

Major Construction Projects

Key Risk and Insurance Strategies

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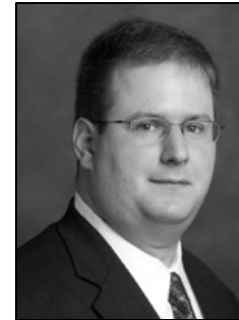
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Insurance in Context: Construction Risk Management

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Insurance in Context

Risk Transfer is Not Risk Management



Charles De Gaulle International Airport, Terminal 2E
May 23, 2004, 05:00 GMT



Insurance in Context

What Insurance Can and Can't Do

- Not all risk is insurable
- There is an interplay between insurable and uninsurable risk
- Regardless of insurance in place, loss avoidance and mitigation are preferable to an insurance settlement
- Insurance can remove barriers to collaboration
- Insurers provide their best terms and conditions to projects where risk is managed



Insurance in Context

Consider/Anticipate all Stakeholders

- Owners
- Equity Investors/Partners
- Lenders
- Engineering, Procurement and Construction (EPC) Contractors
- Engineers
- Trade Contractors
- Insurers
- Original Equipment Manufacturers (OEM's)



Insurance in Context

Construction Risk Management

- Identify/Quantify the risk to all stakeholders
- Determine the most effective methods to **control** and **mitigate** risk
- Assign/Define contractual responsibilities
- Determine the coverage and limits necessary to protect the parties and the work
- Identify which party is in the best position to provide each coverage
- Communicate/Collaborate



Insurance challenges

Market Conditions

Market Capacity – Offshore Projects

- Largest projects exceed market capacity – project values > \$7 billion
- Up to \$3 billion from conventional markets
- Potential additional capacity from Oil Insurance, Ltd. (OIL), captives and international reinsurers
- Delay in Start-up, US Named Windstorm drastically less

Market Capacity – Onshore Projects

- Project Estimated Maximum Loss (EML)
- EML typically does not exceed market capacity
- Up to \$4 billion from conventional markets
- Potential additional capacity from OIL, captives and international reinsurers
- Delay in Start-up, National Catastrophe (Nat Cat) drastically less

Nat Cat Exposures

- Insufficient market capacity for large project EML



Insurance challenges

Issues Affecting Availability

- Duration of project – may be up to 5 + years
- Experience of contractors/EPC
 - New territories – different firms/personnel
 - Quality Assurance/Quality Control (QA/QC) procedures and monitoring thereof
- New technology and scale-up of existing technology
- Lenders' expectations
 - Limits/Deductibles
 - Scope of coverage
 - Non-Vitiation
- Geographic/Geopolitical issues
 - Availability of spares, installation vessels etc.
 - Political instability (e.g. “Arab spring”)



Coverage Issues by Type of Project

Offshore Projects

New WELCAR 2011 form, top issues:

- Old form insured project from start to finish
- New form insures listed activities subject to scheduled values – “declared activities” vs. “project description”
- No longer notion of “innocent assured” – lower tier subs can breach warranty and void coverage for all, including project owner
- Change from a true “All Risks” policy to a “Risks” policy – shifting burden of proof to assured
- Likely to be revised, old form still available BUT WELCAR 2011 demonstrates market direction

Delay in Start-Up

- Extremely expensive, lack of capacity
- “Dual trigger” features

Coverage Issues by Type of Project

Onshore

- Defects Coverage – London Engineering Group (LEG) clauses
- Force Majeure
- Testing – time limitation (number of days) as opposed to following project schedule
- Damage to existing plant





Coverage Issues

Other

- Professional Liability
 - \$100 million or more market capacity (project specific)
 - Standard of care
 - Defense erodes limit
 - LEG coverage
 - Cost
 - Forms (Practice, Project Professional, Owner's Protective Professional Insurance (OPPI), Contractor's Protective Professional Insurance (CPPI))
- Efficacy Insurance
 - 1990's
 - 2011
 - Renewable energy projects
 - First-of-kind technology



Legal Perspectives on Construction Insurance Issues *Part 1*

Josh M. Leavitt, *K&L Gates LLP*





Delivery System and Insurance Choices Should Be Coordinated





Delivery System and Insurance Choices Should be Coordinated

- Design Build and EPC may provide single source and turnkey responsibility, but owners will still want to be sure downstream coverages are adequate.
- Collaborative systems and processes such as Integrated Project Delivery (“IPD”) and even Design Build, enabled by tools such as Building Information Modeling (“BIM”), may minimize errors, but they also blur project roles making insurability of certain risks problematic.
- Use of highly capitalized design builders tends to decrease the need for project-specific policies and increases options to use relatively small but highly specialized designers.



