

# A/E RISK REVIEW

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## Your Role as Project Representative

*The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.*

What you and your coworkers do and don't do on the jobsite in your role as project representative is crucial to your risk management efforts. Project representatives must avoid taking on any jobsite responsibilities and liabilities beyond those your firm already has under the prevailing standard of care for design professionals.

Of utmost importance, project representatives must avoid taking any responsibility for construction means and methods or for jobsite safety. The general contractor has the sole responsibility for controlling the construction process. It directs all construction workers and rightfully assumes full and complete responsibility for jobsite safety. Your project representatives must make sure that none of their words or actions on the jobsite transfer responsibility for safety to your company.

Indeed, recent trends in the design and construction industry have blurred the line on responsibility for safety. While the traditional design-bid-build project delivery system had very delineated lines regarding who was responsible for what, other methods like design-build, fast tracking and IPD put design firms into closer contact with contractors and the construction process. And now, there is a trend toward owners having their design teams actually design with an eye on construction safety (see sidebar, page 3). This movement could create liabilities for jobsite safety even

to those designers who never set foot on the construction site.

While safety issues are certainly front and center when it comes to jobsite liabilities, they are not the only area of liability for architects and engineers in the field. Carefully managing your overall jobsite services is key to limiting your professional liability risks and avoiding disputes and claims.

### When on the Jobsite

A project representative's primary role on the jobsite is to monitor, per the contract, the contractor's and subcontractors' general conformance with the design documents. The level and frequency of this monitoring should be spelled out in the client contract.

Unfortunately, unanticipated field conditions, problems with faulty systems and materials, and human errors often lead to noncompliance with plans. The goal of the project representative is to spot any deviations from plans at the earliest opportunity, help correct the problem before costs escalate and increase the chances the project is on schedule and within budget without sacrificing quality and function.

The most successful project representatives view the contractor as a project teammate, not an adversary. They don't point fingers, assign blame and sound alarm bells each and every time a contractor deviates from plans. Rather, they bring the deviation to the contractor's attention, help determine the reason for the deviation and support the contractor's best solution – whether that means approving a change order or helping the contractor execute according to the original plan. However, project representatives should not take any role in determining the best means and methods of

construction to revolve a problem. That remains the exclusive role of the contractor.

To implement their role effectively, project representatives must understand and adhere to the limits of their authority as established in the client contract.

Project representative responsibilities typically include:

- The interpretation of plans and specifications
- Construction observation for compliance
- Record-keeping and reporting
- Coordination of tests and inspections
- Project sign-off.

### **Interpreting Plans and Specifications**

Your plans and specifications are communication tools to convey your design intent to the contractor. Like all communication tools they are imperfect and subject to misinterpretation, leading to project flaws. That's why field observation services should be part of your scope of services on virtually every project. It allows your project representative to clarify design intent and answer the contractor's questions at the earliest possible moment.

For most projects, you will be asked to interpret your designs and specifications throughout the course of construction via "Requests for Information," or "RFIs." In most cases, RFIs are simply attempts by the contractor to ensure your designs are being interpreted correctly or to raise issues that perhaps your design does not significantly address. It is very important to give each and every RFI immediate attention – no matter how trivial – and provide a timely response – no matter how brief.

Be aware, however, that a contractor who submits an inordinate amount of RFIs may have ulterior motives for doing so. For example, a low-bid contractor may hope to pad its income by using RFI's to generate money-making change orders. If you feel this is happening, address the issue with the contractor and, if necessary, your client.

### **Observation for Compliance**

Should you observe work that fails to comply with your design intent, address it with the contractor immediately. Specify as clearly as possible why you feel the work does not comply. Determine how the contractor intends to proceed. Hopefully, you can reach

a solution that brings the work into conformance without unnecessary delays or added costs.

Sometimes, a work-around can be found that brings the work into general conformance with contract documents and retains design integrity. Other times, rework is the only acceptable alternative. In such cases, agree with the contractor to a rework schedule and examine the revised work upon completion.

Should you reach an impasse with the contractor, bring in an owner's representative to address the situation. *In no instance should you demand the contractor to stop work.* A stop-work order opens your firm up to a variety of liability problems, including delays and jobsite safety. Unless it is an issue of imminent danger to the safety or lives of people on the site – a potential trench collapse, for example – design firms should never stop work or otherwise take control of construction means and methods.

### **Recordkeeping and Reporting**

Key to effective field observation is a formal system of recordkeeping and reporting. Formal records provide the best defense in the event a claim is filed against a design firm, either during construction or years later.

