

Client-Selected Consultants

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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 owner-architect agreements and the contractual relationship with subconsultants.

SUMMARY

It is very common for architects to work alongside other professionals of a focused expertise such as a landscape, lighting, or kitchen designer. When deemed appropriate it is important to consider the legal ramifications of this engagement from both the architect and the owner's positions. Factors to consider when working with client-selected consultants and examples of proper contractual text are offered.

VICARIOUS LIABILITY

Under the legal principle of vicarious liability, an architect who agrees to provide services for an owner may assume the same level of responsibility whether the services are performed directly by the architect or by a subconsultant. In other words, the architect—as the prime design professional—may be liable for the conduct of another party, the subconsultant, based solely on the relationship between the two parties.

The legal system strives for efficiency, and holding one party vicariously responsible for the acts of another may eliminate the need to apportion fault. This concept may extend to the negligence of a subconsultant providing services through a prime consultant.

BUSINESS RELATIONSHIP OPTIONS

Owners have the right to select specific consultants as part of the professional service team. If they do so, however, it may be advisable for them to contract separately for the services of such consultants.

When an owner demands a specific subconsultant on a project for whose work the architect may be reluctant to assume responsibility, the architect may wish to consider various options, including these:

- Negotiate with the owner to use subconsultants for whom the architect is willing to take responsibility.
- Negotiate for the owner to contract directly with the consultants or specialty service providers so that the architect is not held vicariously liable for the consultants' actions.

OTHER FACTORS TO CONSIDER

Regardless of the agreed-upon arrangement regarding subconsultants, the architect remains responsible for coordination of the project documentation. Coordinating the work of consultants employed directly by the owner may require more time and effort than that of the architect's subconsultants, and the architect should be appropriately compensated for that coordination. The architect should also be paid for reviewing the information provided by the owner's consultants, for the limited purpose of determining conformity with design concepts.

Whenever an owner contracts directly with individual consultants, each owner-consultant agreement (including the owner-architect agreement) should acknowledge that each design professional may rely on the technical sufficiency and timely delivery of documents and services furnished by others. This will help ensure that one design professional does not inadvertently become vicariously liable for the work of another. It is also appropriate for the owner to indemnify the architect for any costs resulting from the negligence of the independent consultants. There are significant risks for an architect when the owner contracts separately for the services of consultants. If the owner insists on separate consultants or the use of specific consultants by the architect, the owner should acknowledge that the architect will not be held responsible for the adequacy of the consultants' services.

This issue is addressed in AIA Document B511™ – 2001, *Guide for Amendments to AIA Owner-Architect Agreements*, which includes the following sample provision when the owner contracts separately for consultants:

The Owner shall contract separately for the design services listed below. Unless otherwise indicated, those services shall be performed by licensed professional consultants, who shall affix their seals on the appropriate documents prepared by them. The contracts between the Owner and Owner's consultants shall require the consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflict. The Architect shall have no responsibility for the components of the Project designed by the Owner's consultants. Review by the Architect of the consultants' drawings and other instruments of service is solely for consistency with the Architect's design concept for the Project. The Architect shall be entitled to rely upon the technical sufficiency and timely delivery of documents and services furnished by the Owner's consultants, as well as on the computations performed by those consultants in connection with such documents and services, and shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations. The Owner shall indemnify and hold harmless the Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of the services performed by the other consultants of the Owner.

CHECK YOUR INSURANCE POLICY

If a design firm has professional liability insurance, its policy usually defends it against allegations of negligence and pays on its behalf if the firm or its employees are found to have performed professional services in a negligent manner and caused harm. Most policies cover the vicarious liability of the insured firm for the negligence of its consultants but do not defend or pay on the behalf of the consultants. Some professional liability insurance policies will not cover such vicarious liability at all. Check your policy for the terms of coverage.

CHOOSE CONSULTANTS WISELY

Because an architect is always responsible for the actions—including negligence—of consultants providing services through the architect, select consultants who are qualified and capable of providing their services; who are insured or otherwise have the financial means to fulfill their professional and contractual commitments; and who

do not try to shift risk to the architect by unreasonably limiting their liability, either through their contract with the architect or by failing to maintain their own insurance coverage or sufficient financial assets to meet their indemnity obligations.

RESOURCES

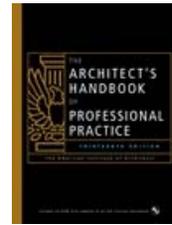
More Best Practices

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

- 18.02.02 Owner-Architect Agreements for Small Projects
- 17.01.01 Reviewing Owner-Supplied Agreements
- 18.02.01 Forms of Agreement: Which Should You Use?

For More Information on This Topic

See also "Agreements with Clients," by Edward T.M. Tsoi, FAIA, and "Project Team Agreements," by Timothy R. Twomey, AIA, *The Architect's Handbook of Professional Practice*, 13th edition, Chapter 11, pages 275 and 289, respectively.



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

- Practice
- Project administration
- Project agreements
- Design services contracts