

DESIGN WITHOUT CONSTRUCTION ADMINISTRATION SERVICES & CONSTRUCTION ADMINISTRATION SERVICES WITHOUT DESIGN

THE WISDOM IS THAT A/E'S SHOULD PROVIDE BOTH DESIGN AND CONSTRUCTION ADMINISTRATION SERVICES

Unfortunately, some project owners may engage an architect or engineer (A/E) to provide design services, but not construction administration. On the other hand, some project owners may engage an A/E for construction administration services, but not for design. The collective risk management wisdom is that an A/E should provide both design and construction services on a project. Both project phases (design and construction) are powerful risk management tools, work together, and should not be separated from each other.

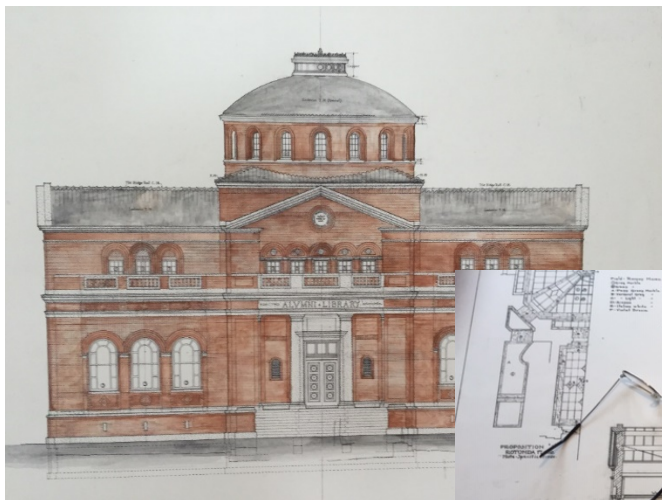
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Some of the following reasons that may separate these professional services are as follows (but by no means is this an exhaustive list).

- An owner has in-house capabilities to provide one service, but not the other.
- An A/E designs a prototype that is constructed in various parts of the country, involving someone else locally to provide construction administration. Geographically, it may make sense to engage a professional in the area of the project location for construction administration, while the owner would like services performed by their preferred design professional in their home location.
- An owner may prefer to engage a construction manager, who has the professional experience to manage the construction of a project. In other words, the owner may desire to have a “second set of eyes” to complete the project.
- Some public entities engage design and construction administration services separately.
- An owner may like to economize on the cost of certain professional services. For example, as soon as the project owner has the required building permits, the A/E’s agreement may be terminated.
- A general contractor (GC) can handle all of the construction tasks without the need of a designer (such as an A/E). For example, in a design-build project lead by the constructor (not an A/E), the contractor takes over, and the designer fades away.

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The Engineers Joint Contract Document Committee (EJCDC) “Agreement Between Owner & Engineer,” E-500 (2014), Article 6.02 A., “Design without Construction Phase Services” states that:

Engineer shall be responsible only for those Construction Phase services expressly

required of Engineer (in this agreement). With the exception of such expressly required services, Engineer shall have no Shop Drawing review, or other obligations during construction, and **Owner assumes all responsibility** for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. **Owner waives all claims against the Engineer that may be connected in any way to Construction Phase** administrative, engineering, or professional services except for those services that are expressly required of Engineer (in this agreement). (Emphasis added.)

What is cleared in E-500 (2014), 6.02 A. is that the project owner has to manage the project's construction (or someone else), that has important responsibilities that the engineer of record is not involved in.

CONSTRUCTION ADMINISTRATION WITHOUT DESIGN SERVICES



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An A/E that did not design a project, but is not providing construction administration, should consider the following.

- Since an A/E's design documents are inherently "conceptual," what was intended as the design of the project does not always end up in the documents, and issues tend to "fall in-between the cracks."
- Services involving only construction phase services tend to be plagued with problems to begin with, with those problems that would occur down the road.

