

"I'm About to Enter into a Construction Contract for a New Building, It Seems Pretty Straightforward, Is There Anything Specific I Should Look Out For?"

As recently as five years ago, we were rarely asked by clients to review their construction contracts. So often, they signed the presented standard form of agreement produced by The American Institute of Architects (AIA) or Associated General Contractors of America (AGC) and may have assumed the document was reasonably fair to both sides. Both the AIA and AGC standard form documents, as well as many other "standard form documents" that have been sanctioned by various trade groups, profess to be even-handed in representing the owner's and the contractor's respective interests. While standard form documents tend to be much more even-handed than custom documents, they still leave much open for interpretation and simply do not adequately protect the typical "owner," who is not in the business of regularly constructing buildings. Fee and "cost of work" provisions can be misleading and make it difficult to distinguish the specific differences between cost arrangements such as "guaranteed maximum price," "stipulated sum" and "cost plus," especially when the contractor's definition may not be consistent with the expected or normal interpretation. Further, the variety of delivery systems, such as design-build and construction management, further complicate the owner's rights and relationships with the numerous professionals involved in each project.

At the most basic level, owners must be clear on: how the construction costs and contractor fees are determined, how those costs can change, which professional is responsible for which part of the work, what assumptions have been made, what risks arise from delay, how to protect against liens, who is carrying what insurance, how the owner is protected from loss via insurance and/or indemnifications and what is the financial strength and reputation of each professional involved in the project. By no means is this list all-inclusive, but, so often, even these most basic concepts are unclear in the construction contract, or are otherwise unclear to the owner, leaving the owner unable to protect itself.

We have found that with careful review and negotiation of a construction contract, and in some instances, effective use of an experienced owner's representative for contract administration and inspection services, our owner clients have saved far more money than the expense of such services. Further,

POSTED:

Aug 17, 2008

RELATED PRACTICES:

[Real Estate](#)

<https://www.reinhartlaw.com/practices/real-estate>

RELATED PEOPLE:

[Melanie S. Lee](#)

<https://www.reinhartlaw.com/people/melanie-lee>



following the review and negotiation process, our clients often comment how they feel significantly more comfortable with their construction project because their involvement in the negotiation armed them with considerable knowledge about the construction process.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.