Delivery System and Insurance Choices Should be Coordinated *(continued)*

- Public Private Partnerships may entail substantial and sometimes unrealistic insurance program demands by sponsors and lenders.
- Construction Management involves provision of professional services that requires professional liability coverage.



Key Risk Allocation Provisions: Their Negotiation and Insurability





Guarantees and Turnkey Provisions

- Owners seeking to aggressively pass through all risks must consider the risk premium ramifications.
- Design builders accepting broad risks must remember that not all risks are insurable even with risk adverse, belts- and suspenders-type insurance programs.
- A/E's accepting warranty liability or responsibility above and beyond their standard of care may be accepting uninsured risks.



Guarantees and Turnkey Provisions *(continued)*

- Negotiation points include:
 - Who bears the risk of errors in process designs, performance specifications or other design elements supplied by the owner?
 - Have the engineers providing the process design, performance specifications and detail design all agreed on performance testing and output requirements contained in any warranties?
 - Are limitations of warranties properly expressed?



Indemnities

- Parties must draft around anti-indemnity statutes and still-developing case law.
 - See, for example, the newly enacted Texas anti-indemnity legislation, Texas Insurance Code Section 151.102.
- Contractors/A/E's/Design Builders' acceptance of indemnity risks may or may not be insurable depending on the type of coverage and exclusions.
- Negotiation points include:
 - Who is indemnified?
 - Who is responsible for losses caused by non-parties to the indemnity agreement?
 - Are indemnified claims limited to bodily injury and property damage or do they include economic loss?



Indemnities *(continued)*

- Are there limits on the indemnity's applicability to bad faith claims?
- Do indemnified attorneys' fees include expert fees, testifying and investigation costs and other types of expenses?
- Does the indemnified party retain choice of counsel, claims handling and settlement rights?
- Is indemnity language for environmental, intellectual property and other risks which often appears in separate provisions coordinated with language in the main indemnity provision?



Liability Limitations and Consequential Damage Waivers

- Parties negotiating the allocation of consequential damages risks should be aware of legal definitions of consequential damages.
- Parties negotiating retrofit, upgrade, divided, or adjacent property projects should consider what consequential damages may occur to the base or adjoining plant.
- A/E's should be cognizant of developing case law regarding the unenforceability of extreme liability limitations.
- What consequential damages risks are insurable under CGL, professional liability and builders risk policies?



Liability Limitations and Consequential Damage Waivers *(continued)*

- Negotiation points:
 - Are consequential damages defined? How?
 - When is a mutual consequential damage waiver ever favorable to an owner?
 - Are there alternatives to limitations on waivers, such as limiting consequential damages to the extent of insurance coverage, carve-outs for willful conduct, caps, and non-waivers for subcontractor consequential damages?



Scheduling, Force Majeure and Delay/Disruption Damages Provisions

- Owners and upstream parties seeking to limit delay and disruption claims must draft around case law and statutory limits on enforceability of no-damages-for-delay and similar clauses.
- Contractors/A/E's/Design Builders seeking to preserve the ability to make claims must be wary of terms of art applied by experts and case law to describe delay, efficiency loss, disruption, acceleration, out of sequence, extended home office overhead, extended field supervision, cumulative impact and other types of damages.



Scheduling, Force Majeure and Delay/Disruption Damages Provisions *(continued)*

- All parties must be aware of the inherent contradictions in liquidated damages case law and the legal tests employed by the applicable jurisdiction.
- Parties may want to negotiate coverage for delays and interruptions caused by insurable loss/physical damage/force majeure events at remote locations.



Scheduling, Force Majeure and Delay/Disruption Damages Provisions *(continued)*

- Negotiation points
 - What particular schedules, milestones, and schedule/milestone updates are incorporated into the contract?
 - What notice requirements and other conditions are placed on requests for extensions, are they reasonable and are they consistent with notice requirements in the extra work or changes clauses?
 - Do any liquidated damages or bonuses bear any relation to reality and what are the ramifications if they don't?
 - Does the consequential damages clause negate what was negotiated in the liquidated damages clause?
 - What critical path analysis, cause and effect logic, and documentation are required not only by case law, but by contract, to support claims?



Payment Provisions

- Owners seeking protection from contractors' mechanics lien, interest and attorneys' fees claims must be fully versed in the local requirements of lien statutes and public and private prompt payment acts.
- General Contractors, CM's at risk and A/E's seeking conditional payment rights from subcontractors and subconsultants must be wary of case law and even statutory prohibitions on the enforceability of pay-if-paid clauses.



