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ARTICLES CONTAINED IN THIS ISSUE OF THE CLE:

End of the Road for Best Value Procurements by PennDOT?

In the Fall of 2011, Pennsylvania's Commonwealth Court permanently enjoined the Pennsylvania Department of Transportation from using any of the "innovative bidding methods" the Department had developed as a more efficient means of selecting construction contractors. *See* Brayman Const. Corp. v. Com. Dept. of Transp., 2011 WL 4578348 (Pa. Commw. Ct. 2011)

The general rule for procurement, as established under Pennsylvania's Procurement Code, is that unless otherwise authorized by law, all Commonwealth agency contracts must be awarded by competitive sealed bidding and must be awarded to the "lowest responsible bidder." 62 Pa.C.S. §§ 511, 512(g).

In an attempt to account for "social costs including disturbances to traveling public and taxpayer dollar costs," PennDOT formulated, as alternatives to the general procurement process, a variety of innovative bidding methods for selecting contractors. The methods were described in PennDOT's internal document: "Publication 448, Innovative Bidding Toolkit." One of the methods described in the publication is the "design-build" method, in which a single entity bids to provide both the design and construction under a single contract between PennDOT and the design-build contractor. There are several variants of design-build, including "design-build best value" (DBBV).

The DBBV process entails two steps. First, the design-build teams submit statements of interest (no monetary bid) to PennDOT. Based on those statements of interest, PennDOT creates a "short list" of three to five design build teams. Each short-listed team then submits a technical approach and a price bid. PennDOT selects the design-build team based on which proposal offered the "best value" for the cost of the bid.

The question of whether PennDOT was authorized to utilize the DBBV process to award contracts under the Procurement Code came before the courts when, in 1998, PennDOT decided to rebuild two bridges carrying Interstate 90 over Six Mile Creek in Erie County ("Erie County Project"). PennDOT sought to use DBBV to select a contractor to replace the bridges. Brayman Construction Corp., which submitted a statement of interest, did not make the short list for the project. It initiated suit to prevent PennDOT from awarding the bridge contract through the DBBV process, arguing that the process violated the Procurement Code.

The Commonwealth Court held that the "best-value" system violated the Procurement Code as PennDOT is not allowed to short-list bidders or evaluate bids based on factors not enunciated in the invitation for bids. While the court allowed the Erie County Project to proceed under the DBBV process, it issued a temporary injunction enjoining PennDOT from seeking and evaluating any additional design-build contracts using the best value method or any other "innovative method" that did not award the bid based on sealed competitive bids.

PennDOT appealed to the Supreme Court arguing that it could short-list bidders under an exception to the general rule requiring competitive sealed bidding. PennDOT claimed it could proceed under § 905 of the Procurement Code which, it contended, allowed design professional services to be awarded through a two-step procurement method. The Supreme Court affirmed the lower court's ruling finding that even accepting PennDOT's assertion that § 905 allowed design professionals services to be awarded through a two step procurement method, a design build contract is a "construction contract," not a design contract subject to § 905. As a construction contract, procurement had to comply with objective requirements of competitive bidding under § 512. Brayman Const. Corp. v. Com. Dept. of Transp., 13 A.3d 925 (Pa. 2011).

On remand, PennDOT proposed that the short-listing process was authorized under § 512(h) of the Procurement Code which reads: "When it is considered impractical to prepare initially a procurement description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced bids, to be followed by an invitation for bids requesting priced bids from responsible bidders of the first solicitation." PennDOT contended that § 512(h) allows it to short list because it permits the selection of the most "responsible bidders," which are the most qualified bidders, from the initial unpriced bid round. The court found the argument unsupported by § 512(h), reasoning that PennDOT was essentially trying to define "responsible bidder" as the "best" bidder. However, § 103 of the Code defines "responsible bidder" as "a bidder that has submitted a responsive bid and that possess

the capability to fully perform the contract . . . ." Thus, under the provision, so long as the contractor to the unpriced bid is a responsible bidder, that bidder can submit a bid for the priced bids. Additionally, the court found the overall scheme established by § 512 made clear that "any criteria which are established for the basis of an award must be objectively measurable and must be specifically set forth in the invitation to bid." Having found DBBV illegal under the Procurement Code, the court permanently enjoined PennDOT from using it or any other innovative bidding method to procure construction contracts.

