

Construction Contract Administration and Risk Management: Self-Defense for Architects



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Learning Objectives:

1. Participants will analyze the early signs or trouble (red flags) to watch for during the construction phase.
2. Evaluation of appropriate proactive and reactive measures will be summarized as well as how to apply them.
3. Measurements of success/failure will be defined. Alternative outcomes will be identified, based on behavior modification.
4. Transformation of construction phase actions will be recognized; building a unified team spirit, protecting the Architect and limiting exposure.

AIA DOCUMENT B141-1997

*Standard Form of Architect's Services:
Design and Contract Administration*

TABLE OF ARTICLES

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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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STANDARD FORM
SERVICES

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of Architects
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**HAVE YOU CONSIDERED THE
LEGALESE?**

**GUARANTEES OF PRICE
DISPUTE RESOLUTION
PERSONAL LIABILITY
CERTIFICATE OF MERIT
LIMITATIONS OF LIABILITY
NO WARRANTIES OR
GUARANTEES
BETTERMENT
INDEMNITY
RECOVERY OF COLLECTION
COSTS**

**IS YOUR CONTRACT IN ORDER?
DO YOU HAVE THE RIGHT CONTRACT FOR THE PROJECT?
HAVE YOU ADEQUATELY DEFINED THE SCOPE OF WORK, THE
FEE FOR THE WORK AND THE SCHEDULE FOR THE
PERFORMANCE OF THE WORK?**

PROPER CONTRACTING WITH SUBCONSULTANTS

HAVE YOU MADE PROPER SUBCONSULTANT AGREEMENTS?

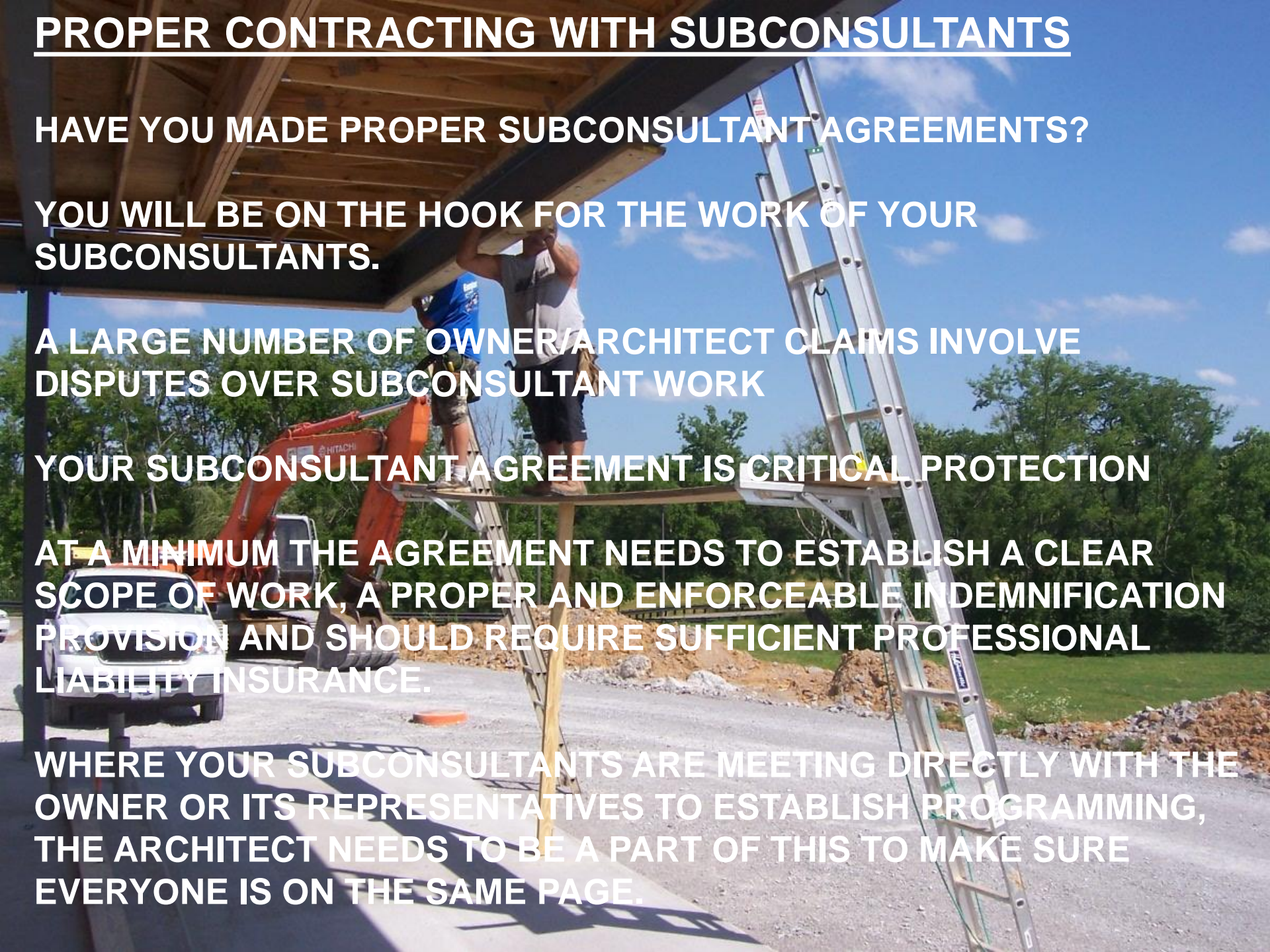
YOU WILL BE ON THE HOOK FOR THE WORK OF YOUR SUBCONSULTANTS.