Payment Provisions *(continued)*

- Negotiation points:
 - Are no-lien contracts prohibited?
 - Does local law allow liens to be removed through bonding over and what security must be posted?
 - Do sworn statements and lien waiver forms comply with local requirements?
 - May prompt payment protections be waived, and what language must be used?
 - What payment withholding rights are allowed?
 - Does the contract require the contractor to work during disputes and thus finance the project?
 - Is any target pricing arrangement realistic and well-defined?



Bonding and Change of Control Issues

- Public or private owners with extreme bonding capacity needs should consult brokers and contractors early regarding market limitations, need for co-sureties, strategies to subdivide projects and joint venture possibilities.
- Contractors contemplating M&A activity should consider in advance ramifications of change in control provisions in bonds and underlying indemnity agreements (as well as in insurance policies and the main contract documents) and take steps to ensure all post-acquisition entities are insured.
- Is default insurance an alternative to bonds and with what limits and deductibles?
- Do bonds offer defect coverage?



Supply Agreements and Material Acquisition

- Owners, contractors and suppliers must appreciate the difference between the approaches of the Uniform Commercial Code (“UCC”) and the Convention on the International Sale of Goods (“CISG”).
- EPC contractors must be wary of prevailing wage or other limitations on overseas supplied fabrication.
- EPC contractors may need to extend builders risk coverage to local fabrication tents, yards, and staging facilities.
- EPC contractors who supply equipment using overseas fabricators may consider marine cargo and builders risk options but must anticipate the stages at which losses may occur (e.g., transit, delay in start-up) and confirm coverage in advance.



Supply Agreements and Material Acquisition

(continued)

- Negotiation points:
 - Are purchase order documents properly conditioned and limited in the event of “battles of the forms”?
 - Are disclaimers of warranties and remedy limitations properly drafted and/or hidden in boilerplate forms?
 - Do dispute resolution and forum selection provisions call for proceedings in unfriendly, risky and far-away places?
 - Are changes allowed for material escalation costs?
 - Who owns materials at the various stages prior to use on project?



Termination and Suspension

- Owners wanting latitude to terminate projects for convenience may want to specifically address suspension rights with separate but coordinated provisions.
- Contractors faced with owner termination for convenience rights must address specific compensation formulas.
- Negotiation points:
 - What is the compensation for termination for convenience? Should it include any element of lost profit?
 - Are de-mobilization, re-mobilization, extended supervision, or overhead recoverable for suspensions?



Changes

- Owners must be aware of case law limitations on ability to enforce clauses requiring changes to be agreed in advance and in writing.
- Contractors should contemporaneously document oral requests for changes and their specific time and material impacts.
- Are cost overruns ever insured risks under project policies, CGL policies or professional liability policies?
- Negotiation points:
 - Are the definitions, procedures, time deadlines and pricing requirements for changes set forth (and are project managers keenly aware of them)?
 - Are conditional payment clauses made applicable to change requests?
 - What rights does the contractor have to stop work or resolve disputes if a change request is denied?



Dispute Resolution Clauses

- Owners will want to minimize the risk of inconsistent awards and judgments by coordinating all downstream dispute resolution clauses and resisting non-joinder provisions.
- Choosing the applicable law, arbitration vs. litigation and the arbitration or litigation forum can have substantial practical effect.
- Subcontractors may benefit from “liquidating” agreements but such agreements have not been tested by extensive case law.
- Do dispute resolution clauses impact insurance underwriting or premiums?



Dispute Resolution Clauses *(continued)*

- Negotiation points:
 - Do arbitration clauses adequately address panel make-up, locale, administering body applicable rules, procedures and expense sharing?
 - Are there prevailing party provisions? Are they mutual? How is “prevailing” defined?



Negotiating Insurance Coverage Provisions





Negotiating Insurance Coverage Provisions

- Counsel, risk managers and brokers (and at the time they are known, insurers) should collaborate early on clause content.
- Negotiation points:
 - General:
 - Have types and limits of coverage been thoroughly reviewed?
 - Does the owner or upstream policy retain approval rights over insurer selection, its ratings or admission?
 - How are deductibles allocated?
 - Who is responsible for claims exceeding policy limits?
 - What proof of insurance is being requested and is it adequate?
 - How are requirements being extended to subcontractors?
 - Will subrogation rights be waived?



