

Though the industry often talks about “client expectations of perfection,” the bar doesn’t need to be anywhere near that high for a client to file a claim. Clients only need to prove that they were justified in expecting better than standard performance from your firm—based on contract language, written statements or oral representations. If the complaint is justified, the consequences can be devastating for a firm because professional liability insurance policies will not provide coverage.

“The policy will cover you if you fail to meet the industry standard of care, but it won’t cover you if you assume a higher duty,” says Erger. “Insurers don’t insure against things that they know are going to happen, and they know that no project will be perfect.”

Unrealistic Expectations

Clients often expect perfection from engineers because they don’t understand the nature of their work.

“Professional services are not goods. They’re not pencils that are manufactured over and over again, and—under the law—are impliedly warranted to be perfect,” says Erger. “A designer’s services are comparable to those of a doctor. They choose a course of treatment, and the patient or client is involved in making the solution happen. The law doesn’t require engineers to guarantee perfect design.”

A second factor is the stark contrast between the designer and the contractor.

“In general, the general contractors guarantee and warranty their work,” says Christine Drage of the law firm Weil & Drage. “Clients don’t understand why general contractors guarantee their work but the engineers don’t guarantee their services.”

She says client expectations have been “an issue in every case I’ve handled over the past 21 years.”

The solution seems simple enough: Tamp down unrealistic expectations with a dose of straight talk.

But it’s not always that easy, says Matt Richards,

vice president and corporate secretary at Strand Associates in Madison, Wis. “To a certain extent, we’ve created this problem for ourselves. It’s not intentional, but as engineers our inherent nature is to serve clients as best we can, and we never want to feel like we’re letting the client down.”

Janice Marsters, chair of the ACEC Risk Management Committee and a senior environmental engineer at Kennedy/Jenks Consultants in Honolulu, agrees. “It’s hard for firms to tell potential clients that their work might not be perfect,” she says. “Who wants to have that conversation at the start of the project? Firms need to make sure their clients have realistic expectations, though. In reality, you’re fulfilling your role as a trusted adviser to the client.”

Reasonable Contract Language

Firms can take steps to set proper client expectations, but the first step should be to ensure that the firm is legally protected by negotiating appropriate contract terms.

Client-provided contracts tend to be one-sided. It’s not unusual for project owners to shift risk onto the engineer. “I’ve seen contracts that make the engineer responsible for all damages or losses related to the project that are not the client’s sole fault,” says Marsters.

Richards says he’s reviewed contracts that would have required “the firm to guarantee that the project would be delivered without change orders and with no additional costs.”

The most important risk management contract language for engineers is the standard of care clause, which stipulates the level of performance to which the engineering firm is held.

The latest version of the



“Facts are more persuasive and won’t get you into trouble.”

KAREN ERGER
LOCKTON COMPANIES

Engineers Joint Contract Documents Committee “standard of care” document reads: “The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agree-

ment or otherwise, in connection with any services performed or furnished by Engineer.”

Most client contracts do not contain such a clear-cut statement. That’s why Drage recommends that firms “cut and paste clauses from the design industry standard agreements. It is really important to get the good clauses you need into your contract,” she says.

Even if you do manage to get the right standard of care language into the contract, you’re not necessarily out of the woods. Firms should also scrub contracts of words and phrases that could elevate the level of services beyond the customary standard of care, such as promises to perform services to a “heightened level of performance” or promises to provide “experts as part of the team.”

Strategies and Tactics

A reasonable contract provides a solid foundation upon which to build a successful client relationship and manage expectations. Here are six other steps firms can take:

Pick Your Clients. At Strand Associates, Richards says the firm strives to avoid projects where the competition is based on price because the interests of the firm and the owner won’t necessarily align.

“We look for folks who really understand the process, understand the role of the consultant,” he says. “They’re looking to work through a problem in a reasonable manner rather than litigating. They understand that risk should be borne by the party most able to manage it.”



Client expectations have been “an issue in every case I’ve handled over the past 21 years.”

CHRISTINE DRAGE
WEIL & DRAGE