A LARGE NUMBER OF OWNER/ARCHITECT CLAIMS INVOLVE DISPUTES OVER SUBCONSULTANT WORK

YOUR SUBCONSULTANT AGREEMENT IS CRITICAL PROTECTION

AT A MINIMUM THE AGREEMENT NEEDS TO ESTABLISH A CLEAR SCOPE OF WORK, A PROPER AND ENFORCEABLE INDEMNIFICATION PROVISION AND SHOULD REQUIRE SUFFICIENT PROFESSIONAL LIABILITY INSURANCE.

WHERE YOUR SUBCONSULTANTS ARE MEETING DIRECTLY WITH THE OWNER OR ITS REPRESENTATIVES TO ESTABLISH PROGRAMMING, THE ARCHITECT NEEDS TO BE A PART OF THIS TO MAKE SURE EVERYONE IS ON THE SAME PAGE.



PRE-BID ISSUES



“THE DRAWINGS ARE ON THE STREET”



**PRE-QUALIFY BIDDERS WITH EXPERIENCE ON A
PARTICULAR PROJECT TYPE**

UNDERSTAND GC BID DAY PRESSURE

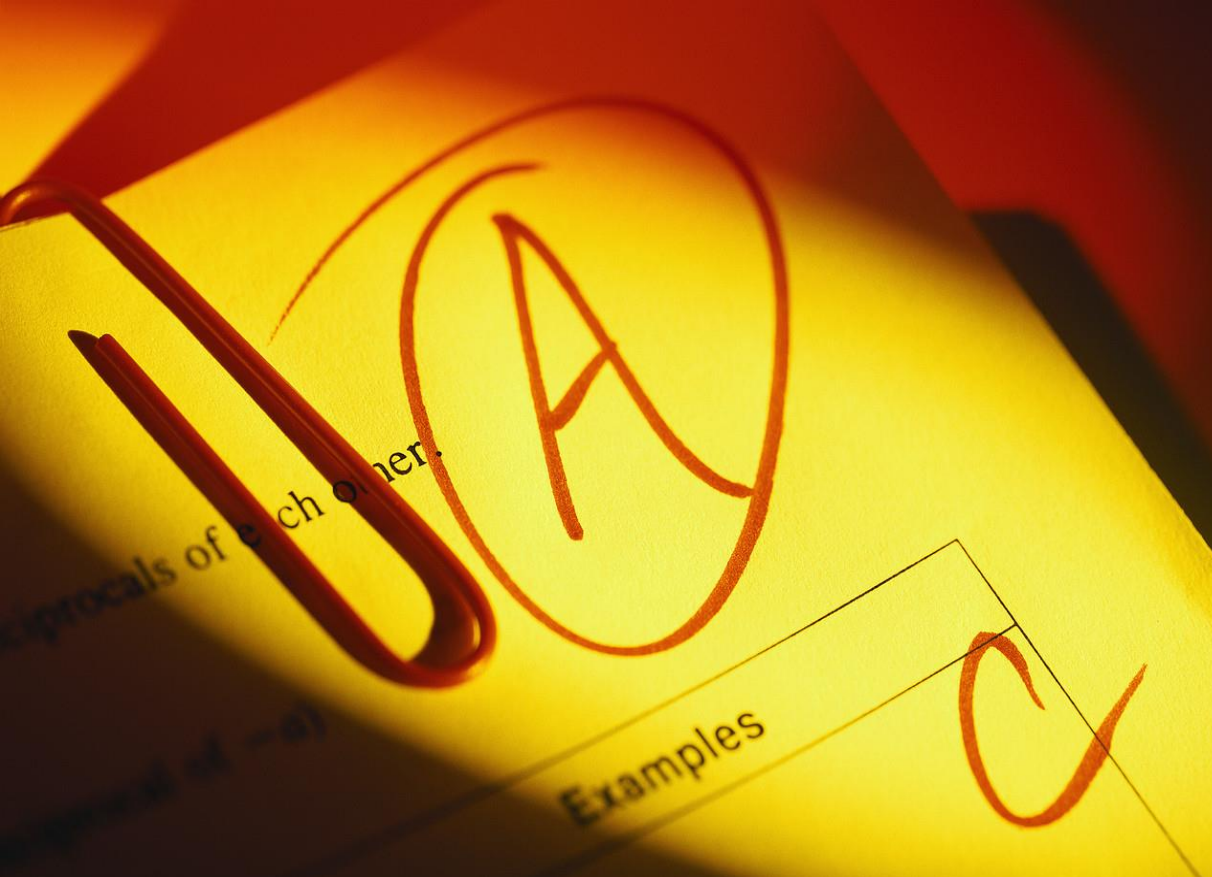
CHOOSE BID DATE CONSIDERATELY

LIMIT NUMBER OF ALTERNATES

**ALLOW POST BID FOLLOW UP ON NON CRITICAL
INFORMATION**

**(EXTENSIVE UNIT PRICES, LISTING OF NON MAJOR SUBS,
ETC)**

UNDERSTAND GC RISK LOGIC



**USE PRE-BID
ATTENDEES AS A
RESEARCH
TOOL**

**PRE-QUALIFY
GC'S WITH LIKE
EXPERIENCE**

**PRE-QUALIFY MAJOR SUBS INCLUDING SPECIALTY
SUBS**

**USE ALLOWANCES WHERE CONSIDERABLE RISK
AND LACK OF SUFFICIENT DATA EXISTS**



MAKE USE OF EXPERTISE IN THE ROOM



**OFFER TO ASSIST THE GENERAL CONSTRUCTION
COMMUNITY IN “PRE-SELECTION” OF QUALIFIED
SUB CONTRACTORS**

PRE-CONSTRUCTION



“THE BID IS IN THE MONEY”

ADMINISTRATIVE PROTOCOL

POTENTIAL SUBCONTRACTOR ISSUES

CLARITY ON ALLOWANCES AND SCHEDULE

NOTICE TO PROCEED

SUBSTANTIAL COMPLETION

IN CONGRESS, JULY 4, 1776.

