

Sustainable Buildings

Managing the Environmental and Project Risks

The design and construction of sustainable buildings that are environmentally responsible and healthy places in which to work, as well as profitable facilities, is a matter of increased interest these days. The U.S. Green Building Council (USGBC) is a voluntary, national nonprofit organization that promotes “Green Design,” defined as design and construction practices that significantly reduce or eliminate the negative impact of buildings on the environment and occupants in five broad areas: (1) sustainable site planning; (2) safeguarding water and water efficiency; (3) energy efficiency and renewable energy; (4) conservation of materials and resources; and (5) indoor environmental quality.

To achieve that goal, the USGBC developed the LEED (Leadership in Energy and Environmental Design) Green Building Rating System,[®] which has gained significant popularity over the past several years and is, perhaps, the most widely accepted method for measuring the sustainability of building projects in the United States.

The number of LEED registered projects for educational, commercial, multi-use and other facilities has increased exponentially over that past several years in both the public and private sectors. The core goals of the USGBC and its LEED rating system are well-defined and, despite its economic critics, there are ample statistics detailing substantial environmental, economic, health-safety, and community benefits to building green. The potential pitfalls and risks associated with Green Building contracts are less clear. One obvious reason for this uncertainty is that Green Building requires the use of innovative systems and equipment having no significant track record for production or installation. Therefore, owners, contractors, designers and vendors alike are far less familiar with these processes and products and their comparatively novel applications. Not surprisingly, this lack of familiarity often leads to an increased risk of problems arising on the project, which may undermine the heart of the planned result.

Because of the gaining popularity of building green, and the increased adoption of the USGBC’s LEED rating system, contractors must become familiar with the system. Indeed, compliance with the LEED standards will be mandatory when they are made part of the construction contract. Failure to comply with the LEED system in that instance will likely result in a claim by the owner for breach of the very essence of the agreement.

As with traditional construction projects, an effective risk management plan for a Green Building project should begin with a thorough review and understanding of the contract documents, which generally include the contract for construction (including any requirements or documents incorporated by reference therein), specifications, general and supplementary conditions, addenda and modifications.

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