Negotiating Insurance Coverage Provisions

(continued)

- Additional Insured Issues:
 - What is the extent of coverage for additional insureds?
 - What protections are accorded additional insureds from cancellation of coverage?
 - Are the current and proper form endorsements or their equivalents being cited?
- Wrap-up Coverage
 - Will handbooks and administration procedures be made contractual?
 - What are the consequences of inadequate wrap-up coverage limits?
 - How are risks and rewards of wrap-up programs shared?
 - What happens if a subcontractor does not qualify?



Negotiating Insurance Coverage Provisions

(continued)


- CGL Coverage
 - Will owners require contractors' policies to be primary and non-contributory to insulate the owner and its program from claims?
 - Is there any language governing coverage for defect claims?
- Professional Liability
 - Does list of the professional services required for the project fit within the definition of "professional services" in the PL policy?
 - Are practice policy limitations (such as other project claims/and eroding limits) so significant that a project policy should be required?
 - What is the retroactive date for coverage and is the extended reporting period adequate?



Negotiating Insurance Coverage Provisions

(continued)

- Builders Risk
 - Is the coverage tailored to the contractor's on-site operations?
 - Who is paying the premium?
 - What risks are covered and is "all risks" language adequate?
- Marine Cargo Insurance:
 - Who is responsible for purchasing?
 - Are there potential coverage gaps to the nature of the project?



Legal Perspectives on Construction Insurance Issues *Part 2*

Daniel G. Rosenberg, K&L Gates LLP





The Basics

- Obtain copies of the policies that cover you or are supposed to cover you
- Make a timely claim
 - As soon as reasonably practicable
 - Notice of a claim does not necessarily mean getting sued
- Put all the carriers on notice
 - Do not decide type of claim too early
 - Defect might be GL or Builders Risk or Professional
- Duty to defend v. duty to indemnify
 - A little bit of duty goes a long way
- Don't accept the first no
 - Some would say to expect it
- Plead to coverage



Project Insurance / Non-traditional Insurance Is Designed to Reduce Litigation

- Less finger pointing
- Disputes over additional insured status and coverage
 - All contractors and subcontractors participate in wrap-up
- Ancillary disputes over scope and validity of contractual indemnification
- Subrogation and disputes between insureds
- Professional liability/general liability
 - EPC systems
 - Availability of sufficient limits



The Right to Independent Counsel

In many states where an insurer's and insured's interests do not fully align

- Independent counsel is mandated

Law:

- *Northern County Mut. Ins. Co. v. Davalos*, 140 S.W. 3d 685 (Tex. 2004)
- *Belanger v. Gabriel Chemicals, Inc.*, 787 So. 2d 559 (La. App. 2001)
- *San Diego Fed Credit Union v. Cumis Ins. Society, Inc.*, 162 Cal. App. 3d 358 (1984)
- *Md. Cas. Co. v. Peppers*, 355 N.E.2d 24 (Ill. 1976)
- *Public Service Mut. Ins. Co. v. Goldfarb*, 425 N.E. 2d 810 (N.Y. 1981)



The Right to Independent Counsel *(continued)*

Examples of conflicts:

- Multiple count complaint, not all counts covered (fraud / intentional acts)
- Multiple types of damages, not all covered
- A potential dispute regarding whether the conduct in question fell within the covered time period
- Plaintiff potentially seeking damages in excess of limits, but demand within limits
- Vicarious liability v. direct liability
- Project policy and a need for cross claims



The Right to Independent Counsel *(continued)*

Why does it matter?

- Counsel that answers to you, not your insurer
- Your business interests
- Resolving a case more quickly with less of your money



The Right to Independent Counsel *(continued)*

What does “independent counsel” mean?

- You control the defense and strategy of the case; the insurer pays for it
- In some states, the case law suggests the insurer has no right even to have input into the case (practically speaking this may not be a good idea)



The Right to Independent Counsel *(continued)*

Rates that Are Reimbursable Vary

- CA – rate the insurer would *ordinarily and customarily* pay to panel counsel [Cal. Civ. Code Section 2860]
- IL – “reasonable” rate, which equals what the market will bear [*Taco Bell Corp. v. Cont’l. Cas. Co.*, 388 F. 3d 1069 (7th Cir. 2004)]
- LA – “reasonable rate” [See *Cunard Line Limited Co. v. Datrex, Inc.* (rejecting an argument that defense counsel’s rates were too high)]
- TX – insured entitled to reasonably incurred costs of independent counsel [*Housing Authority of City of Dallas, TX v. Northland Ins. Co.*, 333 F. Supp. 2d 595 (N.D. Tex.)]
- Watch for “*Cummis*” endorsement



The Right to Independent Counsel *(continued)*

Are there consequences if an insurer fails to identify conflict?

