

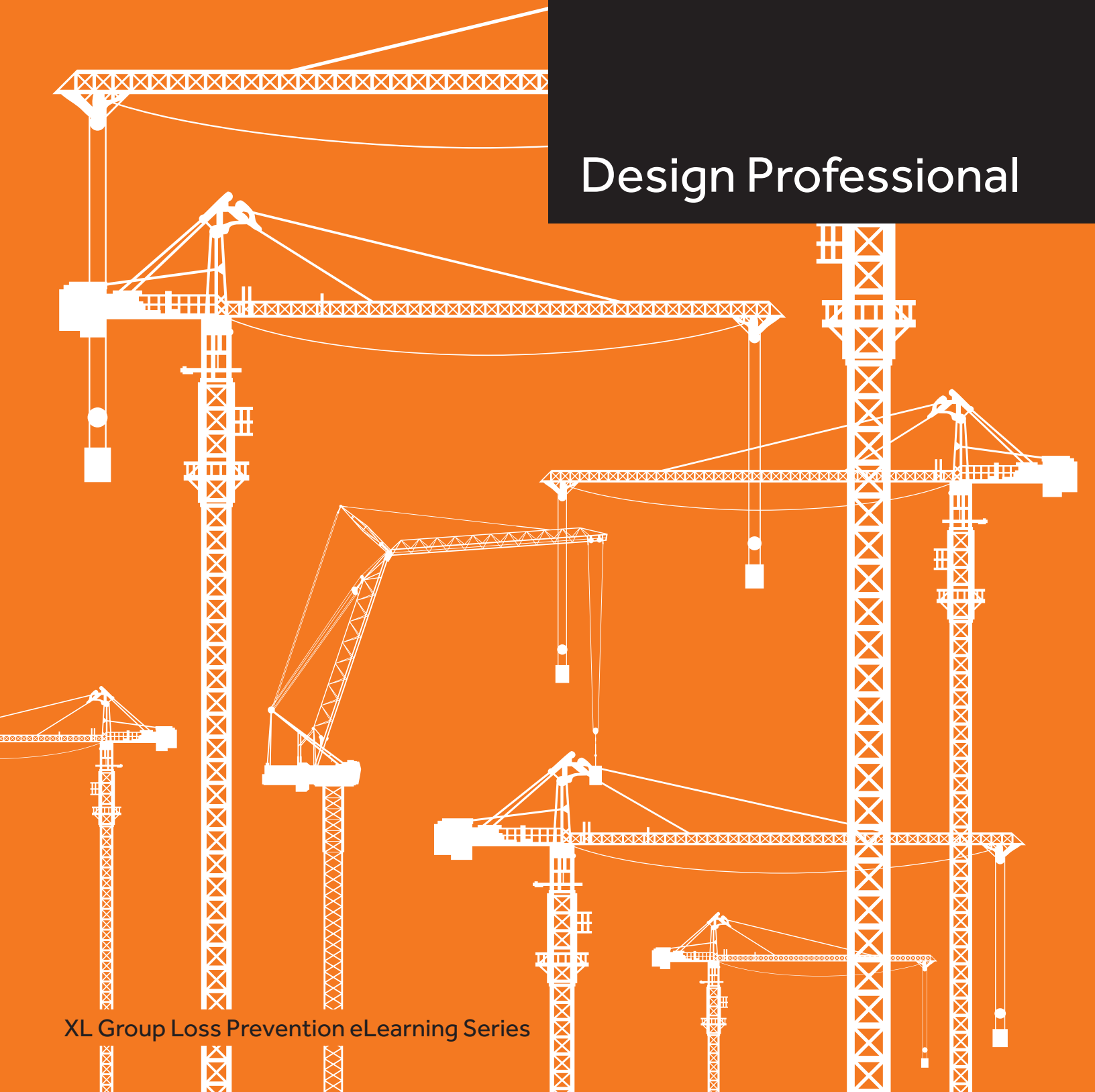
Managing Construction Phase Risks: Course Resources

XL Group
Insurance



Design Professional

XL Group Loss Prevention eLearning Series



Notice to Participants

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Introduction

The construction phase of a project brings all your hard work to realization. By approaching this phase proactively, you can exercise greater control over the interpretation of your final design, address questions and problems as they arise, and support the client's objectives more effectively. The learning objectives for this eLearning course are to:

- Understand the purpose and importance of providing construction phase services.
- Find out how firms slip up during this phase and become vulnerable to claims.
- Acquire best practices to manage such risks.
- Learn how to recognize the warning signs of a claim.
- Identify the tools and procedures that can improve your firm's construction phase practices.

The information and tools in this booklet are designed to help you take some of the concepts you learned in the eLearning course and put them into action within your firm.

Why Provide Construction Phase Services

XL Group's Design Professional team believes that full construction phase services should be part of every design professional's Scope of Services and fee structure. You know your design concept and the assumptions you made in preparing your documents. So it makes sense for you to present your plans and specifications to members of the project team, to confirm roles and responsibilities and to discuss how to effectively communicate with each other during construction. And no matter how detailed your plans are, even the best contractor can't build from them without some degree of interpretation. By being on-site, you are the one most likely to recognize any misinterpretations and know what to do about them. It is far better to protect your interests and those of your client by being an active member of the project team during construction.

