



Adding To The Value Of Health Care Construction

ATTORNEYS CAN OFFER ADVICE WITH FUNDING ISSUES, CODE COMPLIANCE

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Nationally, large and exciting health care construction initiatives seem to make news all the time. Connecticut, finally, is no exception. We, too, have some game-changing health care projects in the works. But these flashes sometimes obscure the fact that the long health care construction boom, which Connecticut more or less sat out anyway, ended years ago.

Health care institutions have reprioritized. Budgets matter again. Renovation and modernization, particularly those that reduce energy use and update IT infrastructure, are favored over new construction. Revenue-producers like imaging, surgery, and cancer care departments are growing, while others like trauma and neonatal intensive care are not. Room sizes are shrinking. Relatively cheap ambulatory care centers are spreading.

In this environment, lawyers, like the other members of the project team, must add value to health care projects. Lawyers can bring their unique expertise to construction projects by helping develop approaches to legal and contracting challenges early in the project. When these approaches are incorporated into procurement documents and contracts, it helps minimize back-tracking, cost-overruns, scope changes, and change orders.

Challenges described below are common on many types of projects. But they are am-

plified on health care projects — and amplify the value lawyers can add by helping plan for them.

Conditions Of Public Funding

Many health care projects are supported by state or federal funds. Of course, public funds come with strings. Conditions of public funds commonly include prevailing wage, specialized design requirements, environmental studies, real estate title matters, agency review and approval, and procurement procedures.

To minimize the budgetary and scheduling effect of these conditions, they should be brought to the table early in the project's planning and incorporated into the project's budget, schedule, and processes. A project team that is aware of conditions early in the process is also in a good position to request waivers of some funding conditions, particularly on federally funded projects.

Mandated procurement procedures, in particular, trip up many projects. On the one hand, neglecting these procedures can have enormous consequences, including loss of public funds. On the other hand, implementing the procedures conservatively often adversely affects projects.

For example, many grant programs encourage or require that construction con-



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tracts be awarded to the low bidder through a design-bid-build process. But that doesn't mean a low-ball contractor is destined to win the project and that more integrated project delivery is out of the question. Analyzing applicable regulations and rules, reviewing past practices, and engaging with the granting agency can often facilitate more efficient and effective procurement solutions that comply with the funding conditions.

Stakeholder Participation

There are many stakeholders in health care construction projects. They include patient groups; medical, research, and facilities staff; hospital management; government agencies; and benefactors. Each stakeholder group has insights to contribute to the design process. Many stakeholder groups also should contribute to developing construction means, methods, staging, and scheduling.

Some health care projects have even used Building Information Modeling (BIM) to, in addition to its other benefits, help stakeholders (particularly medical staff) visualize the project and provide effective input.

Meetings with stakeholders should be in-

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cluded in the project schedule. To avoid disagreement within the project team, compensation for these meetings should be included in procurement documents and contracts.

Supplementary Codes, Standards

There are numerous codes and standards that can, on health care construction projects, supplement generally applicable codes. These supplementary codes and standards should be specified in procurement documents and contracts to avoid misunderstandings, scope changes, and change orders.

Supplementary codes and standards are particularly important on renovation projects, when patients are on-premises. Patients with depressed immune systems are very susceptible to compromised air quality, particularly airborne fungal spores that originate on water-damaged building materials. Standards must also protect patient privacy.

But protecting patients doesn't end with putting standards into a contract. Clear lines of communication about such issues should be developed and followed throughout the project.

Green Construction

Health care operators have embraced some sustainable building strategies. The primary driver is, of course, energy savings. But other factors are also important. Health

care facilities cater to people with compromised health, who can most benefit from health benefits associated with certain sustainable practices. And many acknowledge that grants and donations are drawn to the "green" label.

As with all construction projects, specificity about which sustainable practices will, or may, be implemented will help avoid misunderstandings, scope changes, and change orders. This is compounded on health care projects because some common green strategies cannot be implemented on health care projects. For example, certain lighting strategies, like auto shut-off and high-efficiency fixtures, usually cannot be used in clinical or specialty space. And, in some regions, overuse of glass can compromise emergency planning.

Final decisions about sustainable practices are made after an architect is hired and, often, after a contractor is selected. To avoid disagreements over scope changes and change orders, procurement documents and contracts should be designed so that prices are locked in for various sustainable options, as additional services for architects and alternates for contractors.

Equipment

Health care facilities contain complicated and specialized equipment, many

with long lead times. When developing a construction schedule, it is important that the milestones for such long lead items be included and that each party be made responsible for storage costs resulting from their failure to meet the schedule. Optimally, equipment contracts should, instead of specifying a delivery date, require delivery within a certain amount of time from notice from the operator. But the larger the manufacturer and more complex and customized the equipment, the less practical such a provision becomes.

Health care equipment can change dramatically over the course of even months. Over the design period, clinicians often need to change equipment specifications to keep pace with new developments. But changing equipment can make it necessary to change a variety of specifications — for example, power, cooling, and ventilation. To avoid costly changes, design contracts should leave the design of rooms with particularly inconstant equipment for last.

There's no escaping that lawyers are a project expense. But, whether representing owners, contractors, architects, or consultants, lawyers can add value to a project by foreseeing legal and contracting challenges and working with the rest of the project team to develop and document solutions early in the process. ■