- Yes, later could be estopped from raising coverage defenses
- *Utica Mut. Ins. Co. v. David Agency Ins., Inc.*, 327 F. Supp. 2d 922 (N.D. Ill. 2004)
- Careful with any estoppel argument in Texas



Subcontractor Risk / The Occurrence Issue

- GL coverage & subcontractor workmanship defects
- Standard form GL Policies
 - Written to cover defects
- Insurers often ignore this fact when faced with claims
- Coverage for construction defects is in flux and unfortunately is often a state-by-state determination



Subcontractor Risk / The Occurrence Issue

(continued)

Must be an “occurrence” to trigger general liability coverage

- Occurrence generally defined as “an accident, including continuous or repeated exposure to conditions, which results in bodily injury or property damage neither expected nor intended from the standpoint of the insured”
- On its face would seem to include any property damage



Subcontractor Risk / The Occurrence Issue

(continued)

- Insurers drafted the policy form to offer broad coverage and they market it accordingly
- Completed Operations
 - Subcontractor exception to “your work” exclusion
 - Carriers have taken a narrower view in court and that narrower view has on occasion carried the day



Subcontractor Risk / The Occurrence Issue

(continued)

Significant Variance in Court Interpretation

- IL, OR, PA and an increasingly limited number of other states
 - Allegations of damage only to the building itself are not property damage and not occurrences
 - *E.g., West Bend Mutual Ins. Co. v. The People of the State of Illinois*, 929 N.E.2d 606 (Ill. App. Ct. (1st Dist.) 2010)
- TX, FL, LA, IN, MS and an increasing majority of states
 - Defect in the work can give rise to an occurrence if it damages other parts of the work
 - *Lamar Homes, Inc. v. Mid-Continent Cas. Co.*, 242 S.W. 3d 1 (Tex. 2007)
 - *Sheenan Const. Co., Inc. v. Continental Cas. Co.* 935 N.E. 2d 160 (Ind. 2010)
 - *Architex Ass., Inc. v. Scotsdale Ins. Co.*, 27 So. 3d 1148 (Miss. 2010)
 - *Broadmoor Anderson v. National Union Fire Ins. Co. of Louisiana*, 912 So. 2d 400 (La. App. 2 Cir., 2005)



Subcontractor Risk / The Occurrence Issue

(continued)

Practical & Broker Driven Solutions to the Occurrence Issue

- Start selecting other forum's law to govern your policy
 - May not be enforceable in all states
 - Careful that the selected state is favorable on other issues
- Make an express change by endorsement (but you should not have to pay for it)
- Purchase other insurance products
 - Subguard and competing products
 - Surety bonds



Subcontractor Risk / The Occurrence Issue

(continued)

Systematic Solutions to the Occurrence Issue

- Resolve the issue before the state Supreme Court
 - Favorable trend
- Address through the legislature
 - Colo. Rev. Stat. § 13-20-808
 - “In interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident unless the property damage is intended and expected by the insured.”
- Also Arkansas (Ark. Code § 23-79-155), South Carolina (2011 S.C. Act 26, to be codified as S.C. Code § 38-61-70) and Hawaii (Ha. Rev. Stat. § 431:1)



Contractual Liability Exclusion

- Insurers' latest theory to avoid covering workmanship defects
 - Exclusion: "for bodily injury or property damage for which the insured is obligated to pay damages by reasons of the assumption of liability in a contract or agreement." This exclusion does not apply to liability for damages: (1) that the insured would have in absence of the contract or agreement; or (2) Assumed in a contract or agreement that is an "insured contract"
 - Traditionally only thought to apply to assumed liability to third parties
- What was accomplished in Texas with *Lamar Homes* may have been seriously undermined by *Gilbert*
 - See *Gilbert Texas Const. L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118 (Tex. 2010)
 - See *Ewing Const. Co. Inc. v. Amerisure Ins. Co.*, No. C-10-256, 2011 WL 1627047 (S.D. Tex. Apr. 28, 2011) (applying *Gilbert* and currently on appeal before the 5th Circuit)
 - See *Broadmoor Anderson v. National Union Fire Ins. Co. of Louisiana*, 912 So. 2d 400 (La. App. 2 Cir., 2005) (rejecting contractual exclusion as a basis to deny coverage for a defect claim)



Insurance Coverage for Delay Claims?

- Builders Risk
- Subguard or similar products
- May even be possible under GL policies
 - Often includes language providing coverage “because of” property damage
- Often covered under professional liability
 - Consider requiring for GC / CM?



