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# LEGAL AND RISK MANAGEMENT (LRM) SEMINARS

Charles F. Mitchell



**Mechanical Contractors Association of America, Inc.**

1385 Piccard Drive Rockville MD 20850 T 301 869 5800 F 301 990 9690 MCAA.ORG

## LRM 101:

### Contracts & Contract Management

Understanding the complex terms and conditions included in most construction contracts, and negotiating reasonable modifications to those terms and conditions, are central elements to the successful management of risks imposed on your company. This class will explore the most common clauses by which project owners and general contractors shift risk down to subcontractors, focusing on risks they create, recommended changes to make them more reasonable, and strategies to try to negotiate these changes.

Specific topics include:

- Risk shifting clauses (e.g., no-damages-for-delay, pay-if-paid, differing site conditions)
- Process and procedure clauses (e.g., notice, submittals, payments, changes, disputes)
- Design responsibility clauses
- Clauses incorporated by reference
- Contract exhibits
- Creating reasonable modifications
- Strategies to manage contract risk
- Strategies to negotiate modifications

## LRM 102:

### Project Risk Management

Every construction project has a set of risks that must be successfully managed. This class will review best practices for construction professionals to identify, manage and respond to project-level risks common to most projects.

Specific topics include:

- Identifying, understanding, and managing risks created by the contract documents
- Identifying, understanding, and managing risks created by the unique project characteristics
- Design-Build and Design-Assist
- Payment
- Project scheduling
- Changes and claims
- Insurance, bonds, and liens
- Subcontractor and vendor performance
- Warranties and latent defects

## LRM 103:

### Fundamentals of Federal Government Contracting

When companies do business on federal government construction projects, they are exposed to a unique set of contractual and regulatory requirements that can be materially different than those governing private construction projects. Failure to understand and abide by those unique requirements can expose your company to substantial risks, penalties, and costs. This class will focus on the basic requirements imposed on contractors that perform work under federal government contracts.

Specific topics include:

- FAR and FAR Supplements, and the Code of Federal Regulations
- Authority of Government Personnel
- Payment requirements (Prompt Payment Act)
- Buy American Act
- Equal Products
- Changes, Requests for Equitable Adjustment, and Claims (Spearing Doctrine, Contract Disputes Act)
- Cost and pricing issues (FAR Cost Principles)
- Labor and certified payroll requirements (Davis Bacon Act, E-Verify)
- Inspection and acceptance
- Termination for Default and Termination for Convenience
- Default and disputes
- Ethics, compliance, and false claims

## LRM 104:

### Change Order and Claim Management

Every contractor will experience projects that have a high volume of disputed change orders and claims. This class will explore how to recognize, preserve, present, and prosecute claims for additional costs and the various disputes processes by which claims are resolved.

Specific topics include:

- Identifying and understanding the relevant contract provisions
- Express changes vs. constructive changes
- Defective design
- Differing site conditions
- Equal products
- Delay, acceleration, and inefficiency
- Requests for equitable adjustment and claims
- Disputes processes
  - o Binding and non-binding ADR (structured negotiation, mediation, arbitration)
  - o Litigation

## LRM 105:

### Labor and Employment Disputes

With the ever-tightening labor market, effective management of both the office and field forces is central to the contractor's success. Therefore, understanding the basic rights and obligations of both the employer and the employee is critical. This class will explore basic issues associated with labor and employment issues contractors must address, including strategies to investigate and respond to those issues.

Specific topics include:

- Hiring
- Discrimination statutes
- Americans with Disabilities Act
- Fair Labor Standards Act
- Davis Bacon Act
- National Labor Relations Act
- Strikes
- Grievances
- OFCCP Requirements and Audits
- EEOC Claims

## LRM 106:

### Ethics and Compliance

Contractors increasingly are expected to have detailed ethics and compliance programs in place as part of their regular business practices. Most governmental owners, and many private owners, impose strict ethics and compliance obligations on all contractors as a condition to performing work. This class will review best practices for developing and maintaining ethics and compliance programs, including the detailed requirements imposed on federal government contractors.

Specific topics include:

- Factors evaluated in deciding whether to charge a corporation with a crime
- Corporate suspension and debarment
- Individual employee liability
- Elements of an effective corporate ethics and compliance program
  - Structure and communication
  - Training
  - Defining acceptable and unacceptable behaviors
- Bribes, kickbacks, and gratuities
- Contract pricing, billing, and payment
- Competition and antitrust
- Small and minority business enterprise arrangements
- Compliance with plans and specifications
- False claims act
- Environmental protection
- Audits and records retention
- Investigating and resolving potential ethics and compliance issues

## LRM 107:

### Financially Distressed Contractors

Eventually, every company has to do business with financially distressed contractors. It might be a general contractor, a subcontractor, a supplier, or another subcontractor on the project. Understanding the unique risks associated with financially distressed contractors is critical. This class will explore the unique legal and business issues associated with financially distressed contractors.

Specific topics include:

- Warning signs of financial distress
- Providing financial assistance
- Declaring default and taking over another party's work
- Third party creditor risks
- Taxes
- Insurance
- Banks and sureties
- Bankruptcy



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**About the Instructor:**

**Charles (Chip) F. Mitchell** is the founder & principal of Blue Fence Advisors, and a senior level executive with more than thirty years of combined business and legal experience in the construction industry.

He also serves as a private arbitrator and mediator, and he is a panel member with the American Arbitration Association.

Before he founded Blue Fence Advisors, Chip served as the General Counsel & Chief Administrative Officer of one of the largest privately held mechanical contractors in the country. He has been responsible for managing the company's legal, risk management, and human resources depts., including corporate governance, compliance, contract management, bonding and insurance relationships, labor and employment issues, and dispute resolution. He also has experience managing M&A transactions on both the buyer and seller sides, including management of the diligence process, and negotiating transaction documents.

Prior to his role as General Counsel and Chief Administrative Officer, Chip was an associate attorney with Dunnells, Duvall, Bennett & Porter (subsequently merged into Holland + Knight), where his practice was devoted to construction and government contract counseling and litigation.

Chip teaches contract management for the MCAA Institute for Project Management and he frequently appears as a guest lecturer at American University, in both undergraduate and law school classes, on topics ranging from construction contracts to white collar criminal investigations. He also frequently speaks before various industry and trade organizations, including the American Bar Association.

Chip earned his Bachelor of Arts from the University of Maryland and his Juris Doctor from the Georgetown University Law Center. He is admitted to practice law in Maryland and the District of Columbia. He is also admitted to the U.S. Court of Federal Claims; the U.S. District Courts for the District of Maryland and the District of Columbia; the U.S. Courts of Appeal for the Fourth, District of Columbia and Federal Circuits; and the U.S. Supreme Court. Chip is a member of the American Bar Association Section of Public Contract Law, and the Forum Committee on the Construction Industry, where he previously served as Vice-Chairman of the Subcontracts Committee.

**Contact Information:**

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