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FIELD SERVICES

The issue of certification should be one of the first agenda items in the early stages of negotiation with the client. If the client's demands for reduced fees result in reduced field services, the client must be warned that all certificates will be qualified to reflect the fact that reduced services were rendered.

One example of a properly qualified certification is the following:

Certification form

*This certificate is based solely upon information provided by (insert source of project information, whether contractor, other professionals engaged by the client, etc.), as the certifier has not had reasonable opportunity to observe the subject matter hereof. Therefore, (insert certifying firm's name) neither warrants nor represents the accuracy or completeness of the information contained herein with respect to (insert as appropriate the subject matter of the certification—i.e., costs of the work, substantial performance, contractor's payments applications, quality of workmanship, percentage of work completed and conformity of work to project documents). _____ (certifying firm name) By: _____
Date: _____*

As well, the 'Certificate of Substantial Completion,' which is usually accompanied by a list of deficiencies, should clearly state that the list is based on the extent to which on-site evaluation services were rendered. If the design professional only made occasional visits, the 'Certificate of Substantial Performance' should state that fact.

'Inspection' and 'observations or evaluations'

During a typical construction project, the design professional will normally perform both 'inspections' and 'observations,' but there is an important difference between the two activities.

Typically, there are two inspections; one at the time of substantial completion of the work and one at the time for final payment. The difference between the observations or evaluations and inspections is principally one of intensity or level of effort. If the design professional has taken on the responsibilities of an inspection, then an inspection should be performed, not just a normal observation of the work.

When the local building code requires field reviews, partial field services are inadequate. In such situations, someone must provide field services in compliance with the local building code.

There is no reason to avoid the word 'inspection' in a contract, as long as all parties understand the differences between 'inspection' and 'observation.' The parties should define these terms, and specify the scope, purpose and payment for each in the agreement. Other terms, such as 'monitoring,' 'reviewing' or 'examining,' can be used as long as the scope of the service is defined in both the professional service agreement and construction contract.

Timing

Many clients want 'periodic' visits to the site written into the contract, but some time ago courts decided that meant a regular and uniform schedule of visits, no matter what was happening at the job site. Most agreements now call for site visits at the design professional's discretion or as scheduled in the contract.

When clients ask for a full or part-time representative at the site, it should be clear to all parties that the representative's authority and responsibility shall only be that as defined under the agreement with the client.

Assuming contractor's responsibility

As noted in several parts of this guide, no matter how carefully the contract documents assign responsibilities between the parties, the design professional can take action on the job site that makes those contract terms meaningless.

Giving advice to the contractor about the means, methods, techniques, sequences or procedures of construction can lead to assuming liability that properly belongs to the contractor. If you do not control the process or the means of construction, do not shoulder the responsibility. "Don't wear the hat if you're not paid to wear it."

Safety issues

Safety is the contractor's responsibility. Because the contractor is in charge of the construction site, that is a fair and reasonable allocation of risk. Design professionals, however, can assume some of the contractor's responsibility for safety if they specify safety requirements or take specific actions in the field with respect to safety programs and procedures. This can happen if there is a contractual commitment to review the contractor's safety programs and procedures. If that commitment is made, both the reason for the review and the applicable standard of performance should be made clear so the design professional does not inadvertently assume or share the contractor's safety responsibilities.

When the design professional spots a situation that could become dangerous, there is a responsibility to notify the contractor, without specifying what action the contractor should take. In a situation of immediate danger, the design professional must take the appropriate action to warn people of danger and possibly take steps to correct the problem. However, the design professional has no obligation to know what steps should be taken. Under the Occupational Health and Safety Act (OSHA), notification of the OSHA inspector may be required. When the design professional does take some safety-related action in an emergency situation, it would be prudent to note in the subsequent communication that: the unsafe condition was noticed during a normal site visit, the design professional was not conducting a safety review, and the design professional will not conduct safety reviews in the future.

Duty to reject substandard work

Some standard contracts give the design professional limited powers to reject work that does not conform to the requirements of the contract documents. The consultant should be alert for language in clients' contracts that says the design professional 'shall reject' defective work. There is a subtle but real difference between having the power to do something and being required to do it. If design professionals must reject substandard work, they are not able to provide the client and project with their judgment and discretion.

Occasionally there are instances when the client will accept nonconforming work in return for a credit from the contractor. The only danger to the design professional here is that the substandard work might violate a code or regulation.