Contract Administration Pitfalls and Pointers

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This course offers an analysis of the common problems that occur during the contract administration phase and provides a review of some best practices to help avoid those problems.
Participants in this session will:

1. Identify from claims studies the issues that may arise during construction and how to avoid those claims.
2. Gain an understanding of how to manage projects in light of these challenges, resulting in improved public health, safety, and welfare.
3. Learn how to recognize and handle life-safety issues on a construction project.
4. Review situations in which better adherence to codes, along with better site evaluation, coordination with engineers, and site design, could avoid legal issues.
Today’s Presenter

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Most claims arise from CA / during the construction phase.

The design team has the least control over this part of their services, and faces constantly changing conditions.

Even with a perfect design, you may be blamed for not catching the mistakes of the contractor.

On the other hand, the CA phase is your best opportunity to verify where the project fails to conform to the design documents, and to identify and correct design errors or omissions.
Contract Administration Concerns

- Site visits - supervision vs. inspection vs. observation
- Change orders, pay applications, other issues
- Submittal responsibility/risk
- Means and methods issues
- Project safety
Site Visits—What is Your Role?

- Frequency and timing of visits—specified in contract?
- Who decides when site visits are scheduled?
- Purpose of visit
- Documenting visits
- Send appropriate person to site
- If you don’t have to be there, don’t go
Your role is to determine whether construction is proceeding in general conformance with the design intent in the plans.

You are not there to guarantee the contractor’s performance.

“Inspection,” “supervision,” “oversight” and the like suggest more control over construction than you actually have.
Documentation of the Site Visit

- Prepare a written report promptly after each visit.
- “Just the facts, ma’am” (or sir) - Avoid editorial comments.
- Record factual observations and conditions.
- Remember your notes and reports may be reviewed by others.
Nonconforming Work

- Never stop the work, simply note the non-conformity and copy the owner.

- Only the owner can ultimately accept work that differs from the contract documents.

- Beware of advising on the means and methods of correcting defective work.
Payment Certifications

1. Qualifications
   Make sure a qualified person from your office is reviewing the Work before processing payment requests.

2. Contractor’s Affidavit
   Require a contractor’s affidavit as to the progress.

3. Means and Methods
   Don’t get into means, methods, or control issues.

4. Process Timely
   Process applications for payment in a timely manner.
Comply with all termination notice requirements.

You need to limit your ongoing liability.

Give the client a chance to correct contract violations.

Consult with your insurance representative and legal counsel.
Owners often try to hold design professionals responsible for flawed shop drawings.

- Timeliness - Contract should stipulate a reasonable time for review.
- Employ a “QA/QC” plan for the review of shop drawings.
- Maintain a shop drawing review log.
- Retain copies of all submittals.
- Review your stamp so that it specifies what you are doing...and what you are not doing.
- Do not review shop drawings that exclude the contractor’s stamp of approval. Return to sender — “not reviewed.”
Requests for Information

1. Be timely and consistent
   - As with shop drawings, pay attention to timeliness, and a consistent review process.

2. Watch for excessive RFIs
   - Be wary of excessive or repetitive RFIs by a contractor seeking to establish a basis for change orders.

3. Enforce contract provisions
   - Understand and enforce contract provisions for RFIs.

4. Address concerns
   - Excessive or repetitive RFIs should be addressed with the owner and the contractor.
Documentation

Your documentation is your lawyer’s ammunition in presenting your defense.

Documentation includes written records, audio/video tapes, photographs and computer records.

Observations should be promptly recorded.

Record observed facts—avoid unneeded editorial comments (cubicle chatter).

Assume all project records are discoverable—including notes and timesheets.

Record retention should at least track state statutes of limitation and repose.
Your contract should clearly exclude responsibility for site safety. However, remember you have a responsibility for the safety of your own employees.

Do not venture beyond your contractual responsibilities because your actions can create liability where none existed.

Keep accurate and timely records of site visits.

CM and D/B change the rules with regard to site safety. Consult with local, experienced legal counsel.
Steps to take if you see an obvious hazard

1. Address imminent danger
   Alert those in imminent danger.

2. Alert foreman
   Address the issue with the project foreman.

3. Protect your people
   Remove your personnel from hazards.

4. Remember your role
   Don’t stop the Work.

5. Don’t correct
   Don’t tell the Contractor how to correct the situation.

6. Notify in writing
   Immediately notify the Owner and Contractor in writing of your observations.
Caution

No matter how clear your drawings are, mistakes will happen.
This presentation is only a tool to assist you in managing your responsibility to maintain safe premises, practices, and equipment, and is not for the benefit of any other party.

The presentation does not cover all possible hazardous conditions or unsafe acts that may exist, and does not constitute legal advice.

For decisions regarding use of the practices suggested by this program or presentation, follow the advice of your own legal counsel.
Thank you for your time!

QUESTIONS?

This concludes The American Institute of Architects Continuing Education Systems Program

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