



Photo: PCI

## Book of Promises

William N. Nickas, *Editor-in-Chief*

Have you ever had a catchy song or clever slogan become instantaneously lodged in your memory? I hope that the phrase “Responsibility, Authority, and Accountability” from the editorial for the Winter 2017 issue of *ASPIRE*® has had that sort of effect on our concrete bridge readership. Sometimes, these types of taglines go viral immediately; other times, they take longer to spread. Keep sharing the message—it’s not too late for this motto to take hold.

A couple months ago, an engineer let me know that certain points I had made about design-build projects more than 15 years ago are still being invoked today. This engineer was referring to a 2002 presentation I had given—while still employed by the Florida Department of Transportation (FDOT) as the state structures design engineer—and the subsequent panel discussion about new adjustments to design-build policies. Although the design-build construction procurement process was not new at that time, the industry was seeing an uptick in requested zero-dollar change orders that altered the scope of work. Some of these policy changes were a concern to the unsuccessful design-build teams as well as others involved in the process.


During my presentation and the panel discussion, we addressed what commitments are established by a contractor’s proposal (what I then referenced as the “Book of Promises”) and what contract terms can be changed after the project is awarded as the design is refined. When design-build scopes are assembled to respond to an emergency, they tend to be based on limited information due to the urgency. In this context, one would expect to have a few changes in conditions that both parties will need to address with supplemental agreements as reconstruction commences. In nonemergency scenarios, proposing teams may spend hundreds of days scoping and proposing the design-build project. Because the owner and proposing teams have taken the time to more fully understand the challenge ahead, one can expect fewer changes to the contract. Note that when this panel convened, the alternative technical concept (ATC) system had not yet been deployed. Now, the ATC process works very well to vet a

change in scope or policies before the final project is even awarded.

Another topic of considerable debate at that time was whether warranties reduce the number of witnessed operations for the owner’s inspection forces. Texas employees had adopted the slogan “You get what you inspect, not what you expect.” My all-time “favorite” feedback on this topic was, “The marketer in the home office promised that I can walk on water, but now you and I have to be reasonable and build this job.”

Some engineers, contractors, and suppliers seemed to believe that, if you look long enough, you will find a state highway agency employee who will authorize after-award changes in scope. However, that type of approach may put all involved in a position where he or she is unaware of the Book of Promises set forth in the proposal; some of these after-contract changes may even go against the advertised policies and standards for the project and blur authority and accountability.

Clay McGonagill, special counsel for FDOT, reminded everyone on the FDOT Design-Build Task Team that the author of a document is legally responsible for the words on the page. Today, that point may be self-evident for owners who write scopes and contracts every day or contractors who sign contract certifications for submittals. However, in 2002, the proposal was generally regarded as a routine attachment to the contract, and its legal weight as the Book of Promises was not fully recognized. McGonagill’s assertion was reinforced with training about how owners can hold design-build teams to commitments in the proposal as the project progresses.

Many people who now use the saying “Book of Promises” in reference to a project proposal do not know its history, but the message is still there: A commitment made will need to be delivered. In a similar way, let’s all work harder to make “Responsibility, Authority, and Accountability” a motto for every concrete and steel bridge project. This slogan reminds us to prevent any well-intentioned but ill-informed person (contractor, inspector, owner, or vendor) from changing something on a project in a way that will have detrimental long-term consequences that blindside future generations. 

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