Every project is unique, but there is certain information that should be gathered at any jobsite. Major industry associations, such as the AIA, ACEC, ASCE, NSPE and ASFE, have developed a variety of forms for collecting vital field information. In addition, firms can develop their own forms and reporting systems to capture important facts and figures.

Consider implementing a system of daily field reports (DFRs). Typically, these DFRs capture project-relevant information such as weather conditions, the particular trades currently working on the project, materials used, on site or delivered, work accomplished, project progress (or lack of it) in relation to the schedule, visitors on site, and conversations with contractors and owner representatives. Project reps should particularly focus on significant events (such as the completion of a major project phase) and unresolved issues (such as delays and noncompliance) that could lead to later disputes.

Visual records of the worksite are great supplements to your DFRs and they are becoming increasingly easy to compile. Cell phones, digital cameras and even onsite web cams can be used to create project progress reports.

### **Tests and Inspections**

Projects often involve independent tests and inspections required or performed by public agencies, manufacturer reps and other third parties. If these site visits are not carefully coordinated, parties can miss opportunities to perform functions that are vital to the project's overall schedule.

Your project representative should attend all tests and inspections. Make sure you obtain copies of test results and include notes in your DFRs regarding testing procedures and inspections.

Keep in mind that testing and inspection schedules are subject to change. As construction progresses, work closely with the contractor, testers and inspectors to track schedules against actual progress and revise testing and inspection dates as necessary.

### **Final Review and Sign-Off**

Your final reviews at the jobsite can be the most frustrating and differences of opinions among key parties can easily escalate to disputes and litigation. The contractor, subcontractors and the owner are anxious to get the job completed and signed off. The owner wants to meet the original schedule and the contractor wants to get paid. Still, project reps must stand firm if the work is lacking.

Once the contractor notifies you that work is complete, thoroughly inspect the project. Document any perceived deficiencies in writing and, if possible, with a camera. Prepare a punch list of all work still to be completed and arrange a punch-list review meeting with the contractor and all affected subcontractors. Conduct a project walkthrough to verify mutual understanding of what work still needs to be done.

As punch-list items are completed, review the work. Advise the contractor whether the work is acceptable or needs further modification. If the owner retains a commissioning firm to test mechanical systems, ask to attend those events.

When you are satisfied that the project is substantially complete, participate in a site tour with the contractor and owner's representative. This review is conducted to confirm that the work is complete, or substantially complete, and that the project is ready for full or partial occupancy. Assuming the building tour results in no major surprises, a certificate of substantial completion can be issued. Append to the certificate a list of any items requiring completion or correction. Once these items are taken care of, a certificate of payment can be issued.

### **A Project Representatives Manual**

Further information on this subject can be found in *Project Representatives Manual, A Guide to Preparing A Construction Administration Manual for Design Professionals*, published by the Professional Liability Agents Network (PLAN). This tool is a great aid in developing a customized manual for your field representatives, from preconstruction activities through project close-out. The cost is \$35 and can be ordered by phone (831.372.3706) or email (info@plan.org).

### **Can We Be of Assistance?**

*We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.*

### **Sidebar:**

#### **Safety Liabilities Off the Jobsite**

Lately, there has been a push to get architects and engineers involved in improving jobsite safety during the design process, before construction begins and prior to the project representative setting foot on the jobsite. This movement, commonly called "Designing for Construction Safety," asks design firms to become more knowledgeable regarding how different design requirements impact the safety of the construction workers who must execute that design. It further asks the design firm to help mitigate construction safety hazards through their designs.

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Without question, designers agree that improving jobsite safety is an admirable objective and are 100% behind the goal of zero jobsite accidents. But being required to design for safety within their scope of services and having this requirement specified in their written contract with the owner begins to gray the lines regarding control of construction means and methods and liabilities that result should a construction worker be injured on the job. If it is determined that a design firm has not appropriately performed its safety considerations, no matter how limited, liability could result.

Should you be required by a client to design for construction safety, proceed cautiously. Alert us immediately of any contract language to that affect. We'll help you determine whether such language expands your scope of work beyond the prevailing standard of care and anticipate whether any such requirements jeopardize your professional liability insurance coverage. We can also help recommend contract language that specifically states that in spite of any contract language related to designing for construction safety you are not responsible in any way for construction means and methods or jobsite safety. These must remain the sole responsibility of the project contractor.