States of America

We the People

insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article 1

Article 11

**ESTABLISHING THE START DATE (NOTICE TO PROCEED)
SHOULD BE BASED ON REAL PROJECT ISSUES.**



**FOR THE CONTRACTOR, “BUYING OUT” THE
PROJECT WITH THE LOW BID SUB-CONTRACTORS
IS TODAY THE BIGGEST CHALLENGE**

**REALIZE THE
PROJECT CAN'T**

“START TOMORROW”



**OFFER TO ASSIST THE CONTRACTOR BY
SETTING A “SHOOTING OF THE STARTERS
PISTOL” DATE, MUTUALLY ACCEPTABLE TO
ALL 3 PARTIES.**



BEGIN NOW TO MANAGE YOUR OWNERS EXPECTATIONS OF THE CONSTRUCTION PHASE. EDUCATE THEM IN FRONT OF THE ISSUES ARISING.



DECIDE ON AND COMMIT TO:
A. WHO , AND
B. HOW
THE PRINCIPALS OF THE 3 TEAMS
(OWNER/ARCHITECT/CONTRACTOR) WILL COORDINATE

DECIDE ON WHO THE “DAILY MANAGER” PERSONNEL ARE
FOR THE 3 TEAMS(OWNER’S REPRESENTATIVE, PROJECT
ARCHITECT OR CONSTRUCTION ADMINISTRATOR,
PROJECT MANAGER OR PROJECT ENGINEER)

STARTING WORK



**“THE STARTERS PISTOL HAS
FIRED”**

**PRE-
CONSTRUCTION
CONFERENCE**

**MAKE THIS AN
INTERACTIVE
GATHERING**

**LISTEN TO TEAM
MEMBERS AS
MUCH AS YOU
SPEAK**

**DIG INTO THE
DETAILS OF THE
PROJECT**



The background of the image is a detailed architectural blueprint, likely for a building's floor plan. It features various rooms, corridors, and structural elements, with labels such as 'KITCHEN', 'BATH', 'BED ROOM', and 'HALL'. The blueprint is drawn in white lines on a dark blue background.

**GO COMPLETELY THROUGH THE
DRAWINGS AND SPECIFICATIONS
GATHERED AS A TEAM.**

**REVIEW AND EVALUATE THE
“PROBLEM” OR “COMPLEX” PORTIONS
OF THE PROJECT TOGETHER**

**AS MUCH AS YOU HAVE BEEN TOLD
NOT TO, REALLY PARTICIPATE IN A
“MEANS AND METHODS” DISCUSSION
ABOUT PROJECT SEQUENCE.**



**DO NOT MAKE THIS A MEETING ABOUT
ADMINISTRATIVE PROCEDURES ONLY.**

BE SURE THE WHOLE TEAM IS PRESENT.

