

Steps for Reviewing a Contract

Contributed by Victor O. Schinnerer & Company Inc.

November 2006

The AIA collects and disseminates Best Practices as a service to AIA members without endorsement or recommendation. Appropriate use of the information provided is the responsibility of the reader.

CONSULT YOUR ATTORNEY

The information herein should not be regarded as a substitute for legal advice. Readers are strongly advised to consult an attorney for advice regarding any matter related to contracts and agreements.

SUMMARY

Victor O. Schinnerer & Company Inc. offers four concrete steps that an architect can take to mitigate risk during contract negotiation.

MITIGATE RISK THROUGH YOUR CONTRACTS

The contract negotiation process provides an opportunity to set the client-architect relationship on a firm and productive course. Both parties must have a full appreciation of the issues involved in the negotiation process.

STEP 1. DETERMINE TYPE OF CONTRACT

Architects typically encounter five generic types of professional service contracts:

- Oral agreements
- Letter agreements
- Purchase orders
- Standard form agreements (often with extensive modifications)
- Custom agreements

Custom agreements drafted by the prospective client present the greatest danger for the architect. Such agreements are often developed because of the unique nature of a project or because of events that occur in the normal course of dealing with the client. However, the use of custom contracts may be driven by the client's intent to establish an unbalanced contractual relationship.

It is important that architects include certain project-specific and general-condition terms in their agreements and strive to limit onerous, unrealistic, or ambiguous terms. In this effort, it is often useful to

start by comparing the proposed agreement with standard AIA documents.

STEP 2. ASK YOURSELF THESE QUESTIONS

From a risk management perspective, the outcome of the contract negotiation process can be considered successful if your policyholders can answer yes to each of these questions:

- Are the expectations of the parties clearly articulated and reasonably integrated?
- Are the rights and obligations of the parties clearly expressed?
- Are the risks and rewards fairly allocated?
- Is each source of risk allocated to the party in the best position to control or otherwise manage that risk?
- Is insurance available to support any common law or contractual indemnity obligation?
- Do mechanisms exist to accommodate changes during the course of the project?
- Is the mutual understanding of the parties confirmed in writing?

STEP 3. CHECK THE ESTABLISHMENT OF SCOPE, TIME, AND COMPENSATION

Perhaps the two most important aspects of an agreement are the description of the scope of services and the method for determining the architect's compensation. A third, increasingly important aspect is the time allocated for the delivery of services.

- The architect's scope of services should be defined with reasonable precision within the contract. An ambiguous or unspecified definition of scope may lead to an obligation to perform not yet considered services or to a dispute with the client.
- The agreement should specify the time expectations for the rendering of services and the submission of deliverables. Time

parameters, however, cannot be stated as absolute; milestones or deadlines must be adjusted when delays are caused by factors beyond the control of the architect.

- Professional services agreements should include guidelines for prompt payment. Prevention of unreasonable withholding of fees and renegotiation requirements of fees for delayed or terminated projects are important parts of the professional services agreement.

STEP 4. CHECK THAT THE PROFESSIONAL SERVICES AND CONSTRUCTION CONTRACTS ARE COORDINATED

One of the most common oversights architects make is the failure to check that the general conditions of the professional services and construction contracts coordinate. Often the contract for design services is executed months before the construction contract and general conditions are developed, and the architect does not have an opportunity to check for conflicts between the two agreements.

If the architect is to perform construction phase services, the construction contract and general conditions must specify the architect's role. Provisions that should be carefully checked include

- Evaluation of construction
- Certificates of payment to the contractor
- Submittal review
- Change orders
- Project completion and closeout

Since the AIA publishes families of documents, coordination is less of an issue. However, if the design and construction contracts are custom agreements, or if one agreement is standard and the other is custom, care should be taken to make sure the agreements are coordinated.

RESOURCES

More Best Practices

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

- 17.01.02 Watch Your Language: Express Warranties
- 17.02.02 Client-Selected Consultants
- 18.02.02 Owner-Architect Agreements for Small Projects

For More Information on This Topic

See also "What Type of Agreement Makes Sense?" by Edward T.M. Tsoi, FAIA, *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 11, page 277.

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.



Feedback

The AIA welcomes member feedback on Best Practice articles. To provide feedback on this article, please contact: bestpractices@aia.org

Keywords

- Practice
- Project administration
- Bidding and contract negotiation



Two Wisconsin Circle
Chevy Chase, MD 20815-7022
(301) 951-9746
www.planetAEC.com

This Best Practice is a contribution of Victor O. Schinnerer & Company, program administrators of the AIA Commended Professional Liability Insurance Program. Adapted with permission from Schinnerer's Practice Management Guide.