It is worth noting that while the courts have permanently precluded Commonwealth agencies from using best-value procurement methods, recently proposed Private-Public Transportation Partnership legislation has adopted the best-value approach. Public-Private Transportation Partnerships are being considered by the Pennsylvania legislature as a way of identifying new sources of money for maintenance and construction of infrastructure. The proposed legislation would authorize public entities to enter into transportation development agreements with private entities and other public entities for the development, operation and financing of transportation facilities with the goal of enhancing greater availability of transportation facilities to the public in a timely, efficient and less costly fashion.

Both the House and Senate versions include the same language regarding "Selection criteria, evaluation and award." The provisions read:

> In evaluating proposals, the department or a proprietary public entity shall obtain the best value for the Commonwealth or the proprietary public entity and may accord relative weight to factors such as cost, financial commitment, innovative financing, technical, scientific, technological or socioeconomic merit, financial strength and viability and other factors as deemed appropriate…. The department or proprietary public entity shall accept for contract negotiation the responsive and responsible development entity whose proposal is determined in writing to be the most advantageous to the Commonwealth or the proprietary public entity taking into consideration price and all evaluation factors.

House Bill No. 3, March 7, 2011, 9106(f); House Bill No. 1834, Sept. 26, 2011, 9106(f); Senate Bill No. 344, Feb. 8, 2011, 9106(f). Therefore, while Brayman precludes Commonwealth agencies from using best-value methods in traditional construction procurement situations, the methods eventually may play a role in public-private transportation partnership procurement.

(The views, opinions and positions expressed in this article are those of the authors and do not necessarily reflect the official policy or position of any organization or entity with which the authors may be affiliated.)


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Is it Safe Enough to be an "Additional Insured"?

The recent decision in Lafayette College v. Selective Insurance Co., 2011 WL 5433698 (3d Cir. November 10, 2011), presents two of the common problems that confront parties that use additional insured requirements in their construction contracts as a means of allocating the risks that arise from such projects. Fortunately for the college, its exposure for defense costs incurred as the owner of the project where a worker was seriously injured was successfully transferred to one of two insurers that covered contractors on the job. The primary lesson to be drawn from the case, however, is that great care must be exercised in drafting additional insured requirements. A secondary lesson is that, even if the contract contains sufficiently specific language regarding the extent of coverage required for the benefit of the additional insured, both parties to the contract must review the coverage actually granted by the insurer to ensure that it fulfills the requirements of the contract. Failing to take these precautions could lead to uninsured losses.

The college hired a general contractor to renovate a building on the campus. The general contractor engaged a subcontractor to perform some of the work. Both the general contractor and the subcontractor took steps to obtain policies naming the college as an additional insured, as required by their respective contract documents. The general contractor's policy contained an additional insured endorsement that granted the college coverage, but only "with respect to liability caused by your [i.e., the general contractor's] ongoing operations." The subcontractor's policy also contained an additional insured endorsement, the text of which was not quoted in the decision, but the coverage granted to the college was regarded to be primary only "if it is required in the contract."

While the work was being done, an employee of the subcontractor fell from a scaffold. He sued the college, the general contractor, and others. The college tendered the suit to the insurers of the general contractor and the subcontractor, but both denied coverage. A verdict of $6,800,000 was entered in favor of the injured worker and the college was held in for 35% of the judgment. The judgment as to the college was overturned on appeal, making the college's demand for indemnification moot. However, its claim for reimbursement of defense costs remained.

The first problem confronting the college concerned the scope of the coverage granted to it as an additional insured under the general contractor's policy. The court regarded the additional insured endorsement as unambiguously limiting the insurer's coverage obligations to liability caused by the general contractor's negligence. Stated differently, the court construed the language of the endorsement to provide coverage to the college only for its vicarious liability arising from the general contractor's actions. After reviewing the allegations made against the college in the worker's complaint, the court held that the claim against the college under the

so-called "peculiar risk doctrine" were sufficient to trigger the insurer's duty to defend which, in turn, included all of the claims asserted against the college, even those alleging its own negligence. The "peculiar risk doctrine" is an exception to the customary rule that one who employs an independent contractor is not liable for the torts committed by that independent contractor. Under that doctrine, employers of independent contractors are vicariously liable for the torts of the independent contractors when the risk is foreseeable to the employer at the time of contracting and the risk is different from the usual and ordinary risks associated with the general type of work done. While the appellate courts in the underlying accident case ultimately ruled that the college was not liable because the risk of falling from the scaffold was not a "peculiar risk," the Third Circuit, in this coverage dispute, had to accept as true the claim as it was pled by the injured worker and it could not go behind the allegations of the underlying complaint to reach the merits of the claim. Thus, the issue before the court in the coverage case was whether the allegation of the "peculiar risk" claim activated the duty to defend under the additional insured endorsement running in favor of the college.