Coverage Lessons Learned from Deepwater Horizon

BP sought \$750 million in coverage as Transocean's additional insured but was denied coverage recently

- *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, On April 20*, MDL No. 2179, 2011 WL 5547259 (E.D. La. Nov. 15, 2011)

Facts:

- Under the parties' contract, Transocean assumed responsibility for above-surface oil pollution without regard to fault
- BP assumed full responsibility for all liability except for that assumed by Transocean
- Contract required Transocean to name BP as an additional insured to its applicable primary and excess policies
- BP argued that once it was additional insured to the Transocean policy, it had full coverage under the policy
- Transocean's insurers (led by the primary carrier Ranger) argued that BP was only covered to the extent of Transocean's obligation to indemnify BP
- Insurers recently carried the day at the trial level

Seems likely to head to the Fifth Circuit



Project Governance and Retained Risk Management

Harold Dorbin, Marsh Risk Consulting





Owner's Project Perspective

Owners make money from the completed project

- Project objectives are longer term
 - On-Stream reliability
 - Usable life
 - Cost of use/operation
- Schedule and cost may or may not be critical
 - Project is “the asset”
 - Funding structure
 - Industry/Business needs
- Success for the project defined by both
 - Corporate objectives
 - Business justification for project



Contractor's Project Perspective

Contractors make money by *completing* the project

- Project objectives are usually shorter term
 - Defined by contract compliance
- Longer term objectives are real
 - Execution reputation
 - Technology supplied/experience
- Success for the project defined by both
 - Contract compliance
 - Corporate objectives



Risk Reality

Is There More of It or Are We Just Better at Identifying It?

Technology advances have led to higher risk recognition and elevated the management bar

- Personal computer and software
- Forecasting and forensics expectations
- Execution expectations
- Global execution and coordination
- Cost of risk – risks are retained selectively
- Each project is a unique collection of risks



Project Governance and Mega Projects





Project Governance Definitions

“Capacity of a management organization to positively influence the project toward a successful outcome”

Project Governance Definitions *(continued)*





Why Mega Projects are Different

First step is to acknowledge:

- “Bet the Farm” “Failure is Not an Option”
- More developed strategic planning
 - Delivery method needs risk consideration
 - Resources/Labor availability considerations
- “New Sandbox Rules”
 - Every action has a reaction
 - “Not Kansas” anymore