The best approach may be to offer your client expanded construction phase services—full-time, on-site project representation services. Both the AIA and EJCDC documents offer good starting points for developing such a workscope.

Managing Changes to Your Scope of Services

There are some measures you can use to protect yourself when a client decides to reduce your scope of services, especially your construction phase activities.

Here's a typical scenario: You negotiate a scope that includes adequate construction observation and execute the contract. As the construction phase approaches, however, the client has a change of heart and wants to cut your construction phase services to save money.

The best strategies for these types of changes need be contemplated as you are negotiating the contract:

- Ensure that there's a clause in your agreement that the scope cannot be modified except by written agreement of the parties.
- Include a self-executing hold-harmless clause, in which the client agrees to hold you harmless in the event it reduces your services.

Such a clause relieves your responsibility with regard to any items that are deleted from the scope. Association standard form agreements typically provide that your fee and schedule can be renegotiated under certain circumstances, including changes in the client’s instructions, revisions due to codes or laws, failure by the owner to make decisions in a timely manner, material changes in the project and so on. But the clause below specifically addresses the *reduction* of your services, and is certainly worth discussing with your attorney and trying to negotiate into your contract.

Hold Harmless Clause

The Consultant’s commitments as set forth in this Agreement are based on the expectation that all of the services described in this Agreement will be provided. In the event Client later elects to reduce design professional’s scope of services, Client hereby agrees to release, hold harmless, defend and indemnify Consultant from any and all claims, damages, losses or costs associated with or arising out of such reduction in services.

Pre-Construction Meeting

One of the most important planning events of the construction phase is the pre-construction meeting. Its purpose is to provide an opportunity for the contractor and the design team, and often the owner or owner’s representative and other key project team members, to meet and lay the foundation for a smooth construction process. While the agenda is determined by the nature of the project, such sessions typically include discussions about the plans and specifications, site issues and scheduling, the duties and roles of project team members, and various communication and coordination processes—including handling RFIs and Change Orders. Such a planning process promotes teamwork and lessens the likelihood of adversarial relationships among team members during construction.

A good approach to administrating pre-construction meetings is to develop a “master agenda” that contemplates most project needs, and then tailor it for each job. An example, adapted from a comprehensive agenda developed by the Fort Worth design firm Huckabee, is on the following pages.



Exhibit 1: Sample Pre-Construction Meeting Agenda

Pre-Construction Meeting Agenda

Project Name: _____ Date of Meeting: _____
 Project Number: _____ Time of Meeting: _____
 Owner: _____ Place of Meeting: _____
 Project Location: _____ Contract Start Date: _____
 Contract Completion Date: _____
 Prepared by: _____
 Participants/Distribution List: _____

This agenda has been prepared to guide the meeting so that participants can fully discuss the procedures, roles and responsibilities necessary for a successfully completed project. Your attendance at this meeting is key to understanding the extent of your responsibilities and authority levels with regard to the project.

1. INTRODUCTIONS AND DISTRIBUTION OF SIGN-IN SHEET

- Attendees introduce themselves (name, organization, title and role on the project).
- Attendance sign-in sheet circulated.

2. CHANNELS OF COMMUNICATION

- _____, Construction Observer for the Architect, shall:
- Serve as the project team point of contact for all requests to interface with Owner personnel.
 - Communicate Owner direction or decisions.
 - Contact Owner personnel for request considerations and approvals.

3. EMERGENCY CONTACT INFORMATION

- Emergency contacts for the Architect will be (name/title/phone numbers _____) during normal work hours and (name/title/phone numbers _____) during evenings, weekends and holidays.
- Contractor shall provide a list of emergency phone numbers, including subcontractors.

4. CONTRACTOR RESPONSIBILITIES

Project Management

- Final list of subcontractors and manufacturers: Provide to the Consultant within 14 days after Notice to Proceed.
- List of Materials: Provide to Consultant within 14 days after Notice to Proceed.
- Schedule of Values: Submit two weeks prior to first application for payment. (Use AIA Document(s) _____).
- Progress Schedule: Provide graphic projection of construction activities showing anticipated start and completion dates, float times and critical path sequence two weeks prior to first pay application. Maintain schedule monthly, submit with each pay application and also post for reference at jobsite.

Jobsite Management

- Contractor Superintendent: Must be present at site to coordinate all on-site activities of subcontractors and review/approve subcontractor work prior to Architect and Owner reviews or observations.
- Record Set of Documents: Maintain set of Drawings and Specifications. Plans shall be updated to reflect all addenda, field clarifications, minor changes and all other approved changes/clarifications. These will be reviewed prior to each monthly payment.
- Testing Lab Coordination and Notification: Schedule inspection as required by contract documents, providing 48 hours advance notice to testing lab. Provide 48 hours advance notice of concrete pours to Architect. All concrete pours shall be made in the presence of Testing Lab. Inspection of steel reinforcement and concrete placement for piers, building foundation, load bearing masonry to be inspected by _____. All costs for failed tests shall be borne by the Contractor, including retesting costs and architectural or engineer analysis.

