

JAMES A. GRAASKAMP COLLECTION OF TEACHING MATERIALS

V. INDUSTRY SEMINARS AND SPEECHES - SHORT TERM

I. Other Presentations In Which Either The Date And /
Or Sponsoring Organization Is Missing

3. Development Topics

n. "AIA Contract", no date

AIA Contract

I. Introductory comments

- A. Understanding of historical facts and present AIA policy requires understanding of the architects view of himself as a master builder and his fear that he will be held responsible for the results.
- B. The architect sees himself in the dominant role of planning and creating a building with responsibilities to the client, to society, and to the profession and therefore seeks a clear definition of his authority as the owner's agent. In recent years his patrons have become more sensitive to economics and less enthralled with philosophies of design so that architects are under considerable competitive pressure from complete service contractors, engineering firms, and package builders.
- C. Until the 1950's there were very few successful malpractice suits but with the advent of malpractice insurance, successful claims soared. Loss experience or premium costs has led to architectural malpractice deductibles as high as one half million dollars. Therefore while the architect is very firm and explicit about his rights, he is very vague about his responsibilities and wishes to operate within a contractual framework which places consequences of design decisions on others as much as possible.
- D. Control of the job and limitations of liability are accomplished by tying the architect contract into a whole series of standard contracts and forms which are incorporated by reference or by procedure into the AIA contract. Thus signing a standard contract more or less locks the owner into a whole sequence of related contractual ties to contractors, lenders, tenants, and others.
- E. Although the relationship of the AIA contract to the building process is a can of worms in which the owner could have a many uncomfortable surprises, the fact is that the process does work for millions of dollars of construction each year because the professionals understand these contracts and practice and because the architect generally feels some professional responsibility for the client.
 1. The small client with a \$1 or \$2 million job will be given little opportunity to modify the AIA contract and runs the risk that in beginning the job with the architect with a fight, he will have alienated the architects good will on which much success depends.
 2. Larger firms like Rouse or General Electric can have their own contract form and because they have their own inhouse expertise can require architects to accept it and like it.
- F. The criticisms which follow are useful to understand contract negotiations in general and the kinds of bias introduced by any standard form offered on a take it or leave it basis. It is also useful to understand many of the sources of risk in the construction loan process or in custom design vs a package. Finally in understanding a good contract also suggests the complexities in a very simple new concept called **Fast Track Building**.

- II. These poster boards will suggest the various elements of an architectural project:
 - A. Contracts and forms which are all tied into the standard AIA agreement.
 - B. Building programs (needs and objectives supplied by owner) in this case, a school board.
 - C. Schematic design phase to convert owner requirements into spatial concepts and relationships.
 - D. Planned development phase in terms of general layout.
 - E. Planned development layout in terms of detailed spatial arrangements.
 - F. Systems development.
 - G. Exterior development (massing, sculpturing, and siting)
 - H. Detail development in terms of materials and structure specifications.
 - I. Working drawings and book of specifications and other preparations of bidding.
 - J. Shop drawings (as required for explanations to contractors in the field as to installation, construction methods, etc.)
- III. The contracts and forms which are tied into the AIA contract which provide the architect the authority to use these forms (which are generally good forms or models which may require small local amendments) would include:
 - A. Standard form of agreement between owner and contractor (which is very brief because it incorporated all the other forms by reference and is concerned primarily with amount and method of payments to the contractor) (in student kit)
 - B. The real controls on the contractor are contained in the bidding documents which generally begin with much detail on the general conditions of the contract for construction and these conditions are accepted by the contractor when he bids and his bid is accepted. Since they are well understood by trade practice any specific change may cause the contractor to raise his price to anticipate the unexpected.
 - C. Certificate of insurance from all contractors.
 - D. Performance bond and payment bond were required.
 - E. Application for payment.
 - F. Certificate for payment.
 - G. Change order
 - H. Architects field order
 - I. Certificate of substantial completion

J. Contractors affidavit of release of liens

K. Consent of surety company to final payment

IV. In commenting on the AIA contract it is important to repeat that while it lacks conceptual perfection, the small developer may not be able to change it because of the architect's emotional insecurity on the control issue and the contractor's generally feeling comfortable with what is rather than innovative variations. Change is both a function of bargaining power and your legal ability to anticipate how a change in one document works through the chain of related documents; moreover it is also a function of how much the owner can do for himself in terms of available expertise.

