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CONTRACTS

Properly written contracts are absolutely essential to protect design professionals. This checklist is not exhaustive, but it does touch on many important points. Legal advice is often warranted.

- ✓ Be sure the contract is written; a standard form issued by your field's professional association is preferable.
- ✓ Be careful in modifying standard forms. Consult your lawyer if you intend to use non-standard contract forms.
- ✓ Make sure you know the implications of the contract on your insurance coverage.
- ✓ Be familiar with the duties and responsibilities assigned to you by the contract between the client and contractor.
- ✓ Any changes to the services to be performed should be in writing and made on the basis of an amendment or supplement to the original agreement with the client.
- ✓ The contract should realistically and definitively describe the project and relate it to any feasibility study.
- ✓ The design professional's services, particularly construction phase services, should be clearly and realistically defined.
- ✓ The contract should be compatible with the contracts of other parties involved with the project. There should be no inconsistencies and no doubling up of duties and responsibilities.
- ✓ The contract should accurately define the design professional's responsibilities for commissioning, and begin with realistic targets and an acknowledgement that there are many elements beyond the design professional's control.
- ✓ The contract should not include express warranties or guarantees that would be excluded from the design professional's professional liability coverage.
- ✓ The contract should not include indemnity clauses by which the design professional assumes the liability of others. In law, design professionals are responsible for their breach of contract and negligent acts, errors and omissions and those of their subconsultants and employees; they should not assume other liabilities through the contract.
- ✓ The contract should describe the client's requirements and any relevant information and data, which the client will supply to the design professional.
- ✓ There should be provision for an equitable adjustment of fees if the client suspends and later resumes the project. Is there a financial penalty for termination at the client's convenience?
- ✓ Is there a non-payment clause? Can you stop work without liability for consequential or other damages?
- ✓ The contract should distinguish between basic and separately compensable additional services, and stipulate adequate levels of remuneration in each case.
- ✓ The contract should allow you to control substitutions and limit the time you spend evaluating substitution requests to a reasonable amount.
- ✓ The contract should clearly state the limitations on your ability to predict construction costs.
- ✓ The agreement should clearly indicate that you are not responsible for how the contractor builds the project or manages safety on the site.
- ✓ Your responsibility for reviewing submittals should be limited to those required by the construction contract.
- ✓ It should be clear that record drawings are based, in large part, on information supplied by others for which you cannot be held responsible.

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- ✓ The contract should cover transfer of ownership of your documents, and protect you against the consequences of misuse by others in the present project and any subsequent projects.