

Law, Risk & Contracts

Say What You Mean,
Mean What You Say, and
Know When to Say It



ACEC Summit and National Convention 2011 Clear Communications for Claims Avoidance

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Outline

1. Forms of Communication
2. Importance of Clear Communication
3. Comprehensive Contracts, Plans and Specs
4. Lines of Communications vs. Contractual Ties
5. Paperwork During the Project
6. On-site Instructions
7. Communications:
Owner, Contractor and Sub-consultants



Forms of Communication

- Written v. Oral
 - Is there evidence to prove the facts?
- Binding v. Non-Binding
 - Parole Evidence Rule
- Express v. Implied
 - Implied Warranties and Waivers
- Helpful v. Harmful
 - Professional, Courteous and Timely



Importance of Clear Communication

- Dispute avoidance
- Early dispute resolution
- Successful dispute resolution
- Minimize exposure to liability



Contracts, Plans and Specifications

- Clearly Outline Commitments:
 - Scope, methods, time, price, change orders, extras, procedures, delay, dispute resolution
- Allow Sufficient Time to Prepare Documents
- Only Promise what you can Deliver
- Only accept Risks over which you have Control
- Use Standard Form Documents
 - i.e. Field Work Authorizations, Site Instructions
- Modify Documents as Required
- Implied Warranty



Lines of Communication v. Contractual Ties

- Confirm Conversations immediately in Writing
 - get other party to sign
- Use Neutral, firm Language
- Remain Professional
- Vet Drafts before Sending



Paperwork during Course of Project

- Paperwork = Evidence to support facts
- Maintain Accurate and Comprehensive records
 - notes, photographs, etc.
- Record the 5 Ws + 1H
 - who, what, where, why, when and how
- Use Active Voice
- Keep Contemporaneous Notes
- Prepare Documents in Timely Manner
- Minimize Disputes and Maximize Position



Paperwork During Course of Project

- Special Forms of Documents
- Notice
 - communications in writing between the parties or between them and the consultant
 - “within a reasonable time after the first observance”
 - required by contract
- Waiver
 - intentional giving up a right
 - may affect the rights and liabilities of a party
 - can be implied by conduct, words or both
 - confirm any ambiguity in writing



On-Site Instructions

Site Meetings

- document decisions
- draft, review and confirm minutes

Course of Conduct

- exercise your rights to protect them



Communications with Owner Contractor and Subs

- Separate Contractual Relationships
 - Owner contracts with Contractor;
 - Contractor contracts with Sub-contractors;
 - Consultant contracts with Sub-consultants
- Foster Open Communication
- Train Management to Deal with Different Personalities



Summary

- Practice Clear Effective Communication throughout Project
 - contract negotiations
 - site reviews and meetings
- Reduce Risk of Claims
 - promote early settlement,
 - successfully advance/defend case
 - avoid costly disputes



Questions?



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Thank you