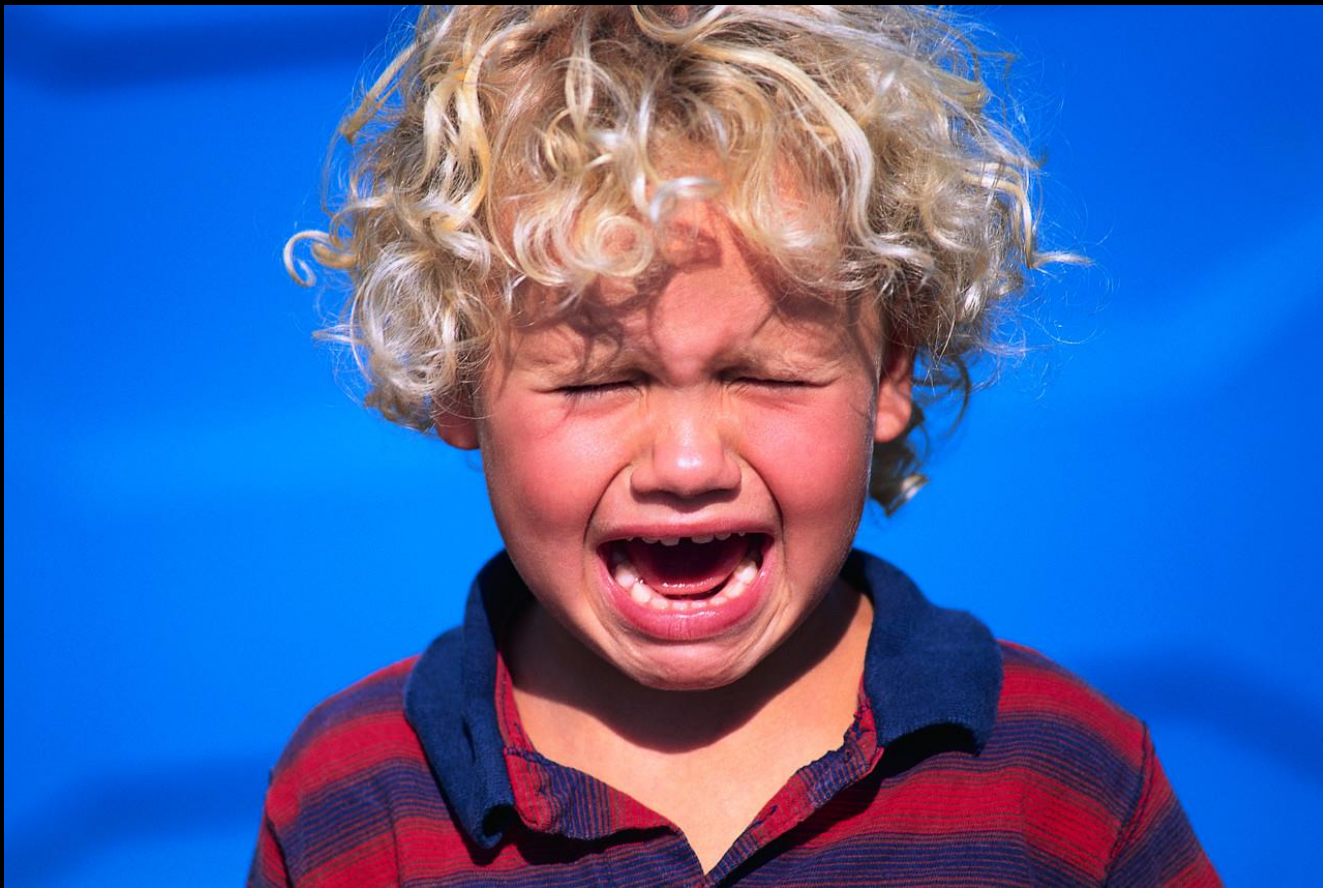


**LOOK IN DETAIL AT
“LOW HANGING
FRUIT”...**

FULL FLEDGED CONSTRUCTION

“THE FIRE ALARM IS GOING OFF”





EVEN AFTER SO MUCH HAS BEEN DONE
TO PLAN THE BEST THAT YOU CAN...

PROBLEMS WILL ARISE.



