**Uncertain Times Call for More Certain Measures**

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Today's uncertain economy gives owners more risk of contractors becoming financially distressed. If a contractor is financially at risk, progress can be delayed or halted entirely, resulting in loss of time and money. This article provides four suggestions for owners to protect themselves.

First, owners must think ahead. During the bidding process, the owner's number one priority should be retaining a contractor who is financially sound. One way to ensure the financial security of a contractor is to request audited financial statements, unaudited financial statements, and tax returns. When assessing financial statements, an owner may choose from some of the following techniques to determine the financial strength of the creditor: An owner may look at the availability of cash and other liquid assets; divide current assets by current liabilities to determine the company's ability to pay its short term liabilities; or compare the contractor's total liabilities to total assets to show the portion of the company's assets that are financed through some form of debt. Finally, an owner may seek to assess the financial strength of a company through the Z-score, which helps predict whether a company will go into bankruptcy within the next two years, or look for credit reports on databases like Dun & Bradstreet.

Second, ask questions. Beyond probing financial statements, the owner should ask questions to obtain information that may not be readily available in the financial statements. For example, the owner may inquire as to the contractor's ability to obtain further financing, when its current loans are due, whether the contractor has significant past-due obligations, and the age of the contractor's outstanding accounts payable balance.

Third, put it in writing. Ideally, the best way to resolve a financially distressed contractor is not to have hired them. However, if prevention was not successful, the owner may create a contract that minimizes the impact of a contractor becoming financially distressed and failing to complete a project. For example, contract provisions that allow owners to evaluate the financial status of contractors throughout the project will allow an owner to discover a contractor's financial distress more quickly. Also, the owner may require the contractor to guarantee completion of the project and payment of subcontractors through payment and performance bonds. Finally, an owner may want to incorporate termination provisions. Such a termination provision may allow for an owner to terminate a contractor who does not meet its payment and performance obligations in a timely manner.

Fourth, mitigate. Have a back-up plan in case the worst case scenario happens. This plan should include not only fixing the current issues, but also fixing the causational issues. Furthermore, an owner should be suspicious of vague explanations for late payments, such as "bank error" or "administrative glitches." Although it's tempting to let late payments slide and just hope for the best, it is important not to let the project start on a downward spiral. Consequently, being firm on the timeliness of payments may help an owner realize the financial distress of a contractor more readily.