A. In the architectural contract definitions are very important, especially the definition of basic compensation because it is here that you actually see the services you are buying from the architect. While the fee formula is clear, the services to be performed are not.

B. The basic services of the architect are divided into six phases:

1. The schematic design phase
2. The design development phase
3. The construction document phase
4. The bidding negotiation phase
5. Contract administration phase

C. The key wording is in the schematic phase - a program provided by the owner. The assistance the architect contributes here may as a practical matter not incur an additional charge but he is entitled to be paid on another basis than is charged for basic services as a percentage of construction, etc. Sophisticated users generally require a seventh phase, the predesign phase or pre-architectural programming.

1. The architect is not expected to analyze the owner's needs but at least to show the owner how to do it and to answer the very specific question relative to design concepts, site selection, etc.
2. Many firms also list specific kinds of products from the schematic phase in terms of certain types of flow charts, models, renderings, and other items necessary to show the schematic design and attractive format for investors or prospective tenants and these are included in the basic design service. In many cases the architect does it anyway but the architect wants to be sure that he can begin charging the owner extra when the architect feels put upon.

D. A certain percentage of the percentage fee is earned at the conclusion of each phase but nothing is said about when a phase is begun or concluded and the base for the percentage for the architect estimate of cost. A contract for services should have each phase of services clearly defined as to beginning and ending by an event such as submission of a report or initialling of drawings or a written memo indicating understanding that another phase has begun. Many insert a base number to be used for computation of the architect's fee prior

to actual construction.

- E. By narrowing the scope of architect's progress by certain specific events or approvals it is also possible to terminate the contract and choose another architect with less conflict with the professional canons of ethics which prohibit another architect from being involved in the project initiated but possibly not completed by a first architect.
- F. ~~Among the things the owner must provide~~ *It is* important to limit excuses of the architect by specifying in writing these specific information required that you the owner must provide. The architect can assume the information is correct but then you may assume the architect had everything he needed.
- G. The architect has a clause which states the owner must notify him of any observed clause in writing or the architect isn't responsible either.
- H. With respect to the work of the contractor, the architect has the right to make inspections of a contractors work under his contract but carefully disclaims any responsibility other than good faith in certifying substantial performance. The owner must provide his own auditing of the contractor to see whether the contractor has performed. The large buyer of architectural services can remove these exculpatory provisions.
- I. The architect claims to own his plans. Under the common law the plans belong to the owner unless the architect copywrites them and he can only copywrite them if they have some unusual or artistic value. (a warehouse may be nothing extra-ordinary) The architect has other fears: *Duplication*
1. ~~Repetition~~ *his* of the plan as a prototype
 2. A change in ~~his~~ working relationship where the performance bond must take over.
 3. Termination of his services with another architect picking up the project in midstream.
- J. The AIA form says the governing law is the principle place of business of the architect whereas the construction contract states that the law is that of the state where the project is located. It is suggested that all contracts reflect the law of the site location so as to be compatible.
- K. The AIA contract does not require errors ~~in~~ *and* omissions insurance but most professionals have it and the owner should insist on it.
- L. Most lenders will require a commitment from the architect and the contractor and in the case of loan default they will, if requested at the option of the lender, continue services in the lender's behalf under the same arrangement they had with the owner.

M. Since the architect is the owner's representative with a right to stop jobs, to terminate the contractor, and to solve disputes in behalf of the owner he has a powerful bundle of rights. The sophisticated buyer of services may therefore require:

1. The architectural partner be named as a person as well as a firm.
2. That the client has final say on interpretation of plans and specifications while the architect has the last word on artistic effects.