

# A/E RISK REVIEW

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## Managing Jobsite Risks

*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 or other design professionals in your firm do – and don't do – on the jobsite as your firm's project representative is crucial to your risk management efforts. Your project representative must avoid taking on liabilities beyond those your firm already has under the prevailing standard of care for your profession.

Most design professionals are aware they should avoid taking responsibility, through their actions or contractually, for jobsite safety. Because the general contractor controls the construction process on the jobsite, it rightfully assumes full responsibility for safety. Design professionals must be careful that none of their words or actions on the jobsite transfer that responsibility to their companies.

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 out in the field. Carefully managing your overall jobsite services is key to limiting your professional liability risks and avoiding disputes and claims.

### Your Primary Job on the Site

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 to achieve the client's objectives. Unfortunately, that is often easier said than done. Challenging field conditions, unanticipated problems with systems and materials, and human errors often

lead to noncompliance with plans. The goal of field observation is to spot deviations at the earliest opportunity and increase the chances that the project delivers on expectations. That means keeping the project on schedule and within budget without sacrificing quality and function.

It is very important that design professionals assume the project representative role as a teammate – not an adversary – of the contractor. Your job is not to point fingers, assign blame and sound alarm bells each and every time a contractor deviates from your plans. Rather, your job is to bring the deviation to the contractor's attention, determine the reason for the deviation and work to find the best solution – whether that means approving a change order or helping the contractor execute according to the original plan. You should be cooperative and flexible – but when necessary, insistent.

To implement their role effectively, project representatives must understand and adhere to the limits of their authority as established in the contract with the client. Specific project representative responsibilities may include:

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

Make sure you, your client and the contractor are perfectly clear as to your company's role on the jobsite, your areas of authority and the contractor's areas of authority, including jobsite safety.

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## Interpreting Plans and Specifications

Your plans and specifications are communication tools that convey your design intent to the contractor. Like all communication tools, they are imperfect. Errors, omissions and misinterpretations can lead 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 your 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. These inquiries typically come in the form of "Requests for Information," or "RFI's," from the contractor, subcontractors and material suppliers.

Be aware that a contractor who submits an inordinate amount of RFI's may have ulterior motives for doing so. Some low-bid contractors hope to pad their 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.

In most cases, however, RFI's 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.

In rare cases, a contractor may ask for a revised drawing. If that is agreeable to you, provide an estimated time of completion. Work with the contractor to maintain schedule conformance.

## 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.

## Record-Keeping and Reporting

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

Every project is unique. However, 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 information.

Consider implementing a system of daily field reports (DFRs). Typically, these are daily reports that record information such as weather conditions, the particular trades currently working on the project, materials on site or delivered, observations of the work, comments about progress (or lack of it) in relation to the schedule, visitors to the site, conversations with contractors and owner representatives and any other information deemed pertinent to the project. Summarize significant events (such as the completion of a major project phase) as well as 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. Video cameras, digital cameras and even onsite web cams can be used to create project progress reports.

In addition to keeping DFRs, it is recommended that the project representative maintain access to the following while on the jobsite:

- Original contract documents
- RFIs
- Testing and inspection reports
- Shop drawings
- Change orders
- Substitutions
- Payment requests
- Conference minutes
- Punch lists.

When necessary, set up a field office on the site. Record-keeping procedures should mirror those at the home office.

### **Testing and Inspections**

Most projects will involve independent testings and inspections required or performed by public agencies, manufacturer reps and other third parties. It is important to keep on top of the schedule of such tests and inspections. If these site visits are not carefully coordinated, parties can miss one-time opportunities to perform functions that are vital to the project's progress.

Realize that testing and inspection schedules are never etched in stone. As construction progresses, work closely with the contractor and the testers and inspectors to track schedules against actual progress and revise dates as necessary.

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.

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

Your final reviews at the jobsite are often the most frustrating and can easily lead 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. So a project representative who continues to point out deficiencies and delays completion will not be making many friends. Still, you 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 for which the contractor is still responsible. Arrange a punch-list review meeting with the contractor and all affected subcontractors. Be prepared to justify each punch list entry. Conduct a project walkthrough to verify mutual understanding of what work still needs to be done.

As punch-list items are completed, inspect 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.

### **Avoiding Disputes and Claims**

How you and your staff handle jobsite responsibilities will go a long way toward avoiding disputes and claims. By being cooperative and flexible, yet diligent and steadfast, you can end your project with a happy client and a satisfied contractor.

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).

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**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.*