Exhibit 1: Sample Pre-Construction Meeting Agenda (continued)

- Energy Code Compliance Inspections: Contractor is responsible for periodic inspections, as required.
- MEP Observation and Notifications: As required by contract documents, these shall be reviewed by Architect and/or MEP Engineer, as appropriate. Provide 48 hours advance notice to all parties for such observations.
- Storm Water Pollution Plan: File Notice of Intent Form as required by EPA, and maintain site in accordance with EPA requirements.
- Compliance with City: Meet with City Inspection Department to establish procedures, and observe city regulations regarding noise, traffic, etc.
- Project safety: Contractor is wholly responsible for project safety and, as such, must have procedures in place to protect workers and public.

5. SUBMITTALS: SHOP DRAWINGS AND REQUESTS FOR SUBSTITUTIONS

- Contractor shall review, coordinate and stamp submittals indicating compliance with all construction requirements before transmitting to Architect.
- Contractor shall send submittal to the Architect for review and coordination, noting critical and/or priority items requiring immediate review and approval. Each submittal shall bear the time requested for return. Only the submittals listed in specification # _____ shall be submitted to the Architect. Submittals listed in other specification sections shall be reviewed and approved by the Contractor.
- Contractor shall maintain a complete set of submittals and their review status at the jobsite.
- Both Contractor and Architect shall maintain schedule logs for weekly updates and review.
- Contractor shall submit prior to each monthly pay application an overall submittal log showing all submitted and items to be submitted along with their tracking information.
- Under no circumstances shall concrete be poured prior to receipt of approved shop drawings.

6. JOBSITE COORDINATION MEETINGS

Weekly Progress Meetings are to be held to discuss job progress, coordination, schedule and potential conflicts. To be attended by Owner Personnel, Contractor and Architect. Subcontractors and/or subconsultants to attend only as required. The Construction Manager will conduct the meeting, establish meeting location and prepare the meeting agenda. Action items include:

- Contractor will distribute attendance sheet and document and distribute meeting notes which will serve as the next meeting's agenda.
- Architect and Owner Personnel shall submit amended notes in writing if deemed necessary.
- Contractor shall review and update construction schedule and submit a three-week forecast as well as daily field reports.
- RFI Log shall be submitted by the Contractor and reviewed against the Architect's Record Log.
- RFP Log shall be submitted by the Contractor.

Pre-Installation Conferences are to be held prior to each trade commencing work on the jobsite. Contractor shall coordinate attendance by subcontractor Personnel responsible for the day-to-day coordination of activities in the field. All agendas and minutes for conference shall be generated and distributed by the Contractor, except roofing and masonry. Contractor, Architect and Subcontractor shall review specification requirements and coordination requirements. Field mock-ups may be considered to establish quality expectations and control. Trade checklist includes:

- | | |
|--|--------------------------------|
| • Concrete Pavement and Cast-In-Place Concrete | • Landscaping and Irrigation |
| • Masonry | • Food Service |
| • Structural Steel | • Mechanical |
| • Cold-Formed Metal Framing and Gypsum Drywall and Acoustical Ceilings | • Electrical |
| • Roofing | • Plumbing |
| • Aluminum Storefront and Glass and Glazing | • Data Cabling and PA/Intercom |
| • Lath and Plaster | • Fire Alarm |
| • Ceramic Tile | |
| • Carpet/Rubber Base/VCT | |
| • Painting | |

Exhibit 1: Sample Pre-Construction Meeting Agenda (continued)

7. PROCESSING OF REQUESTS FOR INFORMATION, CHANGE PROPOSALS/CHANGE ORDERS

- The Architect, Consultants or Contractor may initiate Requests for Information.
- Owner Personnel, Architect or Contractor may request Change Proposals. The Architect originates formal Requests for Proposals (RFPs) and assigns a Control Number for record purposes. The owner approves formal RFPs for changes to the Work. Once an RFP is approved by the owner, it will be incorporated into a Change Order, which will then be submitted to the Owner for approval.

8. PROGRESS PAYMENTS

- Applications for Payment shall be submitted to the Architect by the _____ of each month and processed in accordance with Owner's Payment Schedule.
- Progress payments for materials will be based on materials that are properly stored on-site.
- RFPs are not to be added to the Application for Payment until they have been incorporated into a Change Order approved by Owner.

9. DESCRIPTION OF SITE CONDITIONS (To be completed by Architect and Contractor.)

- Parking: _____
- Storage: _____
- Utilities: _____
- Temporary toilet facilities: _____
- Special site conditions: _____

10. PROJECT CLOSE-OUT

Substantial Completion

- Contractor Completion List (To be completed by Contractor before Architect's Punch List.)

Substantial Completion Requirements

All items listed below are to be submitted before a Substantial Completion Certificate can be issued:

- Contract close-out (Section 01770).
- Complete and finalize TAB report, approved by RRB.
- Complete DDS controls, along with all graphics required.
- Air quality test report.
- Data writing testing.
- Electrical testing.
- Final Energy Code Compliance inspection.
- Final inspections by governmental agencies including Fire Marshal and Health Department.
- Close-out from city municipality.