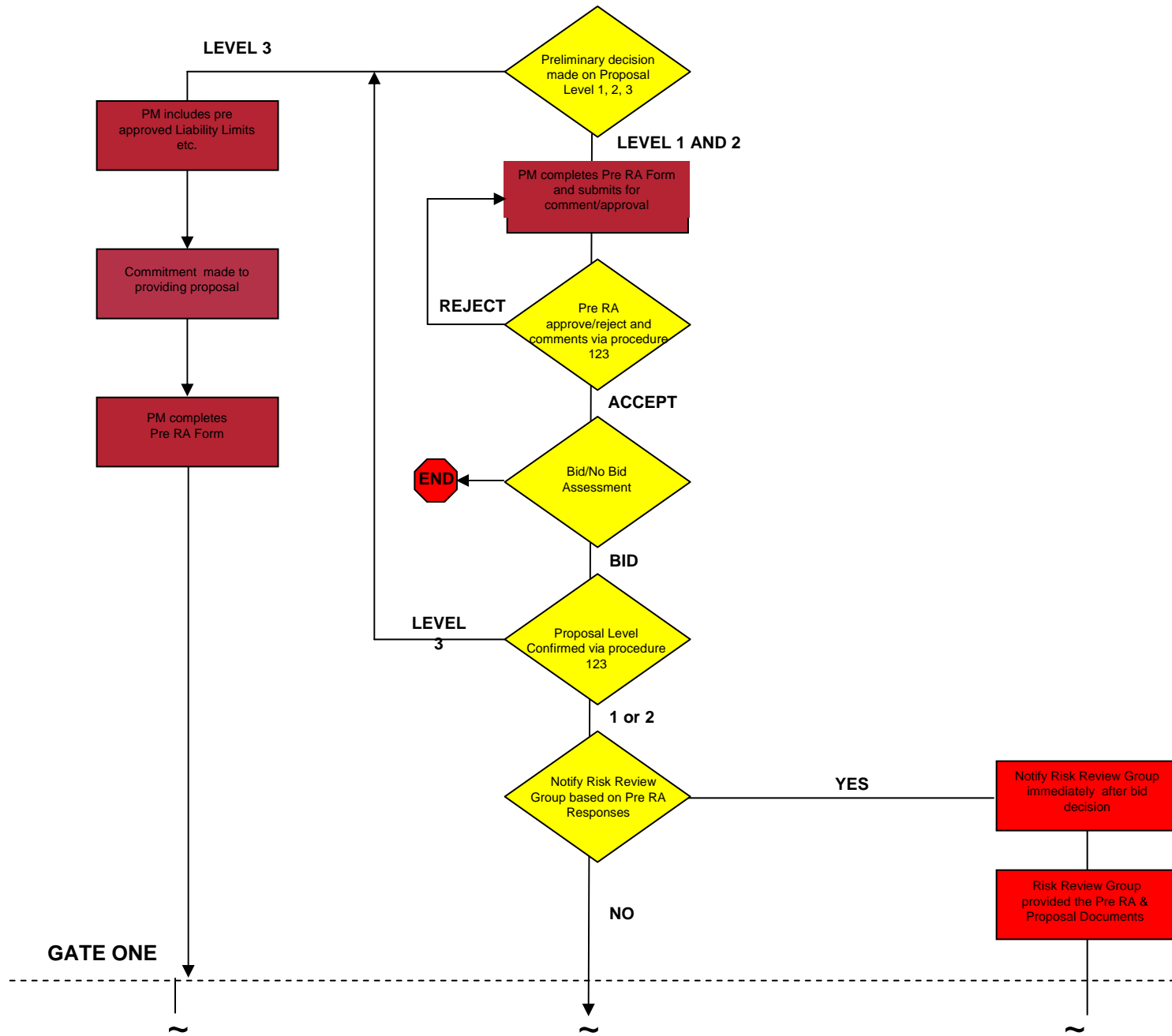


Why Mega Projects are Different *(continued)*

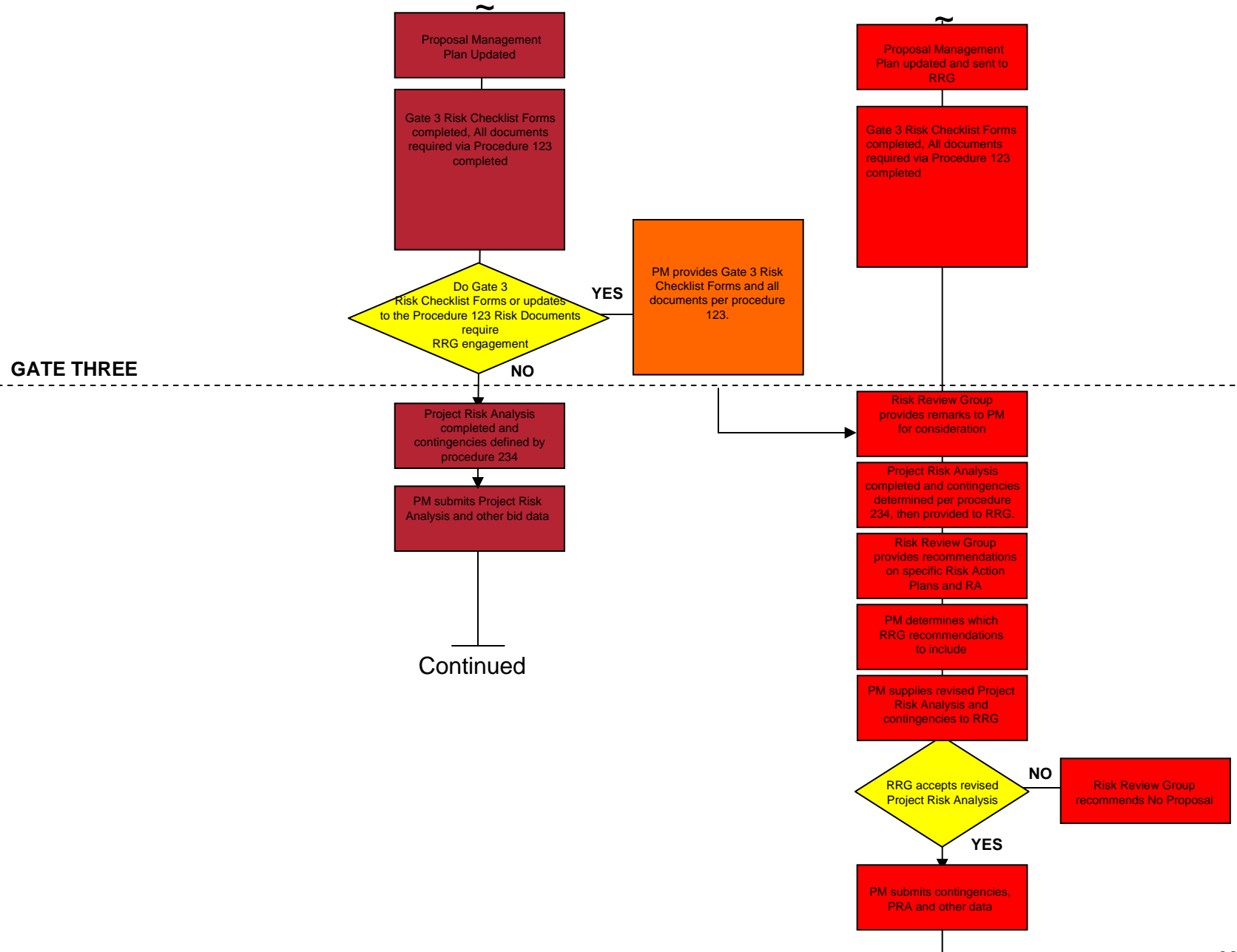
Systematic (“stage gate”) identification of what is high risk (yes/no)

