



In the Loop: Every Member of the Design Team Should Know the Contracts

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The construction phase of a contract presents unique challenges and risks to a design team. At the time of issuance of final construction documents, designers have completed their primary design function, earned a substantial percentage of their fee, overcome countless challenges coordinating among the design team, ownership, and public authorities, and (hopefully) been scrupulously focused on design quality control.

This article will be the first of a four-part series discussing how architects may meet the expectations of their clients, and minimize the risk to themselves, as they transition from the design phase to “administration of the contract,” which introduces a significant change in the architect’s role.

Construction contract administration includes a far broader variety of tasks than the design phase, including bidding, responding to requests for information, reviewing shop drawing submittals, pay applications, site visits, and generally observing the progress of the work performed by the contractor and advising the owner on the same. Frequently, the principal who signed and sealed the plans may have limited involvement during the construction contract administration phase, empowering a project manager in place to oversee construction administration. The shift to construction contract administration is an important time for the design team to re-familiarize itself with the design contract and review the recently-signed construction contract.

Design professionals often view their written project contract as a formality, promptly stashing it away in a desk drawer after signing. Others view the contract as a matter for firm principals, and guard fee information internally. In some instances, the architect never requests the Owner-GC contract out of concern over getting too far into the Owner’s business. These can be risky behaviors for an architectural firm.

First, without familiarity with the design contract, the team tasked with performing the construction contract administration services may unintentionally expand its scope, simultaneously damaging its profitability and unnecessarily exposing itself to additional risks, and struggle to advise the owner in accordance with the firm’s contractual obligations. Conversely, the team tasked with performing the construction contract administration services may inadvertently “miss” a contractual obligation if they lack familiarity with the design contract.

Second, without familiarity with the construction contract, the team tasked with performing construction contract administration services may internalize costs which the general contractor contracted to perform. General contractors often attempt to push the architect to go beyond its contract duties, and may shift responsibility to the architect who does not have intimate knowledge of the contracts. This often happens at the lower levels of the project team: a general contractor’s young project manager calls the architect’s young designer to ask for “an assist” and the architect obliges the general contractor out of a sense of duty to the project, without consideration of whether the architect is required to assist and is unnecessarily undertaking additional liability.

The Owner-General Contractor contract (and general conditions) provide language which may help an architect reject such attempts and push the general contractor to perform its scope. The designer typically has extensive experience with “typical” construction administration functions, but should revisit the contract definitions of these obligations, which typically reinforce the limited nature of the architect’s duties during construction administration and protect the designer from liability.



For example, “rubber stamping” of submittals by the general contractor cannot be adequately policed by an architect without familiarity with contract language imposing an obligation on the Contractor to “review for compliance with the Contract Documents, approve, and submit to the Architect,” and defining the Architect’s review as “the limited purpose of checking for conformance with ... the design concept expressed in the Contract Documents” as stated in AIA A201 § 3.12.5 and § 4.2.7.

Every level of the design team should be aware of all time-related provisions in the contract, and this is not limited to the construction schedule itself. For example, a general contractor may attempt to impose shorter return dates for RFIs and submittals than the Owner-Architect contract requires of the Architect. A designer cannot guard against such attempts (which can later be used to blame the designer for delay) without knowledge of its contract obligations. Designers can also miss out on opportunities for additional compensation by performing additional services without first notifying the Owner of the need for such services and entitlement for payment.

Knowledge of the Owner-General Contractor contract is critical when considering Change Order requests. The architect should not merely rely on arguments that a particular cost is “reasonably inferable from the Contract Documents,” but should also consider other contract provisions affect the general contractor’s entitlement to a change order. For example, claim notice provisions may act as a bar to the GC’s claim in the first instance. Further, language outlining responsibility for hidden site conditions, definitions of “contingency” and “allowance,” and other provisions which answer the question of whether a Change Order can be modified from project to project, and often stray from the “typical” allocation of risk that the design team may expect.

Nearly every function of the construction administration process can impact Owner satisfaction and result in cost and time impacts on a project, creating risk to the designer. These risks cannot be adequately managed without the entire design team having a solid understanding of the contracts governing the project. By educating the architectural team on the obligations under the Project contracts from at the outset, the risks associated with construction contract administration may be minimized.

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