Project Close-out Documents

Notebook for MSDS Sheets

Warranty Requirements

11. ADDITIONAL COMMENTS

Request for Substitution

No matter how carefully you design, detail and specify a project, contractors may propose substitute materials, products or equipment they would like to use in the project. This might be due to lack of availability, higher cost or value engineering. Unfortunately, there are also some contractors who try to use the substitution process to their own advantage—to reduce their costs, to shorten material lead-times, or for ease of installation, for example.

Bidding instructions normally establish rules for contractors to follow in requesting substitutions prior to the receipt of bids. Public agency clients generally are required to consider a substitution if it is equivalent to what was specified in the bidding documents. But some clients (and consultants) object to substitutions at any time and indicate that in the bid documents.

Substitutions that are proposed well in advance of the bid date and are accompanied by appropriate performance information, test data and other materials necessary for evaluation are not generally a problem. The trouble lies with the substitution request that is presented too late, without the supporting information. Or worse, when it is suggested during construction, requiring unanticipated research and, if accepted, changes to the design documents.

Because you'll have to evaluate substitution requests, it is a good idea to do a couple of things up front. First, educate the owner about the impact of substitutions. Second, make sure the contractor knows the proper procedures for substitution requests.

The substitution process is generally well-managed by design firms, but if you think you'll be dealing with a contractor who will abuse the process, you might consider requiring the use of a Substitution Request Form, such as the examples on the following pages. Developed by Tulsa Oklahoma architect Charles Chief Boyd, of Thalden-Boyd Architects, to tame out-of-control requests by contractors, the first form requires a contractor to conduct a thorough review and analysis of the suggested substitution, including a comparison of options. The second sample request form is from *XL Group's Contract eGuide for Design Professionals*.



Exhibit 2: Sample Request for Substitution

Request for Substitution

This form must be completely filled in with all relevant data by the Subcontractor and submitted to the Project Manager for consideration before any request to change the drawing or specification requirements will be considered.

Reference Data	
Project name: _____	Date of Request: _____
Location: _____	Architect's Job No.: _____
Request by (firm): _____	
Address: _____	
Contact person: _____	Phone: _____ FAX: _____
Subcontract works: _____	Package No.: _____
Substitution Request Data	
Substitution requested is for:	Reason for request: _____
<input type="checkbox"/> Named product	_____
<input type="checkbox"/> Product type, material, finish or formulation	_____
<input type="checkbox"/> Fabrication or installation methods	_____
PRODUCT / MATERIAL / METHOD FOR WHICH SUBSTITUTION IS REQUESTED IS SHOWN ON THE FOLLOWING DOCUMENTS:	
Specification: Section No.: _____ Page(s): _____ Clause No.(s): _____	
Drawings: (List No.'s of all Drawings affected): _____	
Cost/Benefit Analysis	
Describe in detail any alteration to any other part of the Works required by use of the requested substitution:	

Total net cost of any such other required alterations, including overhead and profit:	\$ _____
Cost of Builder's administration (to be filled in by Builder):	\$ _____
Cost of Architect's documentation and administration (to be filled in by Project Manager)	\$ _____
Total cost of such other alterations (to be filled in by Project Manager):	\$ _____
Total cost savings achieved (from page 2, to be filled in by Project Manager):	\$ _____
Total cost/benefit to Proprietor (to be filled in by Project Manager):	\$ _____
Benefits to Proprietor other than financial: _____	

Additional Information Required	
Complete the second page as applicable. Attach the following information:	
1. Manufacturer's technical data sheets on proposed products.	
2. Manufacturer's standard form of warranty.	
3. Letter on manufacturer's letterhead stating that manufacturer will warrant products as specified, if specification.	

Comparison of Options

Fill in the following blanks as are applicable to the product, material or method type. As a guide, if the item is mentioned in the Specification as a performance or materials replacement, then information about the proposed substitution is required by the Project Manager to evaluate the proposed substitution. Requests lacking relevant information will be returned without action.

Specified Product, Material or Method	Proposed Substitution
Description: _____ _____ _____	Description: _____ _____ _____
Product Name: _____	Product Name: _____
Type: _____	Type: _____
Model No.: _____	Model No.: _____
Fire rating (hours): _____	Fire rating (hours): _____
Thickness: _____	Thickness: _____
Country of manufacture: _____	Country of manufacture: _____
Substrate preparation required: _____ _____ _____	Substrate preparation required: _____ _____ _____
Length of warranty available (years): _____	Length of warranty available (years): _____
Sound transfer coefficient (STC): _____	Sound transfer coefficient (STC): _____
Exposure class: _____	Exposure class: _____
Resistance to chemicals (list): _____ _____ _____	Resistance to chemicals (list): _____ _____ _____
Other specified criteria (list): _____ _____ _____ _____	Other specified criteria (list): _____ _____ _____ _____
UNIT COST OF PRODUCT / MATERIAL (Must be completed): \$ _____ What: _____	UNIT COST OF PRODUCT / MATERIAL (Must be completed): \$ _____ What: _____
Units required: _____ Total value: \$ _____	Units required: _____ Total value: \$ _____

Builder's Review

I certify that I have checked the above documentation for the proposed Request for Substitution and warrant it to be substantially complete and accurate.

