

For the Client

The Role of the Contractor During Construction

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Taking a construction project from the pre-planning stage through completion of construction and start-up requires the concerted and coordinated efforts of three distinct parties: the owner of the project, the engineer, and the contractor. The goals and objectives of each of these parties are unique, and often in conflict. It is no wonder that the construction industry is considered to be inherently one of conflict and adversity. In most situations the conflict, and related disputes which come with conflict, come to light during the actual construction process. But that does not have to be the case, and the owner who understands the roles and responsibilities of its construction contractor increases the prospects of a project with minimal conflict and adversity and greater opportunity for success. For most projects the contractor has little or no involvement until the bidding phase, and then the construction phase itself. During the planning and design phases the focus is on the owner and engineer in the design of the project, and in the preparation of the drawings and specifications. By the end of the final design phase the owner and engineer, usually in concert, have created what is called the contract documents. It is the contract documents that contain the definitions of the roles and responsibilities of the owner, the engineer and, most importantly, the contractor during the construction phase. The contract documents are

lengthy, complex, and highly integrated, and their use by the owner and engineer of industry-standard documents is highly recommended. Revisions to those documents should be made only with careful consideration, and with advice of legal counsel. The contract documents include a number of separate documents, incorporated by attachment and/or reference. While the definition of the contract documents and their parts may vary from project to project, the customary definition is contained in the "Standard General Conditions of the Construction Contract" as prepared and published by the Engineers Joint Contract Documents Committee (EJCDC No. 1910-8, 1990 Edition). That definition, and an understanding of it and defined terms in it (usually capitalized), is important to understanding the roles and responsibilities of the owner, engineer, and contractor. The essence of the contractor's contractual responsibilities include the furnishing of the labor, materials, and equipment and related services (the work) for a contract price and within the contract time. However, due to the complexities of the construction environment, and to be sure that the parties accrue the benefits of the bargain that they agreed to, the contract documents provide substantial additional definition of the contractor's and owner's agreement. In many respects the contractor's duties are defined in conjunction with the duties of the engineer. Examples of these duties include:

- Contractor's submittals (shop drawings and samples) for the work;
- Submittal and review of contractor's applications for payment;
- Addition, deletions, or revisions to the work, by

the owner or contractor;

- Changes to the contract price and/or contract time; and
- Interpretations and clarifications of the work defined by the contract documents. However, many of the duties of the contractor are his or hers alone. It is these independent duties of the contractor that result in the greatest potential for risk to the contractor, as well as for the opportunity for reward.

The contractor must be able to complete the work in a manner that gives him or her the ability to do so in his or her own, unique way. It is this willingness to take risks for the potential for reward which drives construction contractors. Examples of these independent duties of the contractor include:

- Schedule and coordinate the work by the contractor and its subcontractors;
- Supervise (control, direct, and coordinate) the performance of the work;
- Provide labor, material, and equipment as necessary for the work;
- Initiate, maintain, and supervise all safety precautions and programs in connection with the work;
- Select and provide the means, methods, techniques, sequences, and procedures of construction; and
- Warrant and guarantee that all work will be in accordance with the contract documents and will not be defective.

It is important that the contractor's independent

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duties not be confused with those of the owner and engineer. Duplicating the responsibilities, by either shifting or reassigning the contractor's responsibilities to the engineer, does not serve the goals or objectives of the owner. It usually results in confusion or ambiguity that ultimately leads to disputes, claims, or litigation. The cooperation and assistance of the owner, the contractor, and the engineer is critical to the success of the project. But the bottom line for the contractor is the ability and willingness to assume and to fulfill the independent duties for furnishing the work in accordance with the requirements of the contract documents within the contract price and within the contract time.