



Risk Tip 8 – Engineer’s Risk for Job Site Safety
In Traditional Design/Bid/Build Projects
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Over the years, roles and responsibilities of each of the project participants – owner, design professional and contractor, for the construction site has been well established in contracts and case law. Nevertheless, engineers can be at risk for liability arising from construction site safety. A survey from one major professional liability insurer shows 1 in 10 claims are site related. If the engineer is not careful about contract wording, issuing specifications that may include ways, means or methods, in conducting construction observation, the engineer can be faced with claims arising from safety issues.

Jobsite safety responsibility is delegated primarily to the general contractor. A contractor’s bid and ability to make a profit is conditional on being in control of the construction. Since the contractor is in control of the ways, means and methods of construction, it is logical that the contractor should bear primary responsibility. As the contractor assumes control of the site, he becomes strictly liable for any injuries sustained by workers or other parties at the site.

The project owner is also considered strictly responsible for the site as he is the major beneficiary of the work. The owner is responsible to verify that the contractor has a safety program in place and is properly following it. Otherwise, the owner faces potential fines from OSHA and responsibility for injuries that may arise from the contractor’s unsafe practices.

The engineer’s role for site safety is far more limited. The EJCDC Owner/Engineer Agreement states it this way:

“Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing its work.”

The engineer’s duty with regard to site safety is limited to knowing the contractor’s safety program and making sure the engineer’s employees follow it, in addition to the engineer’s safety plan. However, if the engineer recognizes an “imminent danger” situation during the site visit, the engineer has a “professional duty” to immediately inform the contractor and the owner of the observed condition. The engineer is not expected to do an exhaustive inspection of the contractor’s safety procedures nor should the engineer ever attempt to stop the contractor’s work.

Notice of the imminent danger may take the simple form of contacting the supervisor working for the contractor responsible for the work and letting him know what was observed. Note the project work file in the event that the supervisor fails to take action, so that you can bring it up with the contractor and owner. Never attempt to stop the work as you do not have the authority and such action would make you liable for all costs the contractor suffered due to delay.

Workers Compensation laws bar injured workers from suing their employers for work related injuries. Thus injured construction workers often sue the project owner, architect, engineer and other participants alleging that each bore some responsibility for the injury. So long as the engineer did not accept site safety responsibilities in its contract, nor took any role in designing or inspecting the safety program, usually such lawsuits result in an early dismissal for the engineer without any damages awarded.

Sometimes owners attempt to delegate site safety to the engineer through contract language. This takes the form of requiring the engineer to “review the contractor’s safety program and confirm it has been implemented.” Some contracts go so far as to delegate joint responsibility to the engineer for site safety. Any such attempts to delegate safety are unwarranted and need to be resisted. The engineer does not supervise the work, cannot control the construction and has no authority to stop the work. Thus delegating site safety to the engineer requires responsibility for something over which the engineer has no control.

If engineering specifications must include means, methods or sequencing of work, they need to be carefully drafted. Include a disclaimer that the engineer is not assuming responsibility for means, methods or sequencing. Also, disclaim responsibility for verifying implementation. The disclaimer should state that responsibility for means, methods and sequencing remains the sole responsibility of the contractor.

Stay within the contractually agreed upon services when at the site. Don’t perform an exhaustive review or inspection of the contractor’s procedures. Don’t look to give direction to the contractor’s employees, but report perceived “imminent danger” conditions to the supervisor in charge of the construction workers and the owner. Providing direction to workers increases risk beyond what is expected in the contractual agreement. An engineer’s employees performing site observation at construction sites should:

- Be properly trained and aware of their own firm’s safety procedures;
- Be aware and follow the contractor’s safety program;
- Know their own firm’s policies with regard to reporting unsafe conditions;
- Not direct safety procedures.

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