

THE IMPORTANCE OF CONSTRUCTION SITE VISITS

Over the years I have observed that where litigation arises on a construction project, frequently the role of the design professional in visiting the construction site and observing construction is a factor in determining the cause of legal disputes. While I have not kept a record of specific data, my distinct impression is that where there has been careful site administration by the architect or engineer, there has been either a reduced amount of disputes or a timely resolution of disputes between owner and engineer and between owner and contractor.

When the most recent 1996 edition of EJCDC No. 1910-1 was published, that standard form took on a different structure. Instead of the agreement covering the entire subject of basic services, the agreement permitted the selection of nine separate exhibits, one of which is Exhibit A entitled "Engineer's Services." Exhibit A is therefore that part of the owner-engineer agreement which evidences the scope of the engineer's services in all material respects, including not only the preliminary design phase, the final design phase, the bidding or negotiating phase, but also the construction phase.

Paragraph A1.05 of Exhibit A to EJCDC 1910-1 is divided into subsections covering the following responsibilities:

1. General Administration of Construction Contract
2. Resident Project Representative (RPR)
3. Selecting Independent Testing Laboratory
4. Pre-Construction Conference
5. Baselines and Benchmarks
6. Visits to Site and Observation of Construction
7. Defective Work
8. Clarifications and Interpretations; Field Orders
9. Change Orders and Work Change Directives
10. Shop Drawings and Samples
11. Substitutes and "or-equal"
12. Inspections and Tests
13. Disagreements between OWNER and Contractor
14. Applications for Payment
15. Contractor's Completion Documents
16. Substantial Completion
17. Additional Tasks
18. Final Notice of Acceptability of the Work.

These tasks are preceded by the general statement: "Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, ENGINEER shall:"

The negotiating strategy of both the owner and the engineer in agreeing to the extent of the engineer's responsibility during the construction phase may not give sufficient consideration to the importance of site visits. Economic constraints will be upon both owner and engineer during these negotiations. Inadequate emphasis may be placed on such site visits by virtue of budget limitations. That may be a mistake.

Under subsection 6 of A1.05 of Exhibit A to 1910-1 (1992 edition) it is stated:

- "6. Visits to Site and Observation of Construction. In connection with observations of Contractor's work in progress while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or

to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.

b. The purpose of ENGINEER's visits to, and representation by the Resident Project Representative, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents."

Since the site visits may be as the engineer deems necessary and are not intended to be exhaustive, they may be diminished in importance. Unquestionably, the engineer is not expected to evaluate every aspect of the contractor's work or to be involved in detailed inspections of the work, but the presence of the engineer will prompt the contractor to seek answers to questions which may be otherwise ignored. Further, the owner's best protection against a contractor's claim for additional compensation may be the engineer's frequent presence on the job site and attendance at progress meetings where the contractor has not voiced any concern regarding the subject matter upon which the contractor later relies in pressing a claim.

The subparagraph quoted above does reflect that such site visits are intended to provide the owner with a greater degree of confidence that the completed work will conform to the contract documents. Contract documents not only will contain the technical specification requirements but also contractual schedules and milestones. Frequent site visits have a salutary effect upon contractors who later claim that the owner failed to take remedial measures to prevent delay.

There is no argument that the engineer is not given authority nor should exercise authority over the contractor's means, methods, techniques, sequences or procedures of construction. However, the engineer may and should exercise authority and responsibility for seeing to it that the contractor proceeds in a timely manner as the work progresses.

In my opinion, the vigilance of the engineer in performing the work described under subparagraph 6 outlined above will have a decided effect upon a contractor's evaluation of potential claims against the owner.

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