Signed by: _____
Date: _____

Project Manager's Action

Request approved.
 Request approved subject to qualifications per attached documentation.
 Approved by: _____
 Request denied.
 Refer Variation Order No.: _____
 Date: _____

Comments: _____

Exhibit 3: Sample Substitution Approval Request Form

Substitution Approval Request Form
<p><i>Contractor requests for substitutions will be considered upon timely receipt of this completed Substitution Approval Request Form and all required supporting documentation. Substitutions made without completion of this form and the Consultant's approval will be considered defective work.</i></p>
<p>Project: _____</p>
<p>The Contractor proposes the following substitution in accordance with the requirements of the Contract Documents:</p>
<p>Scope of substitution: _____</p>
<p>Specification references: _____</p>
<p>Drawings references: _____</p>
<p>Reasons for proposed substitution: _____</p>
<p>Savings to Owner: _____</p>
<p>Impact on project schedule: _____</p>
<p>Impact on guarantees and warranties: _____</p>
<p>Coordination required with adjacent materials and related systems: _____</p>
<p>Deviations from specified requirements: _____</p>
<p>Attachments: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>(Attach supporting documentation sufficient for the Consultant to evaluate proposed substitution. A Substitution Approval Request Form submitted without adequate documentation will be returned without review.)</i></p>
<p>Response date: _____ <small>(Date by which the Consultant's response is requested in order to maintain project schedule and allow sufficient time for inclusion of proposed substitution.)</small></p>
<p>Authorized Signature: _____ Date: _____ <small>(Contractor)</small></p>
<p>Firm name: _____</p>
<p>Address: _____</p>
<p>Phone number/fax number/e-mail address: _____</p>
<p>_____</p>
Consultant's Response
<p><i>The Consultant's response is based on information submitted by the Contractor. Changes to the contract sum or changes to the project schedule shall be processed using appropriate Change Order forms.</i></p>
<p><input type="checkbox"/> Approved</p>
<p><input type="checkbox"/> Approved as noted: _____</p>
<p><input type="checkbox"/> Approved in part: (Itemize approved and rejected substitutions.) _____</p>
<p><input type="checkbox"/> Revise and resubmit: _____</p>
<p><input type="checkbox"/> Rejected: _____</p>
<p><input type="checkbox"/> Returned without review</p>
<p>Authorized Signature: _____ Date: _____ <small>(Consultant)</small></p>

Site Visit Report Guidelines

A site visit report should be thorough and address each significant observation or concern you may have regarding conformance to the project plans and specifications.

Most firms have developed their own report format. The observed conditions should be described and the action required, if any, should be stated. Typically the action required is by the contractor, although it may be by an architect, engineer or another party.

Document any nonconforming items requiring corrective action, as well as any decisions or directives. For example, if the contractor agrees that something needs to be remedied, your site visit report should note this. A time frame for the corrective action should also be established. Remember, site visit reports create a history of your observations at the site and are used by the contractor, the owner and the design team as the mechanism for bringing the construction into general agreement with contract documents.

If you permit the contractor to perform work that deviates from the contract documents, or if you change a detail in the field that affects the project schedule or cost, your decision must be documented by revising the construction documents. In general, however, it is not good practice to make quick decisions in the field; it can be costly, difficult and often embarrassing if you change your mind later. The recommended course is to tell the contractor that you need to review the drawings and that you will contact him or her by a certain time.

When changes are made to the drawings, ask the contractor about the cost implications. Document the response and, if the amount is significant, immediately notify the appropriate people. Don't wait until the end of the job to discover the costs of design changes.

If a field clarification is made, prepare a sketch of the revised detail and attach it to the site visit report so that there will be no misunderstandings.

Your site visit report should also note outstanding issues from previous site visits so that corrected items can be marked off as complete, with open items still requiring action carried forward. This generates a running commentary on the construction observation and corrective actions. It also allows you to state with more certainty at the end of the job that the deficient items have been addressed.

The only role of the site visit report is to record construction issues you observe. In general, issues beyond your responsibility should not be included in your report. If you see something at a jobsite that doesn't look right but is not within your area of responsibility, document your observation and notify the client so that those who need to know are informed.

Submittal Review and Log

Submittals represent those items you call for from the contractor prior to construction, such as shop drawings, product samples, cut sheets and test reports. A schedule of submittals is produced and given to the contractor during the bid phase.

The review of submittals is demanding. What's more, inadequate internal procedures and failure to treat submittal review as a critically important task can prove costly. It is in your best interest to clearly define in your contract with the project owner your role in the review process and to establish and follow strict procedures for handling submittals.

The action taken on submittals is usually limited to the following (or similar) descriptions: accepted, accepted as noted, revise and resubmit, or not accepted. When the submittal is returned to the contractor, it should have a cover note or stamp that indicates the action to be taken. We recommend that you also include a definition of what each of the action statements means. For example, accepted might be defined as "fabrication, manufacture or construction may proceed on the basis that the submitted item is in general conformance with the design concept and the contract documents."