The college failed to specify what coverage it wanted the general contractor to obtain for its benefit, but it was saved by the fact that the complaint alleged a theory of vicarious liability that fell within the narrow scope of the additional insured endorsement contained in the policy. If the complaint had not invoked the "peculiar risk doctrine," and had merely alleged claims of negligence on the part of the college, the college would have had no recourse under the additional insured endorsement.

Owners of projects seeking protection as an additional insured and contractors called upon to add owners as additional insureds need to be aware that there are over two dozen different versions of additional insured endorsements commonly used by the insurance industry. Moreover, some insurers eschew the use of standardized forms, choosing instead, to craft their own policy language in an attempt to limit the protection that they may be called upon to provide to the additional insureds. Consequently, when a contract document simply calls for the owner to be designated as an additional insured, the owner is at the mercy of the insurer. The additional insured endorsement could be broad enough to encompass allegations of the owner's own negligence, or it could be narrowly limited, as was the endorsement in this case, to matters of vicarious liability only. To avoid this problem, owners seeking broad protection should use great care in wording their additional insured requirements, so that the expectations of coverage are spelled out, rather than being left to the vagaries of the insurance industry. On the other side of the transaction, contractors required to obtain additional insured status for owners need to be aware of the language of the additional insured endorsements added to policies, so that the endorsements added actually fulfill the expectations of the owners. Unless there is a complete meeting of the minds, the coverage granted could fall short of the expectations of the owner and/or the contractor, with the end result being a gap in coverage.

The second problem confronting the college was the issue of whether the subcontractor's policy would provide primary or excess coverage to the college as an additional insured. The court

held that the policy language was clear, in that the coverage was deemed to be primary only when the contract required the subcontractor to provide primary coverage for the benefit of the college as an additional insured. Otherwise, the coverage granted to the additional insured would be excess to other available coverage. Because the contract documents were silent as to whether that coverage for the college was to be primary or excess, the court held that the policy was excess.

The moral of this part of the story is that the additional insured requirement should specify whether the coverage for the additional insured ought to be primary or excess. Taking the matter one step further, the contract document should also specify whether the coverage, if primary, should be contributory with any other primary coverage available to the additional insured. In many instances, owners may have access to other policies naming them as additional insureds, or even to their own policies issued to them as named insureds. These policies could provide co-primary coverage with the one in question, and all of the insurers may be required or permitted to pro-rate the loss amongst themselves. This could have the undesired effect of having the owner's other insurance sources respond to a loss when the owner's intent was to transfer all of the loss to a contactor's policy. So, when the owner wishes to subordinate its coverage to that provided for it as an additional insured, the contract document should specify that the coverage afforded to it as an additional insured shall be primary and that it shall not require any contribution from any other source of coverage. Once again, the contractors procuring additional insured coverage need to be aware of the requirements set forth in the contract documents, and they need to take the requisite steps to ensure that their policies meet the demands of the additional insured requirement.

It is sad to say that many contract documents are inadequate because they merely require a person or entity to be designated as an additional insured. Moreover, requests made of insurance companies to add additional insureds to policies are often similarly deficient because they do not adequately express the expectations of the contracting parties regarding the scope of the coverage necessary to meet the demands of the additional insured requirements. This uncertainty often goes unaddressed until after a loss occurs and, by then, it is too late to remedy the situation.

Whether giving or receiving additional insured protection, parties should have the additional insured requirements of their contracts reviewed by counsel and/or by insurance professionals to ensure that the needs are adequately articulated. Further, once the additional insured endorsements are issued, they need to be reviewed by counsel and/or insurance consultants to make certain that the contract requirements are being met.

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Home Court Advantage – Forum Selection Clauses in Construction Contracts

Most if not all drafters of contracts include clauses that make their home state's law applicable to any dispute, and select the courts of the jurisdiction of their place of business as the forum of choice (if ADR is not selected). The reasons for doing so are primarily the drafter's familiarity with the law of the home state and the judges, procedures and scheduling of the local courts, and convenience in obviating the need for travel.

