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## **Fast-in, fast-out projects present great financial upside, but not without increased risks**

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From initial demolition to securing the final certificate of occupancy, tenant fit-out projects are among the fastest moving construction projects. And with the northeastern commercial tenant turnover market as busy as ever, these are hectic times for contractors specializing in this space. With so much activity on so many jobs often under tight time schedules, contractors have less time to spend reviewing the plans, negotiating the contract, and assessing the risks. Spending a little extra time on the front-end of a project can help minimize these risks and maintain a project's profitability.

### **Estimating and Bidding**

The temptation to price per s/f every job is difficult to resist, especially when you may have already done work on another space in the same building or for a specific landlord owner. Before locking in a price, be sure to review the plans and specifications carefully and note any specialty materials or installation methods that may require a longer lead-time or higher pricing. Walk the space with the owner and consider any unique access or utility issues. Understand the landlord's requirements for union labor, clean-up, LEED issues, or working hours and, where available, ask for a copy of the tenant's lease.

### **Contract Negotiation**

Take the time to read and understand the contract and make sure the appropriate form of contract is being used. Choose a payment delivery method that is job appropriate. If the total cost of the project is less than \$1 million, then a cost plus a fee with a GMP may not be appropriate given the significant administrative burdens such pricing often carries. And be sure to contract with the party that has the ultimate responsibility to make payments. Often the landlord will have agreed to fund a portion of the fit-out through a negotiated tenant improvement allowance. Avoid getting caught in the middle of a tenant/landlord dispute by contracting with just one party for the entire contract sum.

Scheduling terms are especially important in tenant fit-out contracts given the common time pressures of such projects. If the new tenant is required to move out of its existing space by a date certain, then you need to know that date and be prepared to finish construction of the new space and obtain all necessary occupancy certificates well in advance. Pay close attention to liquidated damages provisions. In many jurisdictions, liquidated damages cannot be imposed as a penalty and must be causally related to the anticipated damages that will likely result from a delay. A contractor who has agreed to be on the hook for liquidated damages cannot also be subject to actual damages for delay. Owners ought to consider this when deciding whether or not to impose liquidated damages and, if so, their amount.

### **Project Close-Out and Securing Payment**

Failing to obtain municipal or governmental authority approvals, sign-offs, or certificates can threaten an otherwise timely project. Care should be taken throughout the project to coordinate

inspections to make sure there are no surprises that can derail timely completion.

In addition, a general contractor is only entitled to lien the interest of the party with whom it contracted. So if the tenant signed the contract, then lien rights are limited to a lien on the tenant's leasehold interest, which is typically worth much less than a lien on the owner's fee interest. As such, it is generally preferable to contract directly with the building owner.

These fast-in, fast-out projects present a great financial upside, but are not without increased risks which must be considered and addressed before the contract is signed.

Bradley Croft, Esq., is a shareholder at Ruberto, Israel & Weiner, Boston.

New England Real Estate Journal - 17 Accord Park Drive #207, Norwell MA 02061 - (781) 878-4540