Most firms develop a log to monitor all submittals and their final disposition. A sample submittal form and log, developed by Hanson Professional Services Inc. in Springfield, Illinois, are on the following pages.



Exhibit 4: Sample Submittal Review Form

REVIEW OF SUBMITTAL

Project Name	
Owner	
Project Location	
Project Number	
Date Received	
Work Discipline	
Architect/Engineer	
Const. Mgr./Gen. Contr.	
Submitting Contractor	
Vendor	
Submittal No.	
Specification Section	
Reviewed By	
Date Reviewed	

REVIEW BY <FIRM NAME>

<Firm's> review of submittal is solely for its general conformance with <Firm's> design intent and general conformance with information given in the construction documents. <Firm> shall not be responsible for any aspects of a submittal that affect or are affected by the means, methods, techniques, sequences and operations of construction, safety precautions and programs incidental thereto, all of which are the contractor's responsibility. The contractor will be responsible for lengths, dimensions, elevations, quantities and coordination of the work with other trades. The contractor shall be aware of his/her responsibilities to review submittals and approve them in these respects. **Based on our review, actions (as defined below) are noted for each item submitted.**

Action	Action Comment	Action Definition
1	NO EXCEPTIONS TAKEN	Fabrication, manufacture or construction may proceed on the basis that the submitted item is in conformance with the design concept and the contract documents.
2	FURNISH AS CORRECTED	Fabrication, manufacture or construction may proceed after making the noted corrections to satisfy compliance with the design concept and/or contract documents.
3	REVISE AND RESUBMIT	No fabrication, manufacture or construction may proceed. Resubmit for review after requested revisions are made.
4	SUBMIT SPECIFIED ITEM(S)	No fabrication, manufacture or construction may proceed. Submit specified item(s) to <Firm> for review.
5	REJECTED: SEE REMARKS	No fabrication, manufacture or construction may occur for reasons stated in "Comments/Remarks"

Weekly Project Status Report

It's especially critical to keep clients informed about their projects and, as such, manage their expectations. You can accomplish this through regular documented communication.

Your contract probably requires you to provide project updates to your client. What we are suggesting is a one-page report to be sent to the client—or the client's representative—on a weekly basis. By doing this weekly, it keeps the report small and the information manageable and easy to update.

We recommend preparing this type of status report throughout the project, but it can prove especially important during the construction phase. Firms who use this type of communication mechanism report fewer client-related disputes during this important phase.

This report would cover the following areas:

- Progress made during the week.
- Anticipated accomplishments for the upcoming week.
- Status on the budget, scope and schedule.
- Things you are waiting for or need from the client.

You can adapt the following status report to all phases of your project.

