

a/e RISK REVIEW

A P U B L I C A T I O N O F T H E P R O F E S S I O N A L L I A B I L I T Y A G E N T S N E T W O R K

Comprehensive Scope of Services boosts bottom line

The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.

Drafting a clear and comprehensive scope of services has long been recognized as an important tool in reducing your professional liability risks. Often overlooked, however, is that a complete and accurate scope of services can also boost your bottom-line profitability. By itemizing all of the valuable services you provide to clients and including a list of additional services you recommend, you increase your chances of getting adequately paid for your contributions to a successful project.

Alternately, the absence of a clear and comprehensive scope of services is a major cause of disputes, claims and counterclaims between design or environmental consulting firms and their clients. Without a clearly written project scope—

negotiated and signed off by both parties—client expectations are rarely understood or met and consultants often find themselves facing client demands for far more services than they agreed to perform.

In the vast majority of cases, an inadequate scope of services is simply the result of a client and consultant failing to take the time to itemize all of the services required to meet the client's project objectives. Often, the design or environmental professional simply accepts the client's standard contract that contains general language such as "provide any and all services necessary for the completion of the project."

In some cases, however, clients may intentionally use broad contract language, such as "any and all design

services." In this way, they can better hold the firm responsible for achieving project completion and success, regardless of the countless add-on services the client later demands.

Similarly, some clients might purposely specify a bare-bones scope of services, limiting the specified services in the agreement in an attempt to minimize fees. Then, once the project begins, the client attempts to squeeze every service imaginable out of the design or environmental firm for an inadequate fee.

Before signing any client contract, ensure that a clear and comprehensive scope of design services is negotiated and signed off on. It is very risky to take on a project in which the scope of services is either unclear or inadequate and therefore imprudent and unusual for your profession. For example, by agreeing to perform your services without

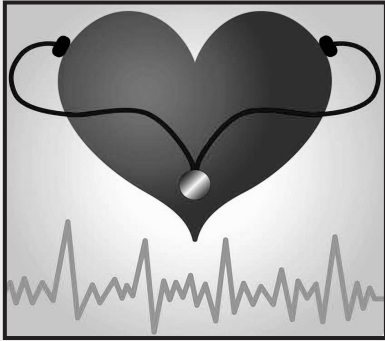
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providing construction-phase services you are prevented from seeing firsthand whether the contractor is acting in general conformance with your design. It also denies you the opportunity to clarify ambiguities or correct misunderstandings that arise on the jobsite. And if brought into a claim on such a project, a jury, judge, arbitrator or mediator may conclude that you did not act as a reasonably prudent design or environmental professional, even though you were not contracted to perform construction observation as part of your scope of services.

As shown, a clear scope of services can: 1) Minimize misunderstandings between client and design or environmental firm and thereby reduce the chances of claims and 2) maximize fees earned by itemizing all services that will be provided.

Negotiating your Scope of Services

Negotiating a clear scope of services is one of the best ways to make sure you are paid adequately for your work and to optimize your chances of meeting your client's every expectation. The negotiating process helps your client more clearly define needs, success factors and expectations and gives you the opportunity to explain how those goals can best be met. It will also give your client a better understanding of your role in the design and construction process and the full range of services you can provide.

Your goal is to develop a final scope of services that clearly sets forth:

1. Services that you will perform for the agreed-to fee
2. Additional services you can perform for an additional fee
3. Recommended services you will not perform per the client's refusal
4. Required services that will be performed by a third party, such as the contractor or subconsultants.

The fourth item—required services performed by others—is often overlooked but very important to spell out. As the prime consultant on a project, you can be liable for failing to ensure a required service was performed up to standard, even if you were not contracted to provide that service directly. This is true even if the third party performing the services enters into a contract directly with the client.

Sample Scope of Services

A useful tool to reach agreement on a reasonable scope of services is a scope of services checklist. You can use the basic services listed in the standard AIA or EJCDC agreement as a starting point and then customize it to fit your own practice. Services can be listed by project phase. For example, an architect might categorize services as pre-design,

schematic design, design development, construction documents, bidding/negotiation, construction-phase/observation and post-construction. [A Sample Scope of Services Checklist, adapted from the Coalition of American Structural Engineers (CASE), is shown on the following page.]