**AGREE TO THE
SUBMITTALS
REQUIRED TO BE
PROVIDED.**

**BE REALISTIC AND
HONEST WHEN
AGREEING TO THE
SCHEDULE.**

**FOLLOW THROUGH
ON YOUR
COMMITMENT.**

**WHERE
POSSIBLE,
ACCEPT
THE
PORTIONS
OF A
SUBMITTAL
THAT CAN
BE
ACCEPTED**





**ASK FOR MOCK-UPS
ONLY WHEN REQUIRED
AND IMPORTANT.**

**ALLOW FOR THE
MOCK-UP
PRODUCTION,
SHIPMENT AND
ASSEMBLY.**

**IF IT HAS TO BE DONE,
UTILIZE IT FOR
INSTALLATION AND
QUALITY REVIEW.**

PERFORM SITE
OBSERVATIONS/
VISITS AS A
GROUP

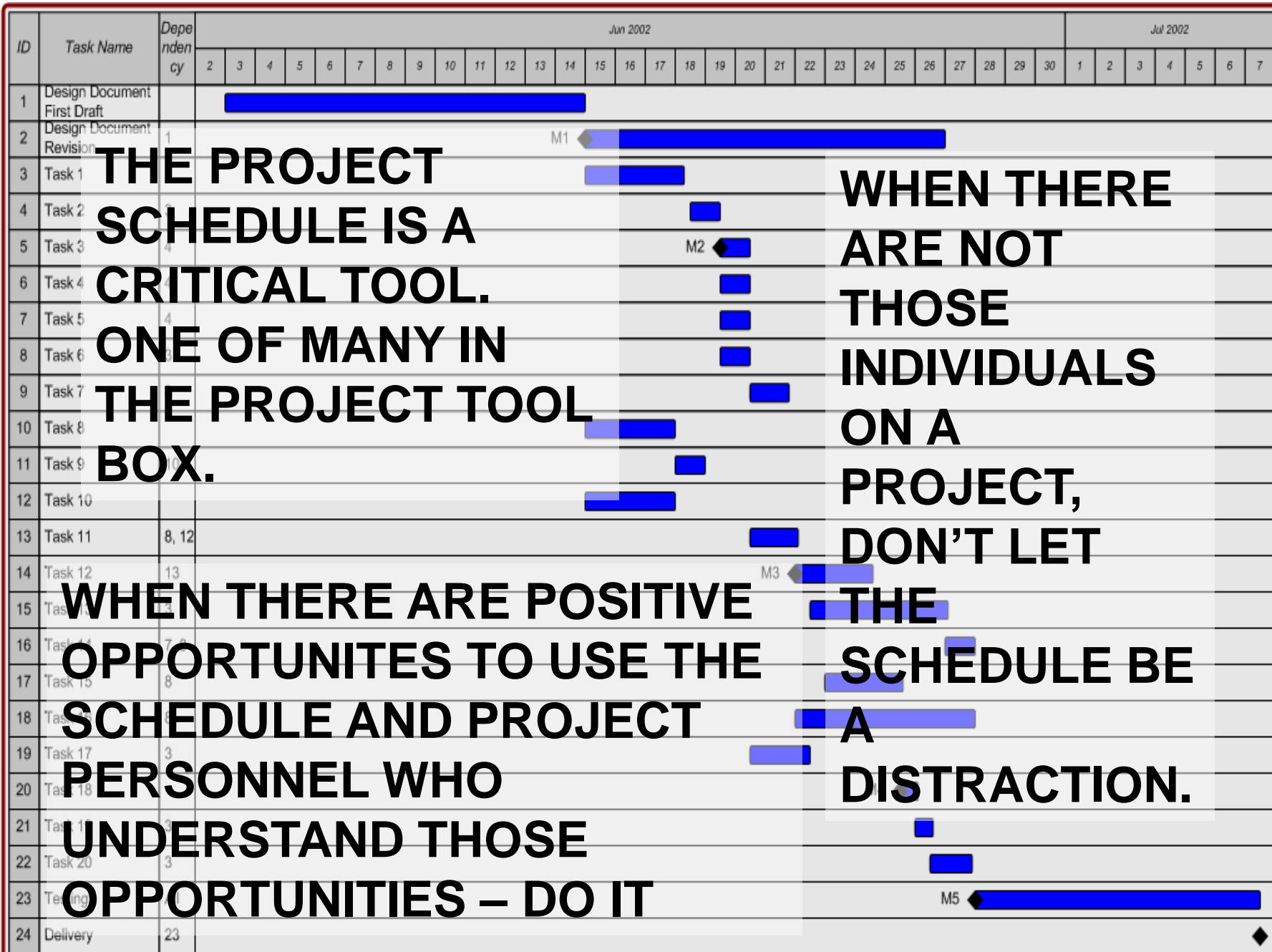
DOCUMENT THE
VISIT AS SOON
AS POSSIBLE

REFERENCE
NON-
CONFORMING
WORK, REJECT
IT...

DRAFT AIA® Document G711™ - 1972

Architect's Field Report

PROJECT: (Name and address) sample	FIELD REPORT NUMBER:	OWNER: <input type="checkbox"/>	
CONTRACT:	ARCHITECT'S PROJECT NUMBER:	ARCHITECT: <input type="checkbox"/>	
		CONSULTANT: <input type="checkbox"/>	
		FIELD: <input type="checkbox"/>	
DATE	TIME	WEATHER	TEMP. RANGE
EST. % OF COMPLETION	CONFORMANCE WITH SCHEDULE (+/-)		
WORK IN PROGRESS	PRESENT AT SITE		
OBSERVATIONS			
ITEMS TO VERIFY			
INFORMATION OR ACTION REQUIRED			
ATTACHMENTS			
REPORT BY:			



THE PROJECT SCHEDULE IS A CRITICAL TOOL. ONE OF MANY IN THE PROJECT TOOL BOX.

WHEN THERE ARE NOT THOSE INDIVIDUALS ON A PROJECT, DON'T LET

WHEN THERE ARE POSITIVE OPPORTUNITES TO USE THE SCHEDULE AND PROJECT PERSONNEL WHO UNDERSTAND THOSE OPPORTUNITIES – DO IT

THE SCHEDULE BE A DISTRACTION.

SHORT “LOOK AHEAD” JOB SITE GENERATED SCHEDULES ARE EXTREMELY USEFUL.



ADJUST THE PROJECT SCHEDULE WHEN IT IS APPROPRIATE TO DO SO.

CHANGES WILL HAPPEN

BE REALISTIC ABOUT THIS

FIND AGREEMENT ON THE FINANCIAL IMPACT OF THE CHANGED CONDITION

PROCESS CHANGE ORDERS EVERY MONTH

ASK FOR ADDITIONAL FEE WHEN THE SCOPE OF THE PROJECT EXPANDS



AIA® Document G701™ – 2001

Change Order

PROJECT (Name and address): Mel's Coffee Shop & Day Spa Ramseur, North Carolina	CHANGE ORDER NUMBER: 001 DATE: August 12, 2008	OWNER: <input checked="" type="checkbox"/> ARCHITECT: <input checked="" type="checkbox"/> CONTRACTOR: <input checked="" type="checkbox"/> FIELD: <input type="checkbox"/> OTHER: <input type="checkbox"/>
TO CONTRACTOR (Name and address): Mr. Contractor	ARCHITECT'S PROJECT NUMBER: 000000000 CONTRACT DATE: October 07, 2005 CONTRACT FOR: General Construction	

THE CONTRACT IS CHANGED AS FOLLOWS:

(Include, where applicable, any undisputed amount attributable to previously executed Construction Change Directives)

CPF#055 2 nd Pottery Kiln	\$6,630.09
CPF#056 Additional Spa Room	\$1,776.49
CPF#060 Parking Lot Expansion	\$3,812.95

The original Contract Sum was	\$ 16,165,000.00
The net change by previously authorized Change Orders	\$ 0.00
The Contract Sum prior to this Change Order was	\$ 16,165,000.00
The Contract Sum will be increased by this Change Order in the amount of	\$ 12,219.53
The new Contract Sum including this Change Order will be	\$ 16,177,219.53

The Contract Time will be unchanged by Zero (0) days.
The date of Substantial Completion as of the date of this Change Order therefore is

NOTE: This Change Order does not include changes in the Contract Sum, Contract Time or Guaranteed Maximum Price which have been authorized by Construction Change Directive until the cost and time have been agreed upon by both the Owner and Contractor, in which case a Change Order is executed to supersede the Construction Change Directive.

NOT VALID UNTIL SIGNED BY THE ARCHITECT, CONTRACTOR AND OWNER.

