

An Overview of Design Professional Contracts

By Bruce Burt, P.E.

If you are a practicing structural engineer, you have no doubt come across various forms of contracts outlining the terms of your agreements. These contracts may be with parties that engaged your services or from whom you sought services. You may have your own contract composed by your legal counsel. More likely, your contract is based on a template created by an organization that develops and periodically updates standard contracts. This article provides a brief overview of the types of contracts you may encounter and contract offerings available from several respected sources.

Types of Contracts

The most common contract type is between the structural engineer and the owner or architect. This may take a short form when the project is small with an easily defined scope of service or a longer form for larger projects of greater complexity. There are other contract types for use in special situations. There are agreements for Special Inspection Services when they are included in the Structural Engineer of Record's (SER's) services. Contracts cover Peer Review Services and when the structural engineer is not the



SER but is responsible for designing a portion of the project, such as a building façade, connections, or other engineered elements. There are also contracts for forensic engineering services, generally related to construction claims or building failures, and the client is usually an attorney.

For the above contracts, the structural engineer is retained by someone else. However, there are occasions when the structural engineer requires the services of another party. The other party may be a geotechnical engineer or a testing lab. The structural engineer may also act as the Prime Design Professional and must retain other consultants. Specific contracts deal with each of these scenarios.

Sources of Contracts

Organizations whose contracts a structural engineer will most likely encounter are the American Institute of Architects (AIA), the Engineers Joint Contract Documents Committee (EJCDC), the Council of American Structural Engineers (CASE), and Consensus Docs.

AIA has developed an extensive family of documents for design and construction projects, intended for use when the prime owner-design professional is an architect. For design projects when the SER's client is the architect, AIA Document C401 is often used as the agreement for providing structural engineering services.

EJCDC is a joint venture between The American Council of Engineering Companies (ACEC), The National Society of Professional Engineers (NSPE), and The American Society of Civil Engineers (ASCE). EJCDC offers contracts in five principal areas. Its E-Series documents pertain to professional service agreements and related contracts. Document E-001 is available for free download on the EJCDC website and provides a commentary on the entire series of EJCDC engineering services documents.

CASE "represents more than 200 structural engineering firms dedicated to making structural engineering a fair, profitable, and robust industry." CASE offers twelve contracts expressly for use by structural engineers and three commentaries that guide the use of specific AIA documents.

Consensus Docs "is a coalition of associations representing diverse interests in the construction industry that collaboratively develops and promotes standard form construction contract documents..." Consensus Docs' 200-series contract numbers 240 and 245 are standard long- and short-form agreements between owners and design professionals, and number 250 is a standard agreement between design professionals and consultants.

Design-Build Contracts

Design-build project delivery requires a different form of agreement. In traditional

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project delivery, the owner retains the prime design professional. In design-build, the owner contracts with an entity comprised of construction trades and consultants known as the Design-Builder. The contractual relationship between the design professional(s), including structural engineers, can vary based on the project and the composition of the design-build team.

EJCDC document D-001 (available for free download) provides an excellent commentary on the contractual issues faced by the design professional on a design-build project. D-001 also provides commentary on the eighteen documents that comprise EJCDC's D-Series. EJCDC D-505 encompasses the standard agreement between the design-builder and engineer.

Other organizations also offer standard agreements covering design-build projects. AIA offers C441-2014 for agreements between architect and consultant on design-build work. Consensus Docs offers contract numbers 400 and 422, and the Design Build Institute of America (DBIA) provides contract numbers 501 and 540.

Teaming Agreements

An essential element of the contractual arrangement when an engineer and contractor pursue a project together is the teaming agreement. Teaming agreements are usually associated with design-build projects but can be used on any project pursued jointly by a contractor and design professional. They are critical when the design-builder requires the assistance of an engineer in developing sufficient project scope to prepare its bid. EJCDC document D-580 provides contractual language on teaming agreements. Per EJCDC's D-001 commentary, document D-580 "enumerates the respective duties of each team member in the pursuit of the award of contract; specifies the contractual relationship that the Design-Builder and Engineer will enter into if the contract is awarded to the Design Builder...; addresses the responsibility of costs incurred in pursuit of the work; requires confidentiality and assigns ownership rights with respect to documents prepared during the teaming agreement; and specifies rules for exiting the team."

DBIA (DBIA-580), AIA (C102-2015), and Consensus Docs also offer standard teaming agreements.

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Consensus Docs number 296 pertains to the pursuit of traditional projects, and number 498 covers design-build projects.

Your firm should exercise additional care when entering into design-build agreements. Without appropriate contract language, design-build projects can elevate the standard of care, potentially reducing or eliminating your professional liability insurance coverage in the event of a claim. Likewise, entering into a joint venture can have ramifications for your professional liability insurance coverage if the arrangement is not structured correctly.

Other project delivery methods, such as Integrated Project Delivery (IPD) and Public-Private Partnerships (PPP), also require special contractual treatment. Though AIA and Consensus Docs offer documents covering IPD projects, a custom contract is more common with these types of endeavors. ■



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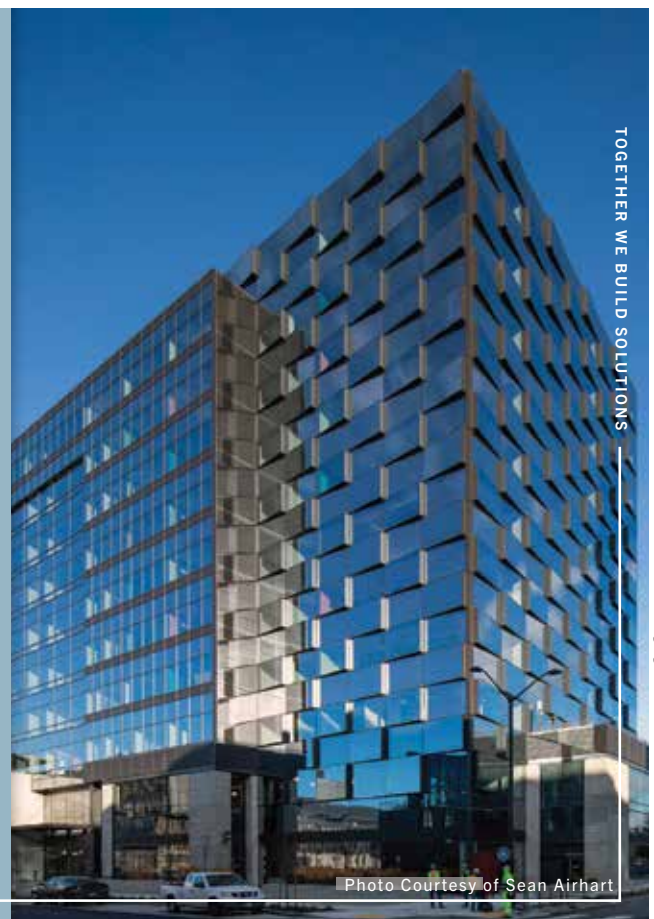
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