

For the Client

Carefully Standard Contract Documents—An Ounce of Prevention

“Why is it important to use a standard contract document like those developed by the Engineers Joint Contract Documents Committee?” That’s a question commonly asked by clients. The answer should be apparent from the number of court cases where the written agreement was perfunctory or failed to address the important points of the parties’ working relationship, or was so poorly worded or peppered with conflicting language that the intention of the parties was left in doubt.

Standard contract documents, like those prepared by EJCDC, assist all parties in the design and construction process because they establish measured and predictable standards among the parties. Owners particularly benefit because the standard documents provide a detailed statement of the duties and responsibilities of the parties hired by the owner to provide the services as well as the labor and materials to successfully complete the owner’s project.

Expectations

Knowing what is expected of each party to the contact and what those parties can be counted on to do is a key consideration in preparing for any project. This is especially true when so many parties with differing interests and training are involved, as

is the case of the design and construction industries. A clear understanding of what is expected, and accepting that responsibility, is probably the most economical ounce of prevention that one can find. It’s far less expensive in terms of time and money than the pound of cure that’s required when misunderstandings and mistakes follow with claims and litigation. Complaints about the cost of an attorney before trouble has arisen are common. But it’s usually much less for the client than the dollar value of the man hours needed to prepare a defense of a claim, whether the claim is justified or frivolous.

The loss in life and property damage resulting from human error in the design and construction of facilities cannot be overlooked. Consider the John Hancock tragedy in Boston, the Hyatt Regency disaster in Kansas City, or the L’Ambiance Plaza catastrophe in Bridgeport, Connecticut. If those agreements had clearly assigned duties and responsibilities to the parties best qualified to carry them out, those tragedies may not have occurred. The chance of human error is greatly reduced when everyone knows what is expected and what others will rely upon.

For that to happen, careful attention must be paid, from the beginning, to the written agreements that engineers, owners, and contractors enter into. That calls for accurately prepared documents that are precisely integrated with one another and address the important aspects of the interrelationships.

That’s what the EJCDC documents try to accomplish and it would appear from their increasing acceptance that they are achieving their goal.

Some owners, as well as several large design firms, try to develop their own forms of agreements for

design services and construction contracts to cover the peculiarities of their own business practices. That’s understandable. But in doing so, no one should overlook the importance of preserving the level playing field for the members of the owner/design/construction triad.

Widely Used and Tested in Courts

Another persuasive reason for using standard forms is that they have been tested in practice as well as in the courts. Standard forms represent the cumulative experience of design professionals, contractors, public and private owners, representatives of the insurance industry, and others in all segments of the design and construction process. These forms are the product of countless hours of thoughtful preparation and revision. Because of their wide use for more than 30 years, the meaning of most terms and the intent of most paragraphs are well established and accepted by the courts. Regardless of their experience in the design and construction industry, any group of engineers or attorneys would find it virtually impossible to match the scope, quality, and thoroughness of the standard forms.

EJCDC Documents: Trusted and Respected

EJCDC documents are based on generally accepted professional and industry norms and are fair and balanced. Moreover, their content is widely accepted: Owners and prospective contractors faced with a standard pre-printed form are more likely to understand what is expected of them and to appreciate

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that there are "no jokers" in the deck; contractor bids are less likely to include contingencies for the unknown; and misunderstandings, ambiguities, contradictions and inconsistencies are less likely to occur.

Many contractors have indicated that there is a significant degree of comfort and certainty when they see the pre-printed forms because they know what to expect and how their activities will be required to mesh with those of the other participants. This appears to be a major reason for the Associated General Contractors' endorsement of the EJCDC's construction-related documents. The endorsement is also significant because it indicates AGC's preference for a uniform approach to the intricate relationship in the construction triad, rather than the possibility of including certain language more favorable to the contractor's point of view.

Even when a specially typed contract follows most of the standard language, it has to be read word for word to detect the variations from the industry norm-before being accepted. The EJCDC's standard forms are carefully integrated with each other. For example, terms are used with the same meaning and in the same context throughout all of the documents, and the engineer's assignments during construction as expressed in the Owner-Engineer Agreement and the General Conditions of the Construction Contract are the same. Language and phraseology are used consistently and with the same meanings in the Instructions, Bid Form, Owner-Contractor Agreements, General Conditions, and Supplementary Conditions.