Architectural Firm ARCHITECT (Firm name)	Contractor Firm CONTRACTOR (Firm name)	Owner Firm OWNER (Firm name)
ADDRESS	ADDRESS	ADDRESS
BY (Signature) Mr. Architect (Typed name) August 14, 2008 DATE	BY (Signature) Mr. Contractor (Typed name) August 12, 2008 DATE	BY (Signature) Mr. Owner (Typed name) August 15, 2008 DATE

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User Notes:

(1715848330)

CLAIMS



**“THE ARCHITECT AS MEDIATOR
AND ARBITOR”**



**THE ARCHITECT
TRADITIONALLY WORE 3
HATS ON THE PROJECT**

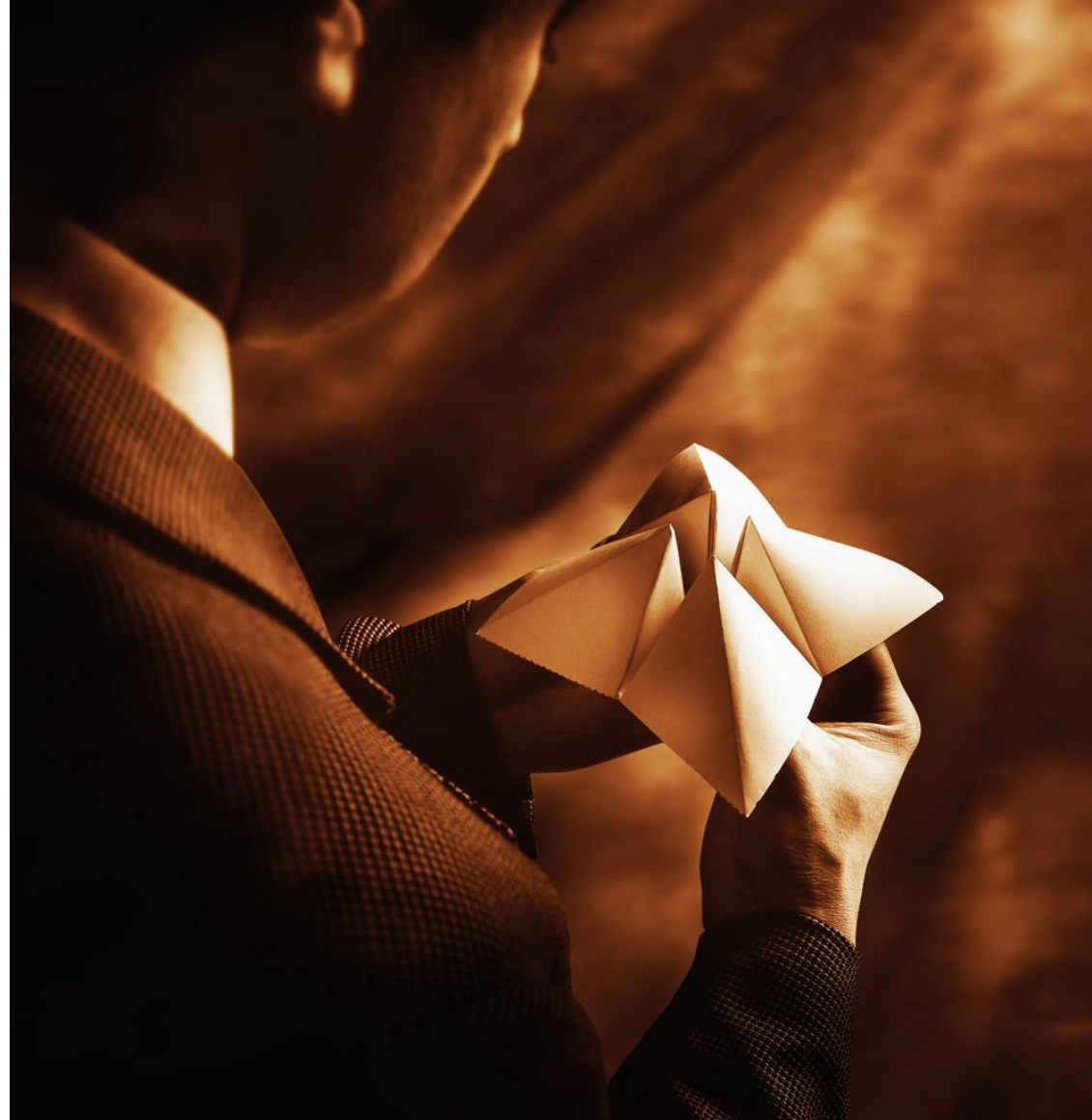
**UNDER THE NEW 2007
DOCUMENTS, THE
REFEREE IS REFERRED
TO AS AN “INITIAL
DECISION MAKER”**

**THE IDM MAY BE THE
ARCHITECT OR CAN BE
SOME OTHER PARTY.**



WHAT IS THE PROCESS?

***Ruffin Woody and Associates, Inc. v. Person County*, 92 N.C. App. 129 (1988) (holding that architect's decision is final absent evidence of 'such gross mistake as would necessarily imply bad faith or failure to exercise honest judgment').**



Who gets to decide whether a decision was made in “good faith” and what is “good faith”?

Practical Considerations:

Conflicts of interest

Making a decision

Details to include in written decision

Burden of proof

**Dealing with the Owner's
Attorney**



CASE STUDIES





#1

NON-SOCIETAL COMPLIANT LECTURE
SEATS.

DO MOCK-UPS MATTER?

