

Self Defense for Architects

Questions + Answers from the April 14, 2013 Webinar

Q: How do you address a situation where during construction the owner's rep takes over the project (unofficially) and no longer invites the architect to site meetings, making impromptu site decisions/ changes without consulting the architect or interior designer?

A: First, review your contract for specifics in this regard. Follow up with a meeting with the "owner" to be sure that individual is aware of this action. Next, assuming you find no other specific action defined in your contract, hold an "official" meeting with the owner and contractor to re-outline the contractual relationship you hold based on your contract. Specifically outline what has been done that you were not a party to, and document your indemnification related to those items. Copy attendees with your report, and require receipt confirmation. Include your liability insurance carrier and legal advisor in this process and follow her/his advice as well. Invite the project authority having jurisdiction to the meeting. Be sure they are on notice that you are no longer involved in the CA phase of this project. It may work to get things back on track by just sharing that this is your intention.

Q: Can you briefly cover the last few case studies as well? Those that we weren't able to get to in time?

A: It isn't really practical or of real value I'm afraid to do that in a worded answer. They are included in the file of the PowerPoint and I'd be happy to answer any questions as a follow up to you reviewing that. I apologize for not getting to them. It always makes the process more rich to bring in the participants questions...and that took longer than I hoped....but I think it added value.

Q: Post-bid, a contractor may desire to substitute one product or system in the construction documents for another product or system he prefers. Sometimes this translates into significant re-design for the architect and consultants. How do we as architects/consultants avoid the risk of having to redesign without coming across as a non-team player, and also upsetting the owner with additional services requests?

A: This possibility had to be reviewed and discussed as one of those pre-contract signing items to be most powerful I think. But, having a detailed owner conversation when it does happen about what is involved to make the necessary document changes is helpful. I would center it around how you are protecting them in going through the exercise. I have heard in the past that a majority (over 50% that is) of construction lawsuits involve some "change" made to the contract documents during construction. Showing the value of your involvement in an extremely detailed fashion related to a change might help them understand the need for money to do so. I also have seen (in supplementary general conditions for example) phrases that require the contractor to pay for the re-design.

Q: During bidding, it seems like many projects have a lot of catch-all addenda to complete the drawings. How can we get away from this?



A: You are so right! We shoot off our own foot when we do that too. Does anyone think the construction community is fooled into thinking that kind of set of documents is strong when we do so. WOW...I sure wish that was something everyone was trying to do. I don't have a good answer that won't seem like I'm being a bit smart-alecky; but...we have got to stop rushing out the door with work. We have got to start taking the time to really develop drawings, drawing the "hardest to understand components in great detail. We all need a well-documented and follow-able QA/QC program in our firms...and then we MUST use it. And...we have got to take the time to sell our value to our customer, so we have the fee to be able to take the necessary time to produce a solid and strong set of contract documents.

Q: What does one do when GC ignores or make excuses for non-conforming work?

A: My personal process is to be direct, factual and strong. I try to point out in a non-confrontational way first who is the decision maker when it comes to "conforming" work. If it is possible, I also involve industry expertise (outside of myself) early. But...when it comes down to it, excuses will turn around on you quickly. They eat up valuable project clock. So, I try to be very fair, timely and deliberate in making the decision. But, once made, I set a correction timeframe when the work must be corrected. Should it be missed I go to the next step by using the owner's right to perform their own work, correct non-conforming work or giving work to other contractors outside of the primary contractor.

Q: What do you think about a mediation panel being in place during the course of construction?

A: I believe mediation is how almost everything gets resolved in the end. In that regard having the process and individual(s) set up ahead of time is a wise move. Having a procedure where the designer of record attempts first to resolve an issue and then going to a panel seems a good way to involve an "outside" group. I have seen that work well. I also like it when the contractor, owner and designer each select a panel member. Having a perspective represented from each of the three can be very insightful.