



Risk Tip 12 – Project Completion Certification
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Architects and engineers providing services to their clients on certain types of projects (usually buildings) routinely are asked to sign a certification at the completion of the project. The Project Completion Certification is intended to confirm that the project has been completed in general conformance with the contract documents. The certification may be a legal requirement in order for the project owner to receive an occupancy permit. Local building officials will rely upon this certification that the project conforms to local codes as well as life safety codes so that members of the public using the project will be safe.

So, why is such a routine procedure problematic? Unfortunately sometimes project owners don't necessarily understand, nor care to understand the role of a design professional in the performance of site observation. Often owners seek to impose language in a certification that goes far beyond the scope of observation. Sometimes certification language can imply that the design professional is guaranteeing the quality of the construction and that the project fully conforms in all aspects to the contract documents. Consider the following wording that a typical certificate might contain:

“The Architect/Engineer hereby certifies that the work was completed in strict accordance with the contract documents.”

The design professional may think that this statement is a reasonable one because in his or her opinion and as far as he or she observed, the work was in conformance with the contract documents. However closer scrutiny of the wording shows that the language places an impossible burden on the Architect/Engineer. He or she could not possibly have observed every minute of every activity performed on the job. As a result, there is no way to verify that the work was done in *strict accordance*. Even the use of the word *accordance* without some qualifying language could be interpreted to mean that the certification is a full guarantee of conformance. The certification might be interpreted to indicate there are no deficiencies in the work. Should a deficiency later manifest itself, the Owner may have a legal right to make a claim against the design professional, arguing that they relied upon this statement as a guarantee that there were no defects. This is a situation that can easily be avoided by drafting certification language that is indicative of the actual services being performed by the design professional during construction observation.

To make sure that the Architect/Engineer assumes no more liability than their services warrant, consider the following steps.

As an engineering performing site observation know where your responsibility for the overall project construction starts and ends. Usually, the role is observation, not a detailed, exhaustive inspection. Be sure that the engineering agreement does not describe the role as “inspection” but rather “observation.” In contract language, inspection means an examination that would involve tests, probing and other more detailed analysis. There is often a specific protocol that is followed with inspection services. Observation usually means visual review that the engineer can make while walking through the site.

It can be very helpful to reinforce this role during any pre-project planning with the owner. Let the owner know that as you are not in charge of the contractor, that the contractor must solely bear responsibility for the ways, means, methods and quality of the construction on the project. You will check during observation that overall the project is in conformance with the original design intent, but you cannot fully guarantee the construction. That responsibility must remain with the contractor.

As to contract language, consider adding a clause in the agreement for professional services that reads:

“Conformance With Contract Documents – the Architect/Engineer will provide a written report stating whether, in its opinion, based on site visits, the construction work complies generally with the documents.”

Remember you can’t certify work that you did not actually review or see. Sometimes in an effort to save money in the budget, project owners may cut back on site observation services. If the project owner attempts to do this, be sure to clearly advise the owner that you will then be unable to provide the Certification of Completion, unless you are allowed to observe the work as you originally specified in your scope of services. Stand firm on this, or otherwise you may be placed in the position of falsifying the certification.

As to language in the certification, be sure that the wording reflects something to which you can attest. At the outset of the project, request a copy of the certification that the owner will seek you to sign at the end of the project. Be sure that the certification is *qualified as a professional opinion* and not an outright guarantee. Qualifying language to use might be “to the best of my knowledge information and belief” or “in my professional opinion.” For example:

“I hereby certify that the undersigned is a licensed _____. To the best of my knowledge, information, and belief, I certify that the _____ (building, facility, project) was constructed in general conformance with the contract documents.”

As with contract language, it is prudent to seek the advice of your attorney as well as insurance professional before agreeing to sign any certification, especially a Certification of Project Completion. Keep in mind, you will likely run into less resistance proposing appropriate changes to the certification wording, if this is done *before* the project begins.

Successfully negotiating the wording of any certification is a valuable risk management tool that design professionals can employ to mitigate potential future liability on a project.

This ACEC/MA Risk Tip is intended to provide current and accurate information to assist the reader in becoming more familiar with the subject matter. It is informational only and not intended to substitute for technical, legal, or risk management professional advice. The reader is encouraged to consult with an attorney or appropriate professional consultant to explore this information further.

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