give the whole team more concrete ways to keep projects on track. Though the recession proved to be a harsh teacher, it forced the industry to learn and adopt best practices, demonstrating that making changes actually reduces the likelihood, cost and impact of disputes down the line.

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