



Constructing Protection for Design Professionals

Architects, engineers' liability to third party contractors

By Andrea Lee

In the traditional design-bid-build project delivery method, the owner (client) enters into one contract for design services with an architect or engineer and a separate contract for construction with a general contractor. While there is no direct contractual relationship between the architect or engineer and the contractor, the design professional may be liable to the contractor in negligence if the contractor can establish the architect or engineer owed it a duty of care, there was a breach of that duty of care and the contractor suffered damage as a result of the breach.

In the tendering and bidding phase, the design professional has a duty to provide contractors with tender documents, which are as reasonably accurate and complete as possible, as well as all relevant information in the owner's possession. If the architect or engineer discovers any additional information or corrects any errors after issuing the tender, disclosure must be made to the bidding contractors. As the architect or engineer is not party to the contract between the owner and contractor, the design professional may not be protected by any exclusionary clauses for representations made in the tender documents.


The design professional's drawings must be sufficient to allow the contractor to build in accordance with the design and if the contractor requests information or clarification, the architect or engineer should provide further detail. If the design professional fails to respond in a timely manner, the contractor may be entitled to claim damages against the design professional for delay.

The contractor is entitled to carry out its work as it sees fit; the design professional cannot dictate or interfere with the contractor's method of construction. The architect or engineer is under no duty to advise the contractor about the potential difficulties or drawbacks with its selected construction method. The design professional is also not responsible to the contractor for any costs related to the removal or correction of unsound construction resulting from the contractor's choice to deviate from the design.

The design professional should inspect the contractor's work at important stages of construction prior to the work being covered up; however, the design professional is not required to inspect every detail of construction.

The contractor cannot recover damages from the design professional for failure to supervise its work, notice a deviation from the design and order cessation of work.

With respect to payment certification, the design professional must ensure the work has progressed to the value claimed by the contractor and the work is in general accordance to the design. The design professional must act judicially, independently and fairly with respect to its decisions, despite acting as agent for the owner. If the contractor can show the design professional has lost its impartiality then obtaining a certificate is not a condition precedent to payment.

While there may be exclusion clauses built into the contract between the design professional and owner, the design professional is not shielded against claims from third party contractors. Architects and engineers should obtain professional liability insurance to protect themselves from tort claims arising in the ordinary practice of their respective professions. 

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