

# Avoiding the Pitfalls of Limited Contract Administration Agreements

## Practice Matters

By Satish Rao

Comprehensive contract administration remains a key element in ensuring a satisfactory outcome for all the parties of a building construction project. The architect's best chance of heading off difficulties during construction still comes from being able to fully review shop drawings and submittals and to get a reasonable number of opportunities to observe construction as it progresses, regardless of pressures on time. Yet architects often confront problems when clients seek limited contract administration, with a curtailed construction-phase role for the architect.

Limited contract administration appeals to clients for several reasons. Some naively regard construction observation as costly and unnecessary because they believe drawings are a complete product that requires no interpretation or explanation. More quality-conscious clients might hire a construction manager and therefore think the architect's observation is redundant.

These well-meaning clients might not understand that a consultant who is unfamiliar with the architect's design concept or the assumptions on which the plans were based may not know the best way to solve problems or even recognize them. Clients have even been known to use construction documents to get building permits while fully intending to cut

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corners once the architect's role in observing construction has been restricted.

### What typically gets cut

A typical limited-services contract administration agreement might stipulate that the architect's fee would cover only the following:

- Site visits limited to a specific number of trips;
- Submittal review limited to selected products and specific shop drawings;
- A stipulated allowance of hours for answering contractor queries and for in-house administration;
- Review and approval of the contractor's monthly payment requests;
- Approval of the Certificate of Substantial Completion.

These limitations leave a significant void in the checking and observing of work, which can cause trouble. Consider the plethora of hazards to which the unwary architect might thus be exposed:

- The architect cannot observe whether the builder's work conforms to the contract documents.
- The client or the contractor can make mistakes or changes without the architect's knowledge. These can result in code violations or safety compromises.
- The architect's review of only selected submittals may allow many deviations from the documents.
- Facts needed to support the certifications that must be signed cannot be verified.
- The capacity of the architect to

effectively facilitate communications between the owner and contractor is severely curtailed.

- The architect loses control over aesthetic issues when the client or contractor makes changes affecting them.
- Often the client contracts for limited services but requests more as the project proceeds. Securing compensation for these additional services can be difficult.

Clients usually want to lower the level of service in order to reduce the architect's fee. But the architect's liability is not lessened

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even if a restricted-services agreement has been accepted. Reduced contracts demand that the architect assume a higher level of risk in order to allow the client to save money. There is really no advantage for the architect to enter into such an agreement.

Over the years, architects' acceptance of limited contract administration agreements has had unfortunate consequences. It has weakened the negotiating position of architects who are not prepared to accept limited-service agreements. It has allowed the construction-management industry to flourish, as architects have deferred more and more responsibility to them, and it has also had the effect of diminishing the stature of the profession in the eyes of the public.

### Explaining the benefits

When a client wishes to limit contract administration, it is often because they don't understand the architect's role during this phase of the work. To sell your services, you need to understand this role yourself, to be able to explain its importance while negotiating your contract. Comprehensive contract administration is somewhat like an insurance policy: If things go well, its cost to the client is small compared to the losses that may well be incurred if things go awry. When millions of dollars are at stake during the construction of a project, dis-

putes arise between those writing the checks and those writing the bills. Good contract administrators facilitate communication between parties—a vital role. In this role the architect may be correctly described as “a friend of the contract.” This means the architect acts impartially in seeing that the work conforms to the contract documents, and that the client pays for it. This requires that the architect at times be an advocate for the owner, for instance through vigilance in spotting construction errors, and at other times in protecting the contractor.

### Deciding to take the job

If you feel that having too limited a role during the contract-administration phase of a particular project will not provide you with the means to

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adequately represent your client and to protect yourself, you may be disposed to walk away from the job. In order to make such a decision, you will have to know from the outset what are the minimum services that you can provide for the fee allowed for the work. If you must assume too many risks for the amount of compensation allowed, you may indeed have to turn down the job. Before you do, however, consult your insurance provider. He or she will help you identify risks and protect you against them.

### **If you take on the project**

Should circumstances require you to accept a commission with less than a full scope for contract administration, you still must insist on a level of service that will provide all parties to the work, including the contractor, with a reasonable amount of protection from construction prob-

lems. Here are some tips:

*Craft a thorough contract.* Pay special attention to role definitions and limits of responsibility. Make sure the General Conditions of the Contract also describe your responsibilities. Be sure to include a provision indicating that you will not be responsible for the contractor's failure to perform the work in accordance with the contract documents. Never surrender services when that would result in compromising the safety of the public.

*Get into the communication habit.* Establish a trusting relationship with your clients and maintain clear and open communication at all times. Inform your clients that they must not make field changes without consulting with you. This will allow them to understand all the ramifications of these changes.

*Keep thorough notes.* The owner and the contractor will have

kept detailed notes that can nail you in a dispute, so you must keep a day-by-day log of what happens on a project. Do not destroy e-mails. Legally, they are considered project records.

*Never certify something you don't know for a fact.* Do not certify the quality of construction you have not inspected. Do not certify the work of other disciplines. Avoid the use of words or phrases that imply unlimited scope, such as "all" and "et cetera." The architect is under no obligation to the client to sign anything from a lender or a surety company, so resist the client's efforts to include this requirement in the contract. You should never certify or warrant that the contractor's work conforms to the contract documents or to the codes and regulations.

You should decidedly refuse to sign monthly certifications for payment unless you have been able to personally visit the site frequently enough to judge the progress of the work with absolute certainty.

Liability and exposure to lawsuits from either the contractor or the owner increase if inaccurate estimates of the percentage of project completion lead to inaccurate authorizations for payment or to delays in payments being made.

*Hone your in-house practices.* Develop a good set of standard procedures for your office and insist that your staff use them. Make sure your staff understands what being a "friend of the contract" means. Be certain that those who administer the contracts have read them and understand them well enough to identify potential dangers. Assign experienced staff to perform contract administration.

*Know your costs and negotiate with care.* Every contract should include a level of service and compensation that will enable you to provide adequate contract administration services. And this means protecting the client through the early detection of construction defects while limiting your own exposure to risk. ■