

## Quality Plan: Dangerous Clause Ahead

Agreeing by contract to give your client your quality control manuals could actually increase your liability. Has your client ever asked for a copy of your quality plan? Many clients require A/Es to have written quality control standards and procedures for the performance of the project. Sometimes they'll go further and require by contract that you adhere strictly to these procedures and may even dictate that you submit them for the client's review and approval. But while your client may think this a reasonable request, it can put you in a risky position.



Perhaps in response to the last several years' focus on quality improvement methodologies, many design and consulting firms have developed quality programs. While quality management is critical, not all quality plans are created equal. Many such plans are simply long litanies of "Thou shalt's": "The engineer will verify...; the project manager will check...; the principal in charge will monitor..." A recent review of quality plans for large A/E firms revealed that most consist of these check sheets and lists of "watch-for's."

### **MORE THAN A QUALITY MANAGEMENT ISSUE**

At first glance, this may appear to be a quality management issue. But there's more at stake. If you agree by contract to follow a set of rigid rules and guidelines, you may be changing the standard of

care by which you are judged. In fact, this could be interpreted by a client — or a zealous attorney — as a promise that you will abide by a higher standard than you are legally obliged to follow, thus increasing your liability and perhaps jeopardizing your insurance coverage.

If an owner gets an A/E's QC procedures into the contract, the owner will be able to show a departure from the A/E's own procedures and therefore argue that the A/E was negligent. Even though a departure from the internal QC procedures doesn't actually amount to a deviation from the standard of care, that's a very powerful argument.

These standards don't even have to be incorporated by contract, our claims managers tell us. Through discovery procedures, plaintiff attorneys can — and do — use a design firm's own promotional materials advertising in-house quality control programs. They claim these programs are higher standards set by the firm itself, which creates a coverage issue under the design professional's liability insurance. Attorneys present these promotional materials as evidence of the firm's voluminous QA/QC plan. Even the most inept lawyer can usually prove a tiny deviation from the firm's own QC plan.

The wording used in the quality plan can also increase an A/E's liability. In one instance, an A/E firm's plan called for inspections of plans and construction documents to "ensure" constructability. The quality plan was written as a template; each client's name was inserted into the template, thereby giving it the appearance of a customized quality plan.

## WHAT DOES THE CLIENT REALLY WANT?

If a client-written contract requires you to maintain and adhere to written quality control procedures and standards, your best approach is to delete the clause. Find out what your client really expects. If the client simply wants assurance that you intend to provide quality professional services, explain that you are already legally obligated to uphold a high standard. The law requires you to perform your services in a manner consistent with the degree and skill and care used by other competent practitioners of your discipline under similar circumstances.

It might be helpful if you could demonstrate to your client that your firm is vitally concerned about quality, perhaps by pointing out your ISO 9000 certification, another quality management program or a peer review.

If your client insists that your contract specify that you have quality control procedures in place, you might have to agree, but do so only with certain conditions. Be sure that the provision includes language that allows you to use your best judgment and experience as a professional to apply — or not apply — those procedures as appropriate.

## A SECOND LOOK AT YOUR QUALITY PLAN

The longer-range solution may mean taking another look at your quality plan. A/Es tend to approach the quality issue as a quality-control problem. Many A/E quality plans focus on end results rather than the underlying processes. But, by concentrating on cor-

recting errors after the fact, that some firms may miss the company opportunity to fix the system that generates the errors in the first place.

According to our educational specialists what is lacking in many quality plans are procedures for improving the process of design projects. Process improvement means attention to measurable tactical goals at each step along the way, so that continuous improvement occurs in step-wise increments and the firm as a whole improves.

Make no mistake: Your approach to quality management is crucial to the success of your firm. But promising in your contract that you'll follow a quality plan comprised of inflexible rules and procedures can cause real liability problems down the road.

The information in this article is the product of over 30 years of front-line claims experience and is part of the educational service provided to the design industry by the Design Professional group of the XL Insurance companies. For more information, other loss prevention resources and to find an agent in your area, visit [xldp.com](http://xldp.com) or phone 800-227-8533 ext.2102508.

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