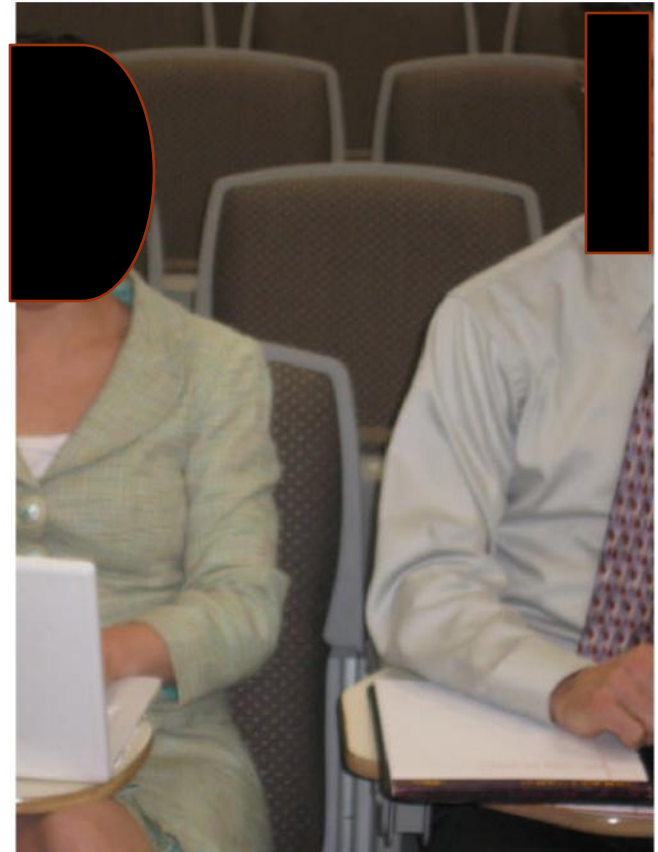
**THIS ISSUE INVOLVES
LECTURE SEATING.**

**DURING
DESIGN, A
DIRECTIVE
WAS GIVEN
TO
PROVIDE A
LECTURE
HALL WITH
“AS MANY
SEATS AS
POSSIBLE”.**



**THE EXACT SPECIFIED SEAT WAS
SUBMITTED BY THE CONTRACTOR
(MAKE AND MODEL NUMBER)**

THE SEATING WAS INSTALLED





**SEVERAL MONTHS
PASSED WHILE
WORK WAS
COMPLETED....**

**AT FINAL INSPECTION, THE
OWNER REFUSED TO ACCEPT
THE SEATS ON THE PROJECT**





**SIX MONTHS
LATER.....**

**THE DESIGNER
WAS COMPLETE
WITH THE
PROJECT AND IT
WAS FINISHED.**



SPECIFY MOCK-UPS WHEN NECESSARY



**UNFORTUNATELY,
THIS HAS BECOME
THE NORM.**



#2

WHEN IS THE END REALLY THE END.....

HOW LONG WILL THIS GO ON?

THE HIGH SCHOOL PROJECT WAS A WONDERFUL COMMISSION



AGENCY REVIEW MODIFICATION REQUIREMENTS THAT MOVED THE BUILDING AROUND ON THE SITE....

N
C
D
O
T



UNFORESEEN SITE CONDITIONS.....



PRIMARY SUBCONTRACTOR GOES BUST

NCDOT CHANGES ITS MIND

PROJECT MANAGER LEAVES THE GC FIRM

**THE WORST WINTER OF THE CENTURY
SHUTS DOWN THE PROJECT FOR THE
WINTER....**




**OWNER REPRESENTATIVE (THE
PRINCIPAL) MAKES MULTIPLE “USER
NECESSARY” CHANGES**



NCDOT.....AGAIN

**CHANGE ORDER PROPOSAL #126 ARRIVES
FOR REVIEW**

THE PRINCIPAL LEAVES.....



**SPECIFICATION
LIMITATIONS
(LACK OF DETAIL)
LEAD TO
FINISHES THAT
ARE LESS THAN
DESIRABLE TO
THE OWNER**

**THE SCHOOL OPENS 2 WEEKS LATE.
OVER THE NEXT 18 MONTHS THE
CONTRACTOR WORKS ON THE 200 PAGE
PUNCHLIST.....**



**THE
PROJECT
JUST
STARTED ITS
3RD YEAR OF
OCCUPANCY
WITH A 2
PAGE
PUNCHLIST
STILL IN
EXISTANCE**



**AND A PROJECT TEAM SET
FOR ITS 2ND MEDIATION.**



#3

**THE CASE OF THE
LOW BIDDER
CHANGE
ORDERING ITS
WAY INTO A
PROFIT**

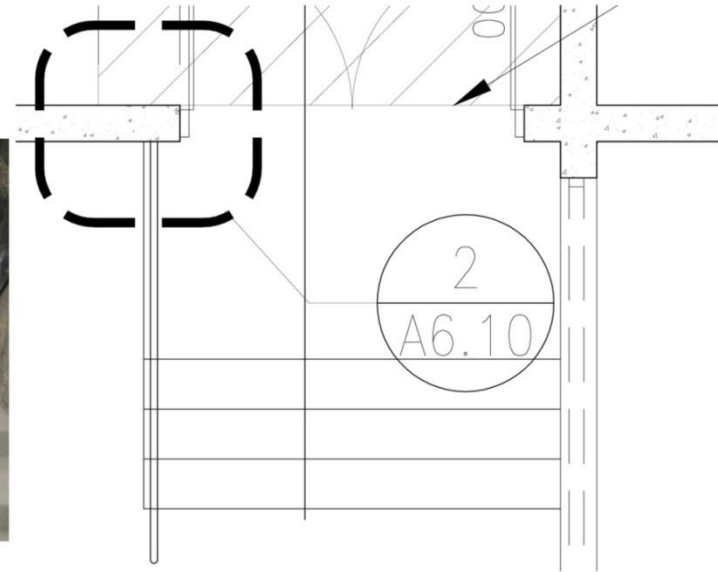


LESSONS TO LEARN:

