



Risk Tip 5.

Project Documentation

Provided as a courtesy by the ACEC/MA Risk Management Forum

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Professional liability insurers and lawyers who assist engineers stress the need for good project documentation. At the very least, good project documentation provides a written record of steps project participants need to follow for the successful delivery of a project. Important decisions and key instructions should always be in writing so as to avoid any risk of confusion. In the unfortunate event of litigation, well drafted documents and written notes in the project work file can be the best defense an engineer may have.

Certainly much has been said about the need for a written contract with the project owner when performing work. Just as important is the need for a written agreement between the prime engineer and any sub-consultants the prime retains. Even if you are very familiar with your sub-consultant and have worked on multiple projects in the past, don't forgo a written agreement with the sub-consultant. As prime engineer, you are responsible to the project owner for loss caused by any sub-consultant you retain. If there is no written agreement between you and the sub-consultant, it may later be unclear to a court what the responsibilities of the sub truly are. Thus, you may have a hard time enforcing the agreement or demonstrating that the sub should be held accountable for a loss.

In addition to contracts, designs and specifications, important instructions, and decisions reached should always be in writing. There should be a written record of the minutes of any project meetings that should be circulated to all participants. If your services change during the course of the project, be sure that the changes are confirmed in writing as an addendum to the contract. If the owner does not want to go through the bother of changing the written agreement, then send them either a letter or e-mail confirming the changes. Also, the owner's decisions about change orders or substitutions should always be obtained in writing. Documentation of a project's quality control review should also be retained in the project file. Internal and external peer review comments, whether adopted or not, can go a long way in demonstrating that you acted reasonably and prudently in accordance with the standard of care. Of course, if a peer reviewer's recommendations are not adopted, it is prudent to note the reason why in the file.

As the project progresses numerous documents are created by the project team – design calculations, reports, technical memoranda, telephone logs, meeting minutes, progress design drawings and specifications, design phase submittals for client review and submittals for regulatory review, to name some. As iterations of these documents are created, the potential for contradictory and conflicting information increases, often arising from design changes made

as a result of client review comments. It is important to maintain control over what versions of documents are retained for the project file as you don't want the information leading up to decisions to conflict.

Draft documents should be carefully controlled. Working drafts should be discarded once a formal draft submittal has been sent to the client for review. Only keep records that document the development of conclusions, such as calculations. All drafts should be marked with the dates they were created and each date when they were revised.

Draft documents submitted to the client to review should be discarded once the client has commented and the comments are incorporated into either a draft for Regulatory Review or the final document. Of course, if the client has specific retention requirements for drafts that they want you to follow, you go with the client's requirements.

Retention of client comments on drafts is crucial to documenting the client's instructions and desires, so be sure to keep the comments. All such correspondence from the client should be retained in accordance with Document Retention Policies.

Note that draft documents submitted for Regulatory Agency Review are public and remain in the public domain. For this reason, treat them as final documents and retain them in accordance with the Document Retention Policies. Final documents of course are the records of your work product and should be retained.

A written record of all site visits should be kept. At a minimum, record the date, the time, the purpose for the visit and what you observed. Depending upon the purpose for your visit and what you encountered, there might be a need for additional details to be recorded. Should you later be questioned as to what you might have done to guard against some deficiency in the work, you want the benefit of specifics rather than a general recollection.

Actions taken on RFIs, shop drawings and submittals should always be in writing. Copies of answers, approvals and other actions taken should be kept in the project work file. If you are rejecting any of the contractor's work or materials, be sure to confirm the rejection in writing with supporting details.

It is also important to be careful about how you document. Whenever you are writing something that will be kept in the project work file as documentation, consider who in the future might be looking at that documentation. Think of the documentation as something that might someday appear in court or on the front page of a newspaper. Would you want it to?

A good rule to follow with regard to documentation is to keep it factual, consistent and contemporaneous. Never render opinions about other project participants or the project. If stating a conclusion, it should be based upon facts and you should document those facts. If information is not consistent, then you later run the risk of having to explain the inconsistencies and possible ambiguities. For example, should you later reject work where you had provided a previous approval, withdraw the approval in writing. Also, confirm changes in designs or

specifications being used by the contractor in writing so it is clear as to what they should be following.

The sooner you document the work file, the better. When documenting a site visit, don't wait weeks before you write the notes. Chances are you might forget something and thus the documentation may be inaccurate. Also, notes that are written soon after the visit will be viewed as more credible by third parties, such as courts.

E-mails, letters and other forms of written correspondence are all acceptable means of written documentation. Many firms today store project work files and records electronically. This is acceptable so long as the documentation stored cannot later be altered.

Documentation will go a long way to demonstrate you acted reasonably and prudently in accordance with the standard of care. It will serve as proof of the facts and will be for another party to dispute. The better your project documentation, the better you can protect your firm against litigation.

This 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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