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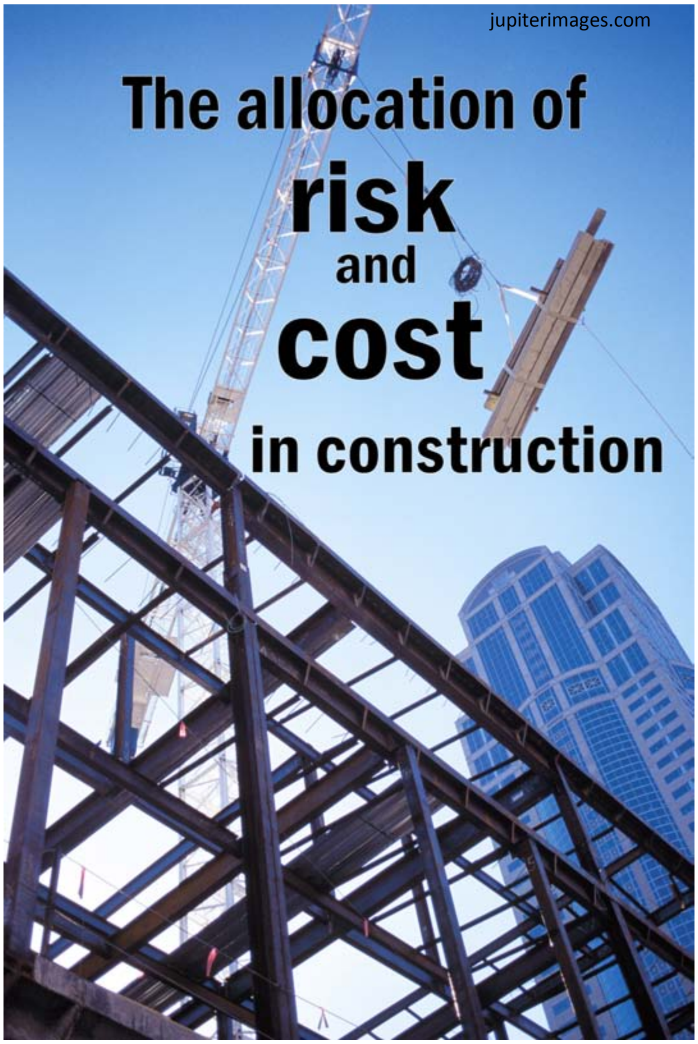

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by Greg Baynton

Public sector agencies typically espouse the guiding principles of fair, open and transparent process in their purchasing of goods and services, however, it gets complicated in their pursuit of value for money and safeguarding the public interest. These principles and objectives are not only appropriate they are required by local and provincial government policy and standards, and by interprovincial and national agreements.

This is also easier said than done when it comes to the procurement of construction services, and it is challenging for the most seasoned of purchasing professionals with expertise in construction. The challenges are multiple and include: balancing the guiding principles against the objective of value for money proposition; and protecting the public interest, particularly for public agencies that do not engage in construction on a routine basis and lack expertise in this area of purchasing and contract management.

In their pursuit to safeguard the public interest, public owners seek legal advice and means of transferring risk to the extent it becomes unfair and disproportionate, and it compromise the value for money proposition.

The construction industry manages risk and onerous conditions in one of two ways: they don't bid or the industry adds large contingencies to their bids that are proportionate with the risks. Risk always affects the degree of competition and costs.

One's immediate reaction is: what are the costs, what is the trade-off, and is it acceptable?

The Residential and Civil Construction Alliance of Ontario (RCCAO) was cognizant of the fact a lot of money was being spent on infrastructure stimulus and, as an industry, had an interest in seeing that the investment would go as far as possible. The RCCAO commissioned Stephen Bauld, president of Consulting International Inc., and one of Canada's leading experts in public procurement [now also publisher of *Summit* magazine], to undertake a study entitled, "Towards a Fair and Balanced Approach: A Commentary on Government Procurement of Construction in the Greater Toronto Hamilton Area (GTHA)," published in September 2009.

The study states that the GTHA spends approximately $2.6 billion annually on construction through federal, provincial and local government agencies, and estimates that taxpayers are paying 5 to 20 percent more than they should because of their procurement practices. All the GTHA governments alone may be paying $500 million more than is necessary on construction projects.

There is a lot of reference in the study on the transferring of risk and its ramifications. Bauld reports government purchasing policies and contract documents are at the root of the problem. "Governments are under great pressure to manage their own risk more effectively. An obvious method of 'managing risk' is to shift it to someone else. The problem with such an approach is that some methods of managing or avoiding risk are inefficient. Inefficiency result when the risk management mechanism employed incurs a higher cost than the discounted cost of assuming the risk."

The study concludes realistic and better structured construction contract procurement practices could save Ontario governments and agencies $1 billion province-wide. One can only imagine what this level of investment could do for health care, education and local government in Ontario, as well as the much needed economic stimulus.

While this study relates to Ontario, it parallels the BC experience from the industry's perspective. The BC Construction Association and four regional associations continue to engage public owners in the unfair distribution of risk, its impact on the industry and its costs; however, for the most part industry has not been heard.

The reality is that there are risks in construction and there are ways to manage them in accordance with recognized industry standard documents produced by the Canadian Construction Documents Committee (CCDC) and the Public Construction Council of BC.

Greg Baynton is the president of the Vancouver Island Construction Association, www.vicabc.ca. You can find the study discussed here at www.rccao.com.