Mark Bollinger

7 critical mistakes engineers and architects make during project negotiation and execution

12-1-2015

Mistake number one is not treating the contract seriously. This can be done in lots of different ways within the document but reading the fine details in the document and making sure that understand the terms. Being able to negotiate those terms so you don’t get sued because in the end the contract is your legal document that binds you to the terms of the job you are trying to complete for the client. The merger clause is where all former agreements are gone. Most of the time the contract prevails over all of the other documents or agreements in the agreement.

Mistake number two is allowing unfair or one-sided contract terms to persist. Some of the biggest un-fair previsions are indemnity which is one party is to assume the liability of another party. Duty to defend that requires you to pay for the owner’s defense of the specified types of claims, whether or not your firm in negligent or even named as a defendant. Consequential damages are indirect sources of loss, such as loss of use, loss of profit, or even loss of bonding capacity.

Mistake number three not choosing the proper dispute resolution method. There are a few distinct options if you do need to fight about a construction dispute: arbitration or trail. The arbitration can be voluntary, or it can be mandatory. The trail can be a bench trail or jury trial.

Mistake number four failing to have good change order and/or failing to have a good request for information processes. As a design professional, you are well aware of the often voluminous requests for information or proposed change orders submitted by contractors. Make sure you respond and document the conversation if you are away from your office during the conversation. Most of the times it is someone not wanting to look at the design document.

Mistake number five failing to have a quality document retention system. This should include keeping uniform procedures are printed, determining where on the hard drive documents will be saved, and requiring timely filing of all incoming documents.

Mistake number six failing to respond properly to claims of errors and omission. If you get a letter that states that your firm did something wrong, respond, and respond kindly. For every letter stating you did something wrong should be a letter explaining why the facts support your position.

Mistake number seven failing to involve insurance company and lawyer at first time of trouble. If you do not report it right away, you run the risk of insurance carrier later denying the claim. Most e&O carriers have experienced lawyers on staff who can help you minimize potential claims if you contact them immediately. Having insurance and a lawyer would greatly improve your chances of this situation never happening to you.