- When providing construction administration only, an A/E would be making assumptions beyond what are known facts.
- The time, effort and probable aggravation of trying to get copies of the agreements from all of the other parties involved in the project, to know what everyone's scope of services are and the possible onerous terms and conditions, could be very difficult.
- An A/E providing only construction administration services would want to know that everyone else on the project has adequate professional and other types insurance as well.
- Lastly, it would be tempting to start preparing remedial documents that an A/E may see as a need to correct any issues. The A/E providing design after the fact would create a host of additional exposures, such as errors and omissions in the remedial documents, ownership of documents and copyright concerns.

The American Institute of Architects' B209 (2007), "Construction Contract Administration, for use where the Owner has retained another Architect for Design Services," Article 4.1 states that:

The Owner shall indemnify the Contract Administration Architect for any copyright claims arising from the Contract Administration Architect's use of the Owner's Design Architect's Instruments of Services while performing Construction Contract Administration Services.

IN CONCLUSION

If design without construction administration services are not included in the A/E's scope of services, the A/E should protect themselves against claims. The project owner should assume the risks that would normally be included in a full service project. Furthermore, the project owner should assume the risks that would normally be included in a full service project.

A/Es that provide both design and construction administration services are in a much better position to protect their clients, as well as mitigating their own risks. In both situations, without a full scope of services, the A/E should be released from any and all claims, and be indemnified for costs or problems, including associated changes made by others. The A/E could include in its agreement with the owner the following.

The A/E's scope of services in this Agreement are understood to be all of the design and construction administration services described in this Agreement. In the event Owner decides to reduce or eliminate design or construction administration services from this Project, without limiting the foregoing, the Owner hereby agrees to release, hold harmless, indemnify and defend A/E from any and all suits, disputes, claims, damages, attorney fees, and losses associated with or arising out of such reduction or elimination of any professional services.

About the Author

Eric O. Pempus, FAIA, Esq., NCARB has been a risk manager for more than 15 years with experience in architecture, law and professional liability insurance, and a unique and well-rounded background in the construction industry. He has 25 years of experience in the practice of architecture, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 34 years. As a Fellow of the American Institute of Architects and Chair/Hearing Officer of the AIA National Ethics Council, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals and architectural students in various venues across the United States and Canada.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities, and should not be construed to represent a determination of legal issues, but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.

Disclaimer: *The viewpoints expressed in this article are those of the author(s) and are not necessarily approved by, reflective of or edited by other individual, group, or institution. This article is an expression by the author(s) to generate discussion and interest in this topic.*

A Fond Farewell and a Warm Welcome!

It is with mixed emotions that we are announcing Ken Windle's retirement at the end of August. Ken's friendly demeanor, dedication to his clients, and vast knowledge of the insurance business will be missed. We wish Ken all the best in his new ventures!

And that brings us to introducing you to our newest addition to the DesignPro Insurance team, Chuck Petretti! Chuck is excited to be serving the Cincinnati, Northern Kentucky, and Southern Indiana areas. Chuck's contact information:

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Speaking Engagements:



“The Public’s Need for Energy—an Architect’s Understanding of Access to Energy”

AIA Cleveland Webinar, 1 Hour HSW

September 24, 2021 – 12:00 pm – 1:00 pm



“Client Contract Terms that an Architect is Asked to Agree that Negatively Impacts the Public HSW”

AIA Cincinnati 2021 Education Summit

Webinar, 1 Hour HSW

November 19, 2021 – 12:00 pm – 1:00 pm

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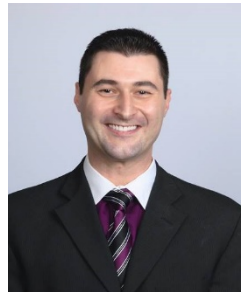
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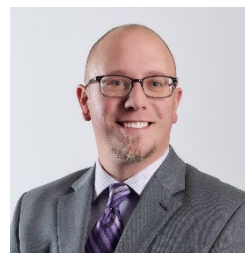
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