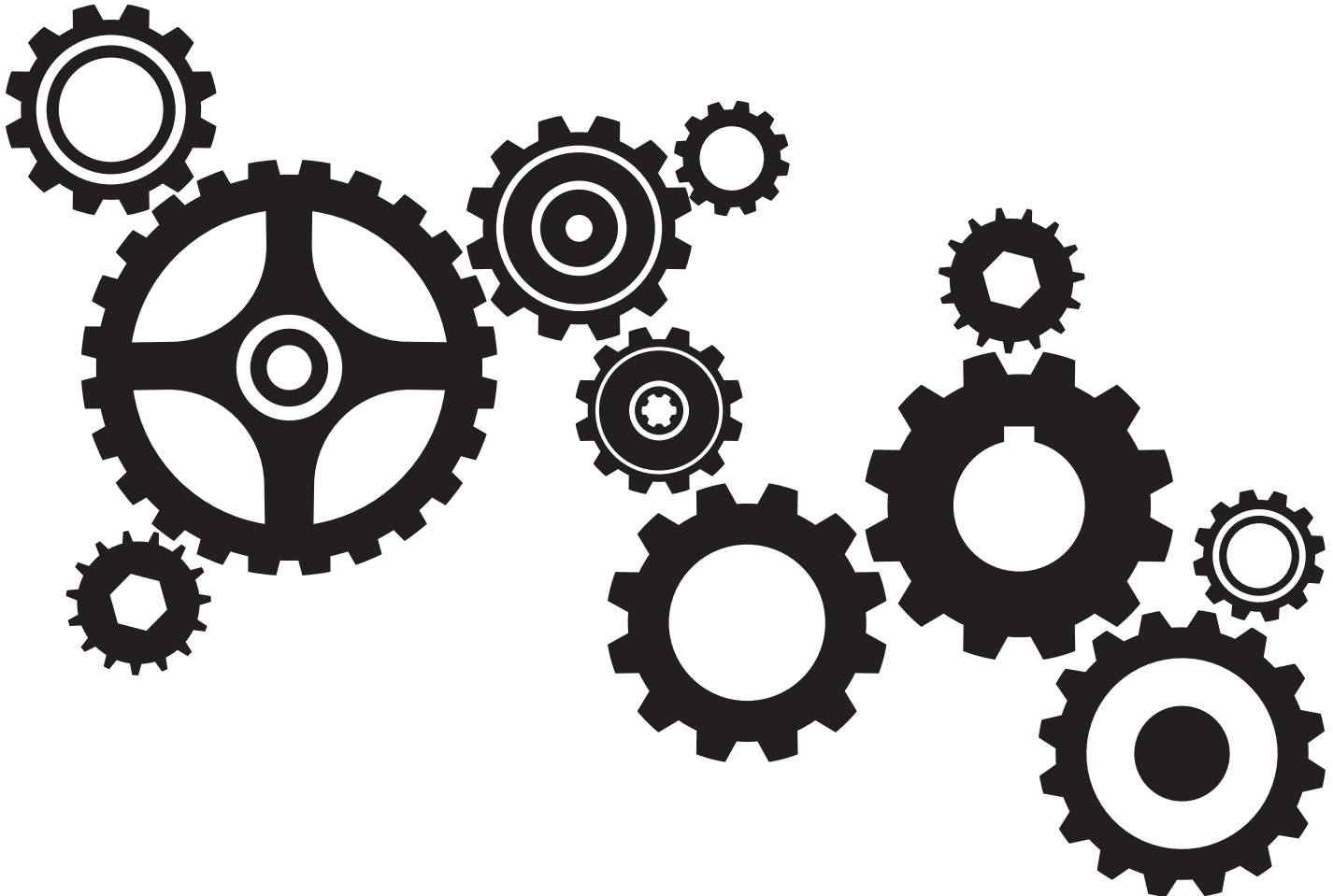


Exhibit 6: Sample Weekly Project Status Report

Project Status Report for Week Ending 01/20/2012

Progress Made this Week

- We completed our responses to the State Design Oversight Review Agency.
- The Client's Schematic Review comments are still being received.
- The Client's Schematic Review comments received to date have been answered by our Project Manager (PM), and a complete record will be forwarded to the Client when all comments have been received and answered by the PM.
- Approval was received for the mechanical screen on the roof. It is acceptable to the Client and the Department of Historic Resources. Materials still have to be worked out.
- The window replacement letter of justification was forwarded to the Client for formalizing acceptance by the Department of Historic Resources.
- The Design Development phase of the project was kicked off.

Goals for Next Week

- Presuming we receive the Client's final Schematic Review comments, we will submit our responses to the Client.
- The ceiling coordination meeting is to be held in-house with appropriate disciplines.
- Our PM will interact with the Department of Historic Resources in regard to its questions about the materials for the retaining wall construction and window replacement.

Scope Changes

- Retaining wall replacement has been added to the original scope of work. A fee proposal will be forthcoming.
- With the Client switching to the procurement method of CM-at-Risk, our PM and the Client will have to discuss and clearly define our role and responsibilities during this process and make an assessment of the hours currently carried for a "design/bid/build" procurement process versus the CM-at-Risk procurement process.

Budget Status/Percent Complete

- The construction budget looks sufficient at this time.
- Our PM has completed Schematic Development and is starting Design Development documents.

Schedule/Delivery Status

- We are on schedule. Responses have been made to the State Design Oversight Review Agency's comments, and Design Development submissions will be made on Feb, 14, 2008.
- Based on discussions with Client Representative John Smith regarding the Client's anticipated CM-at-Risk procurement of this project, our PM has amended the project schedule to include the dates that the Client has proposed for CM-at-Risk milestones. More in-depth discussions will need to be held regarding the dates as the Client firms up its procurement expectations. See attached Schedule A.

Information/Input Required from Client

- Client verification needed of CM-at-Risk schedule and our scope of involvement.
- We need remainder of Client Schematic Review comments to be sent so that Schematic phase can be formally completed.

Early Action Plan for Handling Disputes

Job upsets are inevitable, but they need not escalate into full-blown claims. Resolving disputes at the jobsite level rather than through legal actions has been proven to save time and money and help preserve relationships. According to an XL Group analysis and our Risk Drivers research, design consultants' responses to pre-claim situations are frequently inadequate, both in timeliness and in approach. We have found that most claims stemming from miscommunications are a result of not addressing problems, disputes or errors proactively. Unfortunately, the longer the delay in recognizing and resolving a problem, the more expensive it becomes. The best and least costly way to avoid litigation is to have a project-wide commitment that participants will work together to resolve a problem and not allow it to develop into a conflict requiring third-party resolution.

Everyone in your firm should know what to do—and what not to do—when there's trouble. We suggest that you develop an Early Action Plan, a damage-control policy that can mitigate pre-claim and claim situations. An Early Action Plan establishes a chain of command for dispute reporting and should include the following elements:

- Pre-claim policy and procedures
- How to recognize symptoms of problems
- How to respond to pre-claim situations
- How to report pre-claim situations to the insurance company

A sample Early Action Plan begins on the following page.



Exhibit 7: Sample Early Action Plan for Handling Disputes

Early Action Plan

XYZ, Inc.
February 2012

This document outlines XYZ, Inc.'s Early Action Plan for problem identification and dispute resolution. This Action Plan includes the following components:

- Policy and procedures.
- Recognizing symptoms of problems.
- Responding to pre-claim situations.
- Insurance company pre-claim and dispute reporting procedures.