Aggrieved parties filing suit do not always follow the language of the contract and file suit in their home jurisdiction, prompting the drafter to file a motion to dismiss or transfer the case to the forum selected in the contract. Deference to the forum selection by the court is not automatic. State and federal courts apply their own tests to determine whether to keep the case, to dismiss it or to transfer. A United States District Court judge can transfer a case to any other district court in the country pursuant to the transfer statute, 28 U.S.C. § 1404. A state judge cannot transfer a case to another state and must simply dismiss the case, requiring the plaintiff to re-file in the correct state. If diversity of jurisdiction exists, it is often preferable for the defendant to remove the case to federal court and concurrently file a motion to dismiss for lack of venue or a motion to transfer.

A lack-of-venue challenge, based upon a forum-selection clause, is appropriately brought as a Rule 12(b)(3) Motion to Dismiss. Frietsch v. Refco, Inc., 56 F.3d 825, 830 (7th Cir. 1995); Hugel v. Corporation of Lloyd's, 999 F.2d 206, 207 (7th Cir. 1993). Forum-selection clauses "are prima facie valid and should be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances." M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10, 92 S. Ct. 1907, 32 L.Ed.2d 513 (1972); Continental Ins. Co. v. M/V ORSULA, 354 F.3d 603, 606-607 (7th Cir. 2003).

A federal district court must apply federal law rather than state law in interpreting a forum selection clause and may freely consider evidence outside the pleadings in reviewing a Motion to Dismiss under Rule 12 (b)(3). Albemarle Corp. v, Astrazeneca UK Ltd., 628 F.3d 643, 650 (4th Cir. 2010). Under the federal standard, courts afford forum selection clauses presumptive validity. Allen v. Lloyd's of London, 94 F.3d 923, 928 (4th Cir. 1996). A mandatory forum selection clause is "*prima facie* valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances". M/S Bremen v. Zapata Off–Shore Co., *supra*, at 10. Forum selection clauses are unreasonable under the federal standard only if:

> (1) their formation was induced by fraud or overreaching; (2) the complaining party "will for all practical purposes be deprived of his day in court" because of the grave inconvenience or unfairness of the selected forum; (3) the fundamental unfairness of the chosen law may deprive the plaintiff of a remedy; or (4) their enforcement would contravene a strong public policy of the forum state.

See Allen, 94 F.3d at 928. The party opposing the application of the forum selection clause bears a heavy burden of proving unreasonableness. "Mere inconvenience or additional expense is not the test of unreasonableness since it may be assumed that [the complaining party] received under the contract consideration for these things". Davis Media Group, Inc. v. Best Western Int'l, Inc., 302 F. Supp.2d 464, 469 (D. Md. 2004) (citing Central Contracting Co. v. Md. Cas. Co., 367 F.2d 341, 344 (3d Cir. 1966)).

Under **West Virginia** state law, forum selection clauses "are not contrary to public policy". Caperton v. A.T. Massey Coal Co., 679 S.E.2d 223, 235 (W. Va. 2008). The court looks first to whether the clause is fair and reasonable. If it is not fair and reasonable, only then does the public policy prong potentially make a forum selection clause unenforceable. Sauvageot v. State Farm Mut. Auto. Ins. Co., 2011 WL 2680508, 2 -5 (N.D. W. Va. 2011).

Under **Pennsylvania** law, forum selection clauses are presumed to be valid, and permits enforcement "when the parties have freely agreed that litigation shall be conducted in another forum and where such agreement is not unreasonable at the time of litigation." Central Contracting Co. v. C.E. Youngdahl & Co., 418 Pa. 122, 209 A.2d 810 (1965). A forum selection clause in a commercial contract between business entities is presumptively valid and will be deemed unenforceable only when: 1) the clause itself was induced by fraud or overreaching; 2) the forum selected in the clause is so unfair or inconvenient that a party, for all practical purposes, will be deprived of an opportunity to be heard; or 3) the clause is found to violate public policy. Patriot Commercial Leasing Co., Inc. v. Kremer Restaurant, 914 A.2d 647 (Pa. Super. 2006).