Customize your checklist to reflect the services that are normal and customary in your discipline and for the project type. The checklist should indicate which items you are to perform as contracted services, which services are to be performed by other parties, such as subconsultants, and which non-basic services are available for an additional fee but not included in the original scope. Reviewing such a checklist with the client is a good planning exercise to ensure that all possible services are considered, and makes a

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SAMPLE SCOPE OF SERVICES CHECKLIST

Project Development Phase

- Define scope of structural services
- Assist in development of schedule
- Assist in determining channels of communication
- Assist in determining responsibility for dimensions
- Assist in determining drawing standards and specifications format
- Assist in determining number of meetings and number of site visits
- Negotiate fees and payment schedule
- Execute contract

Schematic Design Plans

- Attend meetings
- Establish structural design criteria
- Prepare studies of alternative structural systems
- Assist in selection of structural system
- Provide structural criteria for geographical consultant
- Assist in determining need for special studies

Design Development Phase

- Attend meetings
- Prepare preliminary foundation drawings
- Prepare preliminary structural design calculations
- Prepare preliminary framing layout drawings
- Prepare typical detail sheets
- Identify pre-engineered structural elements
- Prepare or edit outline specifications for structural items
- Assist preparing preliminary opinion of cost of construction
- Review results of special studies
- Coordinate structural design with special design criteria
- Submit design development documentation for approval

Contract Document Phase

- Prepare structural design of primary structural system
- Designate elements to be designed by specialty engineers, and specify structural criteria for specialty engineers'

design of pre-engineered structural elements

- Review effect of secondary or non-structural elements attached to primary structural system
- Attend meetings
- Assist in coordination with building code officials
- Complete structural calculations
- Complete structural drawings
- Prepare or edit specifications for the primary structural system
- Assist in establishing testing and inspection requirements
- Perform checking and coordination of the structural documents

Construction Administration/Observation Phase

Bidding and award

- Assist in evaluating bidder's qualifications
- Provide structural addenda and clarifications
- Assist in bid evaluation

Pre-construction services

- Attend meetings
- Assist in establishing communications procedures
- Assist in establishing testing and inspection procedures
- Assist in confirming submittal agency
- Assist in selection of testing procedures
- Advise client and contractor regarding which structural elements require construction observation by SER
- Respond to building department and peer review comments

Submittal review

- Review special submittals for items designed by SER
- Review submittals for pre-engineered structural elements

Site visits

- Make site visits at intervals appropriate to the stage of construction
- Prepare site visit reports

Materials testing and inspections

- Review testing and inspection reports
- Initiate appropriate action to those reports, if required

very useful guide in accurately estimating or pricing your proposed services.

Incorporating the Scope Into your contract

The same checklist or a derivative thereof should become part of your proposal to your client as well as a part of your contract for services. The easiest way to incorporate the scope into your contract is to formalize the checklist as an addendum or exhibit added

to the contract with an appropriate reference within the body of the contract.

List the services you are being contracted to perform. Include a list of available additional services as a separate appendix. Make it clear that these additional services are not included as part of your basic scope of services and must be paid for by the client in addition to the payment for basic services in accordance with your prevailing fee schedule.

A separate addendum should be prepared to itemize what you consider critical services that you offered to perform but that will be performed by others or will not be performed at all. Note in your contract that you offered to perform these services but the client declined to utilize your services in these areas. Try to include an indemnity clause that holds

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from preceding page you harmless from any damages, liabilities or costs arising out of or connected to you not providing these services. If you are unable to get the client to agree to a formal indemnity agreement, note in your contract that you assume no responsibility to perform any services not specifically listed in your scope of services.

Finally, if your client chooses to exclude a service that you consider critical to the success of the project or to public safety, you should call special attention to this. Write a letter reminding the client of the necessity of obtaining these services from other sources and asking the client to provide you with the names of the individuals or firms who will perform these services.

Specifying a clear scope of services may help avert a serious problem with your client. It may also help you

expand your scope of services on your next project thereby increasing your fee while reducing liabilities.

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