

Reviewing Owner-supplied Agreements

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Revised January 2007

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SUMMARY

When asked to review a client's owner-architect agreement, architects should adhere to a few general concepts to help organize their comments objectively without jeopardizing a potential work opportunity.

FIND THE RIGHT WORDS

Especially with seasoned clients or on projects for public entities, architects often are asked to comment on a prospective client's standard owner-architect agreement during the procurement process. Sometimes formal responses are required as part of the architect's proposal; at other times, comments are solicited during an interview.

In replying to such requests, it can be difficult to pursue a successful strategy. If one fails to take issue with unreasonable provisions, risk of unnecessary liability may result; if one responds too forcefully or in too much detail, one risks not being selected.

You can protect your interests, without jeopardizing your chance of selection, by adhering to a few general concepts:

Keep it simple. Don't write missives or cite case law when a single sentence will convey the essence of your concerns.

Put it in a broad context. Explain why a term is problematic in the most general terms.

Encourage more dialogue. Offer to provide a client more information if they require it before making a selection. Suggest that major concerns can be addressed and resolved quickly in a face-to-face work session once your team has been selected. Reassure the client of your confidence that an agreement can be reached.

Link comments to insurability, risk management, or quality control.

Clients can identify with these issues and generally respond favorably. For example, rather than characterizing proposed indemnification or redesign clauses as one-sided, unreasonable, or poorly drafted (or all three), simply state, "We would like to discuss the indemnification provisions vis-à-vis our insurance coverage," or "We would like to discuss various cost control strategies that address your budgetary concerns and suggest some alternative redesign provisions." In both cases, you have left the issue open for detailed discussion at a more appropriate time and venue, preferably after you are selected, and have conveyed a willingness to discuss and resolve the issue.

ORGANIZE COMMENTS OBJECTIVELY

If you are asked to provide specific written comments, organizing your comments into general categories will help foster a climate of objectivity focused on issues. An example:

Attached please find our review of your draft agreement for Architectural/Engineering services. Most of our comments fall into the following categories:

1. Clarification of roles and responsibilities between your organization, the A/E team, and the contractor
2. Aligning the A/E team's services with items over which it has reasonable control
3. Providing our team with greater ability to help you manage your risks
4. Consistency with available insurance coverage. Our professional liability insurance serves an important role in providing financial coverage for any of the A/E's negligent acts, errors, or omissions. Throughout the draft, we have offered alternative language that is consistent with our insurance coverage and addresses your major concerns.
5. Clarification of basic and additional services. In our experience, clarifying these lists helps

ensure that fewer services fall through the cracks due to unspoken expectations about what is or is not included within the A/E team's basic services.

Close the letter by offering to meet with your client and their advisors. Reassure the client, again, that you are prepared to work through the issues and reach an agreement.

ABOUT THE CONTRIBUTOR

Michael Strogoff, AIA, was the managing principal of a 40-person architecture and planning firm for 13 years, has negotiated and managed complex projects for more than 20 years, and has consulted closely with many business owners for more than seven years.

Mr. Strogoff is the publisher of *Negotiating Strategies*, a monthly newsletter about negotiating better agreements written specifically for the architecture and engineering professions. To view a sample newsletter or subscribe, visit the Web site,



www.strogoffconsulting.com. This Best Practice was adapted from a 2001 *Negotiating Strategies* article and reprinted with permission.

RESOURCES

More Best Practices

The following AIA Best Practices provide additional information related to this topic:

- 09.01.01 Risk Management Checklist
- 18.02.02 Owner-Architect Agreements for Small Projects
- 09.01.03 Warning Signs of Potential Claims

For More Information on This Topic

See also "Project Team Agreements," by Timothy R. Twomey, AIA, *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 11, pages 289.



See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at bookstore@aia.org.



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Keywords

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- Project administration
- Project documents
- Design services agreements