As discussed above, a 12(b)(3) motion is the appropriate motion to use when seeking a dismissal pursuant to a forum selection clause. However, "transfer is the preferred remedy to dismissal when a forum selection clause dictates that another federal forum is the proper venue for litigation". Petroleum Products, Inc. v. Commerce & Indus. Ins. Co., 2009 WL 4782063, *5 (S.D. W. Va. Dec. 4, 2009); Salovaara v. Jackson Nat'l Life Ins. Co., 246 F.3d 289, 299 (3d Cir. 2001) (stating that it makes "better sense" to transfer rather than to dismiss). Pursuant to 28 U.S.C. § 1404(a), "a district court may transfer any civil action to any other district or division where it might have been brought" where such transfer is made "[f]or the convenience of parties and witnesses, in the interest of justice." 28

U.S.C. § 1404(a). The decision to transfer venue is left to the sound discretion of the trial court. Southern Ry. Co. v. Madden, 235 F.2d 198, 201 (4th Cir. 1956). In making this determination, a court should consider:

> (1) ease of access to sources of proof; (2) the convenience of parties and witnesses; (3) the cost of obtaining the attendance of witnesses; (4) the availability of compulsory process; (5) the possibility of a view; (6) the interest in having local controversies decided at home; and (7) the interests of justice.

In re Campbell Transp. Co., Inc., 368 F. Supp.2d 553, 555–56 (N.D. W. Va. 2005). It is well settled that "[d]istrict courts have greater discretion to transfer venue under 28 U.S.C. §1404 (a) than to dismiss on the grounds of forum non conveniens." Vass, 304 F. Supp.2d at 857 citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 253, 102 S. Ct. 252, 70 L.Ed.2d 419 (1981).

The validity of a forum selection clause is determined under the usual rules governing the enforcement of contracts in general. *See* In re Ricoh Corp., 870 F.2d 570, 573-74 (11th Cir. 1989) (considering whether the clause was "freely and fairly negotiated by experienced business professionals" and whether there was any fraud, duress, misrepresentation, or other misconduct in connection with the agreement to the forum selection clause). Under Section 1404(a), the court should consider "the convenience of parties and witnesses" and "the interest of justice," with a choice of forum clause "a significant factor that figures centrally in the district court's calculus. Thus, while other factors might conceivably militate against a transfer, the venue mandated by a choice of forum clause rarely will be outweighed by other 1404(a) factors. P & S Business Machines, Inc. v. Canon USA, Inc., 331 F.3d 804, 807 (11th Cir. 2003). By enforcing the contractual forum, the court is not attempting to limit the Plaintiff's usual right to choose its forum, but is enforcing the forum that the Plaintiff has already chosen. Id. A forum selection clause binds a litigant, so that something at least in the nature of an "exceptional showing" would be needed to permit a Section 1404(a) motion to override a freely-negotiated provision of that nature. Riviera Finance v. Trucking Services, Inc., 904 F. Supp. 837, 838-839 (N.D. Ill. 1995), *citing* Heller Financial, Inc. v. Midwhey Powder Co., 883 F.2d 1286, 1290–91 (7th Cir. 1989).

In some construction contracts, the issues of mechanics liens are often specifically excepted from the forum selection clause as mechanics liens are *in rem* proceedings filed in the county where the subject property is located where the work occurred. In such cases where mechanics liens are filed and counts for enforcement of the mechanic's lien are included in the complaint for breach of contract, those lien enforcement claims can be severed and stayed pending resolution of the underlying contractual issues regarding payment and the defenses thereto by the court in the contractually selected forum.

Our construction attorneys recently obtained such a transfer for an Illinois General Contractor client. Suit was filed by a West Virginia subcontractor in West Virginia state court. In addition to counts for breach of contract for alleged failure to pay was a count for enforcement of mechanics liens filed in several West Virginia counties. We removed the case to the Northern District of West Virginia and moved for dismissal or transfer to the Northern District of Illinois as the client's contract selected the federal or state courts located in Cook County, Illinois as forum. The contract also contained an exception to the forum selection clause for the filing of mechanics liens in the venue of the subject property. The subcontractor opposed the motion, citing the mechanics lien exception. The district court agreed with our client's position that the enforcement of the mechanics liens was dependent on the resolution of the contract action and transferred the case to the Northern District of Illinois while severing and staying the mechanics lien enforcement count. Thus the client was able to litigate the case in its home court under the law of its home state.

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When Does an Employer's Obligation to Preserve Electronic Information Begin?