POLICIES AND PROCEDURES

Following are the firm's policies in this matter, allocation of responsibilities for taking early action and recommended procedures:

1. We recognize that one of the earliest actions possible to avert claims is to include a dispute resolution mechanism as part of our written agreement with the client. As a matter of principle, participants in the construction industry should commit themselves to exploring dispute resolution options, such as mediation, before resorting to litigation.
2. We recognize that we are all fallible, and we counteract this fallibility by applying quality assurance measures. Errors, omissions and communication breakdowns will nevertheless occur. How we react when they occur is what is important.
3. If an incident or problem that might conceivably lead to a claim is reported as soon as it is detected or even suspected, then it can be dealt with promptly. The consequences will arguably be far less severe than if an attempt at concealment or denial is made.
4. Problem situations are to be reported to the Project Manager and/or to the Principal-in-Charge who will, if warranted, request that another principal of the firm assist in resolving the problem. The assisting principal will have a two-stage involvement:
 - Help to evaluate the problem and decide on immediate action steps to take.
 - Assume or delegate the ongoing task of resolving the problem in cooperation with the project's Principal-in-Charge.
5. All facts in any way relevant to the problem must be gathered and documented by the Project Manager without delay.
6. In dealing with outside parties with respect to a "pre-claim" problem, we should not be defensive, nor should we assume that we are in the wrong. Questions of blame or liability should not be addressed and must be left for determination by our legal advisers and insurance company representative. Discussions should center on early correction of the problem, not fault.
7. The "pre-claim" and dispute reporting recommendations and requirements of our insurers are to be followed to the letter.

RECOGNIZING SYMPTOMS OF PROBLEMS

It is imperative that each member of the firm recognize the early warning signs of potential problems or dissatisfaction with the firm's services, which may come from clients, consultants, contractors or others. These early warning signs and/or sources of construction disputes include—but are not limited to—the following items:

- Costs or billings are significantly over budget.
- You perceive finger pointing and passing of responsibility.
- There are signs of a communication breakdown, a curt attitude or your phone calls aren't returned.
- You receive combative correspondence from the client.
- The work has stopped.
- The client has retained another professional for the same job.
- The client doesn't invite you to a meeting you would typically attend.
- The client is slow to pay or isn't paying.
- Your staff members hear reports that differ from what your client is telling you.
- A risk manager appears on the project.
- An expert is retained to review our services.

In addition to the above, we should be alert to internal warning signs: lack of open communication, change of attitude, overwork, unusual pressure, staff changes, staff illness, etc.

Exhibit 7: Sample Early Action Plan for Handling Disputes (continued)

RESPONDING TO PRE-CLAIM SITUATIONS

- Pre-claim situations should be responded to in the following manner:
- Acknowledge and handle complaints promptly.
- Document, investigate and address allegations.
- Act on observed errors and omissions immediately.
- Do not admit, assume or accept that we are at fault.
- Maintain open communications.
- Report differing assumptions.
- Be alert to events that threaten the project.
- Report unsafe conditions per firm policy..
- Comply with insurance company reporting requirements.

INSURANCE COMPANY PRE-CLAIM AND DISPUTE REPORTING PROCEDURES

The firm's professional liability insurance coverage is provided by XL Group's Design Professional unit, with _____ as the agent or broker.

Because our policy has a provision for loss prevention assistance, we must act promptly so XL Group can help us to prevent a claim or mitigate the situation. Accordingly, all staff members should be aware of our insurer's definition of a claim and its reporting requirements.

Definition of a Claim

A demand received by the insured for money or services and which alleges a wrongful act arising from the performance of professional services. The definition of claim shall include, but not necessarily be limited to lawsuits, petitions, arbitrations or other dispute resolution requests filed against the insured.

Reporting Requirements

- Failure to report in a timely manner could result in a loss of coverage for the situation.
- Notice should include:
 - Reasonably obtainable information about the date, time, place and circumstances of the claim.
 - The names and addresses of available witnesses

Additional Requirements

We must:

- Authorize XL Group to obtain records and other information.
 - Cooperate with XL Group in the investigation, settlement efforts or defense of the claim.
 - Promptly forward to XL Group copies of any demands, notices, summons or legal papers received in connection with the claim.
-

Action Plan

Using the knowledge and tools you've gained in XL Group's eLearning course, you're now ready to develop an action plan for your firm to implement. The questions and tables below will help you draft your plan.

1. What major construction administration issues is your firm currently facing?

2. In what specific ways can construction phase practices be improved in your firm?

3. Select the three improvements that are most important to your firm, and write them in the table on the following page.

4. Choose the tools from the course that will best help your firm to make these three improvements, and write them next to the appropriate improvement area.

5. Finally, and most importantly, identify who will be responsible for the development and implementation of these improvements, the timetable for completion and how the results will be measured.

Exhibit 8:

Action Plan

1

2

3

	1	2	3
CONSTRUCTION PHASE SERVICES IMPROVEMENT AREA			
TOOLS			
PERSON RESPONSIBLE			
DUE DATE			
MEASUREMENT			