- Define stages in planning/project when key decisions need to be made
- Apply specific screening tests at each stage
- If a “high risk” condition exists
 - System engages internal experts “risk committee”
 - Defined interaction between project and risk committee
 - Risk committee makes recommendations to project and executive management – at each stage

Why Mega Projects are Different – Example Proposal Decision Flow Chart



Why Mega Projects are Different – Example Proposal Decision Flow Chart





Why Mega Projects are Different

Define and distinguish compliant from high risk projects at each planning/bidding stage

- What decision is being made? (ex. bid/no bid, funding)
- By when must it be made?
- What information is necessary to make decision?
- What is the risk to not having all the information/assuming?
- Who can make the decision?
- Are there different criteria for different project circumstances? (ex. cost of project, criticality to enterprise)



Why Mega Projects are Different

Define and distinguish compliant from higher risk projects during execution and close-out stage

- Are there key decisions that require executive management input (i.e., key vendor selection)?
 - By when must it be made?
 - What information is necessary to make decision?
 - What is the risk to not having all the information/assuming?
 - Who can make the decision?
- What metrics and at what level define when a project is “off the rails”?



Project Processes and Mega Projects





Why Mega Projects are Different

Project processes must deliver information consistent with decision timing requirements

- Example – if stage gate process requires different levels of cost estimate accuracy – each level of accuracy must be defined and exhibit:
 - Consistency – able to be repeated producing same outputs from same set of inputs
 - Accountability – clearly defined and assigned to project members
 - Transparency – allows others to quickly understand what decisions have been made, by whom and with what information
 - Industry Best Practices (IBP) – all project processes should meet IBP standards



Why Mega Projects are Different

Having good project processes even on non-high risk projects is critical:

- Rely on project processes to deliver projects that are not “high risk” and subject to executive management and risk committee scrutiny
- Having consistent, accountable, transparent and IBP project processes will allow audits and easy testing of project metrics to determine if a project eventually becomes “high risk” during planning/bidding phase or in execution



Project Risk Management and Mega Project Governance





Project Risk Management and Mega Project Governance

Spending more on resources does not guarantee better results:

- Start project risk management during strategic development period of project plan/bid
 - Bid screening tools
 - Qualitative techniques to make key project decisions
- Expectations from sophisticated project risk management processes cannot be higher than capacity of organization to develop needed information
- Utilize a process consistent with information maturity:
 - Identifies and prioritizes key project objectives
 - Identifies and tracks risk to all key project objectives
 - Driven by project team and integrates with project controls



Project Risk Management and Mega Project Governance *(continued)*

Spending more on resources does not guarantee better results (*con't*):

- Simple lessons learned system aids with risk identification
 - Sortable risk data for easy identification of project specific risks
 - Project risk management will tell you what worked and what did not
- Linking project risk management with project controls



Project Risk Management and Mega Project Governance *(continued)*

Governance requires effective project risk management inputs at every project stage:

- Early decisions (funding, bid/no bid) require preliminary risk assessment
- What is the impact to the project key objectives of not having/assuming the data required for the decision?
- What is the impact if the decision is delayed?
- What is the impact to the project key objectives of negative feedback from project controls?
- Which decision should I make – increase the cost of the project by accelerating the contractor/subcontractor or allow the schedule to slip?



Wrap Up





Wrap Up

- Owner vs. contractor perspectives on mega projects
- Changing expectations and standards for project governance
- Stage gate processes and aligning project process to meet objectives
- Consistent, accountable, transparent and IBP procedures
- Risk committee involvement and value
- Project risk management – mastering the least complex system that will support objectives
- Project lessons learned and project integration are critical

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