Complaints filed with the Equal Employment Opportunity Commission ("EEOC") by current and former employees are at a record high – 99,947 in fiscal year 2011. Electronic information is now the number one piece of evidence in employment discrimination cases. With so many discrimination cases being filed, an employer may wonder when its obligation to preserve electronic information begins. It begins when a party "reasonably anticipates" litigation, which in no event is later than when a charge of discrimination is received. The obligation to preserve electronic information may arise even earlier than when a charge is filed, but this article is simply a reminder that in no event does that obligation arise later than when the charge of discrimination if filed.

It has long been understood that the duty to preserve evidence arises when a party reasonably anticipates litigation. The United States District Court for the Middle District of Pennsylvania recently held that, in the employment context, the duty to preserve evidence, including electronically stored information (ESI), arises when an employee files a formal complaint with the EEOC.

The plaintiff in Culler v. Shinseki, 2011 WL 3795009 (M.D. Pa. Aug. 26, 2011), filed an

age discrimination and retaliation complaint in federal court in 2009. In July of 2011, the plaintiff filed a motion for sanctions contending that the defendant had failed to properly preserve, search and produce ESI responsive to his claims. The plaintiff asserted that the defendant's duty to preserve ESI was triggered in 2004, when he filed his first formal complaint with the EEOC. He argued that he was prejudiced by the defendant's failure to institute a litigation hold mandating that all relevant evidence be preserved as of that date. The defendant responded that its duty to preserve relevant documentation did not arise until it was served with the federal complaint in 2009.

The duty to preserve evidence begins when litigation is pending or "reasonably foreseeable." Once the duty to preserve arises, the litigant is expected to suspend its routine document and retention/destruction policy and to put in place a "litigation hold" to preserve the relevant ESI or other information pertaining to the litigation.

The Court found that litigation was reasonably foreseeable, and the defendant had a duty to preserve relevant ESI, as of the date the plaintiff filed his formal complaint with the EEOC in 2004. The court reasoned that the defendant was aware that federal anti-discrimination laws require a party to complete the administrative process prior to filing federal litigation and that filing a formal EEOC complaint was an indication that federal litigation might follow.

This decision reminds employers that the obligation to preserve relevant information, including electronic information, begins no later than when the employer receives the charge of discrimination. Instituting an appropriate "litigation hold" will ensure that evidence the employer needs to defend its case will be there when needed.

Employers should be aware that the Court's conclusion in this case might also be applied when complaints are filed with state administrative agencies such as the Pennsylvania Human Relations Commission and local human relations investigative agencies. Prudent employers, when served with notice of the filing of a complaint or charge of discrimination at any level, should take the necessary steps to preserve documents and electronically stored information with the issuance of a Litigation Hold letter sent to all custodians of documents relating to the employee and to the company's information technology department. A properly worded and timely Litigation Hold letter can effectively preserve evidence of available defenses to the claims made as well as avoid the problems faced by the employer in this case.


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Building Information Modeling

Building Information Modeling (BIM) is here and is projected to be the standard for construction in the future. BIM provides improved visualization of the structure being built through the use of a 3D computer model. Additionally, it gives the user the ability to obtain information about the geometry of the building, building component properties, and the spacial relationship between objects. The concept of Building Information Modeling is to build a building virtually prior to physically erecting the structure.

Building Information Modeling is more than computer software. It requires changes to the definition of traditional architectural phases. It is a process that establishes new project workflows that fosters collaboration among architects, construction contractors, engineers, and vendors. BIM's effectiveness is increased when contractors become involved during the design phase.

The impetus for the adoption of Building Information Modeling is the time and money that can be saved on construction projects by reducing errors through collaboration among project team members.

Some of the different kinds of software offered by BIM vendors are design, detailing, coordination, rendering, and scheduling.

There are a number of issues with respect to the implementation of Building Information Modeling. Below is a list of concerns/questions that typically arise:

- Maintaining the privacy and security of electronic data and documents.
- Maintaining version control of electronic documents.
- Allocation of risk.
- Who owns the model?
- Who pays for the model?
- Who is responsible for the accuracy of the model?
- Are contractural reporting requirements adequate given the increased rate of electronic document exchanges?

When assessing the implementation of Building Information Modeling, some of the practical things to consider are:

1. How will the model be used?
2. How will the process be managed?
3. Will the model be used after construction is completed?

Some owners are selecting and eliminating construction companies based on their capacity to do Building Information Modeling. Rather than fight the implementation of BIM, many companies in the construction industry are embracing BIM as part of their future business development strategy.

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