**HOW TO HANDLE A
PROBLEM PROJECT**

**HOW TO AVOID THE
APPEARANCE OF
IMPROPRIETY**

**WHEN TO BRING IN
THE PRINCIPALS**



#4

**THE DISCOVERY OF AN EXPENSIVE CONSTRUCTION
ERROR AT THE END OF THE JOB, WITH NO EASY FIX
AND POTENTIALLY INSUFFICIENT FUNDS TO
CORRECT THE WORK**



LESSONS TO LEARN:

IDENTIFICATION OF PROBLEM AREAS OF CONSTRUCTION

PROPER CONSTRUCTION OBSERVATION

PRO ACTIVELY GOING AFTER PROBLEMS



#5

**THE
CONSULTANT
DROPPED THE
BALL**



LESSONS TO LEARN:

**PROPER CONSULTANT
MANAGEMENT**

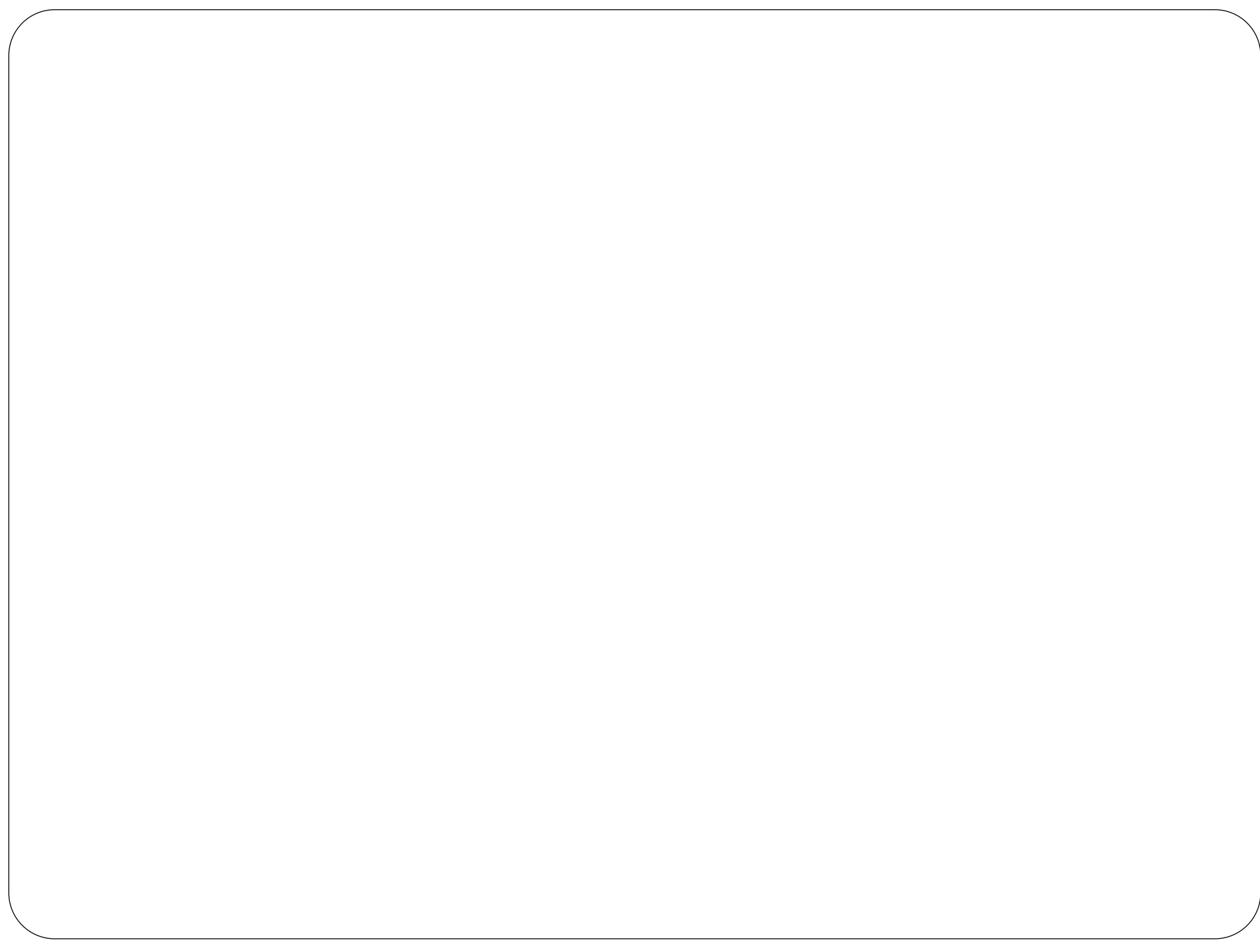
**PROPER DOCUMENTATION
OF DESIGN DECISIONS**

**PROPER CONTRACTING
WITH CONSULTANTS**

**CAREFUL POSITIONING ON
CLAIMS—FIGURE OUT THE
TRUTH BEFORE TAKING
SIDES**



**WHO IS
THE
WINNER?**



OR
Everyone!

You
decide.

THANK YOU!!



James E. Rains, Jr., FAIA, CSI
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Speaker

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