



# Tips & Tricks for Communication with Owners and Contractors

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**VTA Workshop: Program # 16**

# Introduction

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# Goals

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- Gain general knowledge of identifying potentially challenging or risky situations requiring input or a response
- Discuss different scenarios about when voice-to-voice or written word is better
- Remembering to use your contract as a touchstone to guide your communications

# CACI 600 – Standard of Care

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- ▶ An engineer is **negligent** if she fails to use the skill and care that a reasonably careful engineer would have used in similar circumstances. This level of skill, knowledge, and care is sometimes referred to as “the **standard of care.**”
- ▶ You **must** determine the level of skill and care that a reasonably careful engineer would use in similar circumstances based **only** on the testimony of expert witnesses, including the engineer defendants who have testified in this case.

# Standard of Care: AIA B101 2017

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§ 2.2 The Engineer shall perform its services consistent with the professional skill and care ordinarily provided by engineers practicing in the same discipline, and in the same or similar locality under the same or similar circumstances. The Engineer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

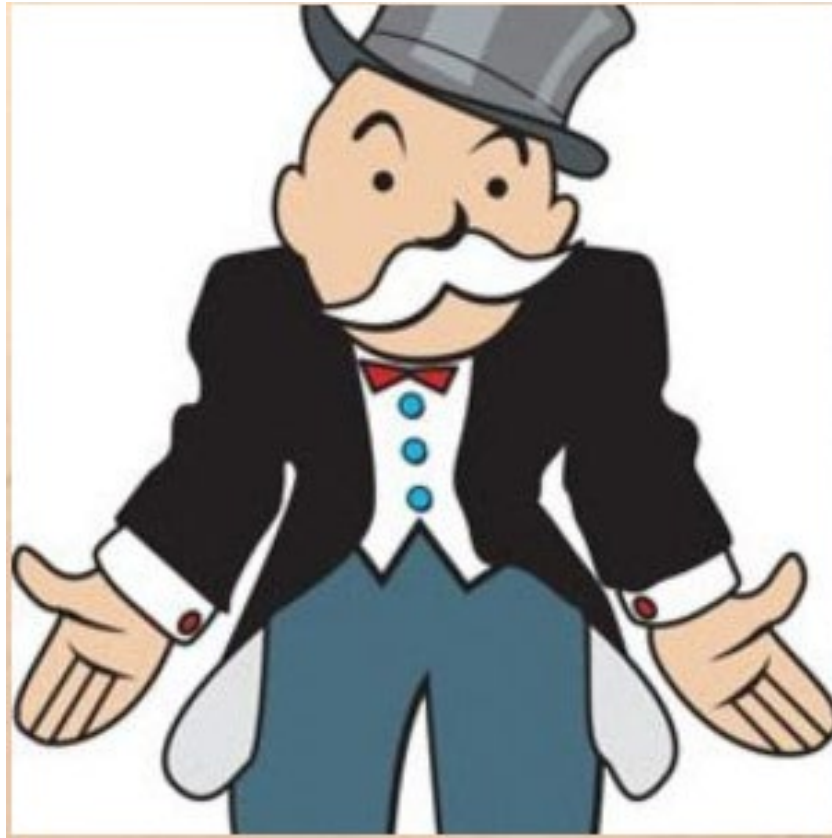
# A Brief Comment on the Nature of Design Professionals

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# Scenario 1: The ~~Cheap~~ Cost-Conscious Owner

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# Issue: So, Just Don't Do That?

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- ▶ Your contract calls for weekly site-visits during construction to observe the work in-progress
- ▶ Owner has passive-aggressively complained about the cost of your on-site services that were included in your last three invoices
- ▶ Owner calls before the next scheduled site-visit and says there's no need for you to come because the “contractor knows what they're doing”



# Options for a Response

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- ▶ Say “Ok, sounds good,” during the call with the Owner and que será, será
- ▶ Write an email to the Owner saying that you understand they’re paying close attention to costs, and you will work with them to keep the project going smoothly
- ▶ Email a letter to the Owner on your letterhead explaining your contract calls for weekly site visits, there is inherent risk in you not providing those services, and that unless stated otherwise, the Owner understands and accepts that risk
- ▶ Show up for the next site visit and invoice the Owner for your time per contract

# Scenario 2: The “Experienced” Contractor

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# Issue: Did You Even Look at the Plans?

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- ▶ Three weeks into site work the contractor is on pace to submit 10 RFI's per week throughout the project
- ▶ You are buried in paperwork trying to keep up and your team is already feeling stress about maintaining schedule while the PM and Principal in charge are watching their budget (and profits) erode
- ▶ The work in-place looks up to standard and per plans, the project is on schedule, and the Owner is blissfully ignorant of the situation

# Handling the Situation

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- ▶ Step 1: Identify the Challenges & What Needs to Change
  - Impending impacts on schedule
  - Impacts on your fees and your subconsultants
  - Risk to be blamed for errors and omissions or delays
  - Owner's lack of information
  - Concerns about the contractor's ability to execute the Project

# Handling the Situation Continued

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- ▶ Step 2: A multi-pronged approach
  - Congruence in messaging/communication with owner and contractor
  - Candor with the Owner about what is occurring and the consequences
  - Tough, but professional messaging to the contractor

# Practical Options

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- ▶ Request a meeting to discuss these issues; or request time to address the issues if there is a set weekly meeting
  - You could circulate an agenda ahead of time to set the playing field
- ▶ Written, candid, notice to the Owner about the impacts on fees and schedule
  - You may even be at the point of submitting an add-service request
- ▶ Written notice to the contractor that the RFI's are excessive, suggest re-review of plans, and potentially offer to meet and go over any questions (after getting Owner buy-in and agreement to compensate you for the time)
  - Tough, but professional messaging to the contractor

# Scenario 3: They're Saying I Did What?

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# Issue: The Blame Game

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- ▶ Unbeknownst to you, the Owner has signed multiple change orders for extra costs based on the contractor's claim of additional scope due to inconsistent/uncoordinated/or deficient plans
- ▶ Owner comes to you and is threatening to withhold payment to make-up for the costs of the change orders
- ▶ You check your design and notice a few minor things that were not coordinated or consistent, but overall, nothing major



# Options for a Response

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- ▶ Tell the Owner you're sorry for your mistakes and that you take responsibility for your services
- ▶ Tell the Owner they're being duped by a contractor that underbid the project who's trying to "change order" the project to death to make up the difference
- ▶ Write to the Owner reminding them of the standard of care, what your contract says about correcting discrepancies in your services, and that it might be to everyone's benefit for you to review the next few change orders and provide comments if the change orders are within your scope of services
- ▶ Correct the minor issues with your drawings and issue an updated set or clarifications identifying the changes

# A Quick Discussion on Lessons Learned from Scenario 3

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- ▶ Never admit fault
  - Has implications on your insurance coverage
  - Has implications on your liability if (god forbid) there is a claim
- ▶ The art of diplomatically telling the truth will take you very far
- ▶ Setting reasonable expectations at the outset relieves a lot of potential stress
- ▶ Foresight for potential scenarios that may arise during contract negotiations provide the framework for future communications and responses during the project

# Scenario 4: Could You Do Me a Favor?

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# Issue: That's Not Really in My Scope

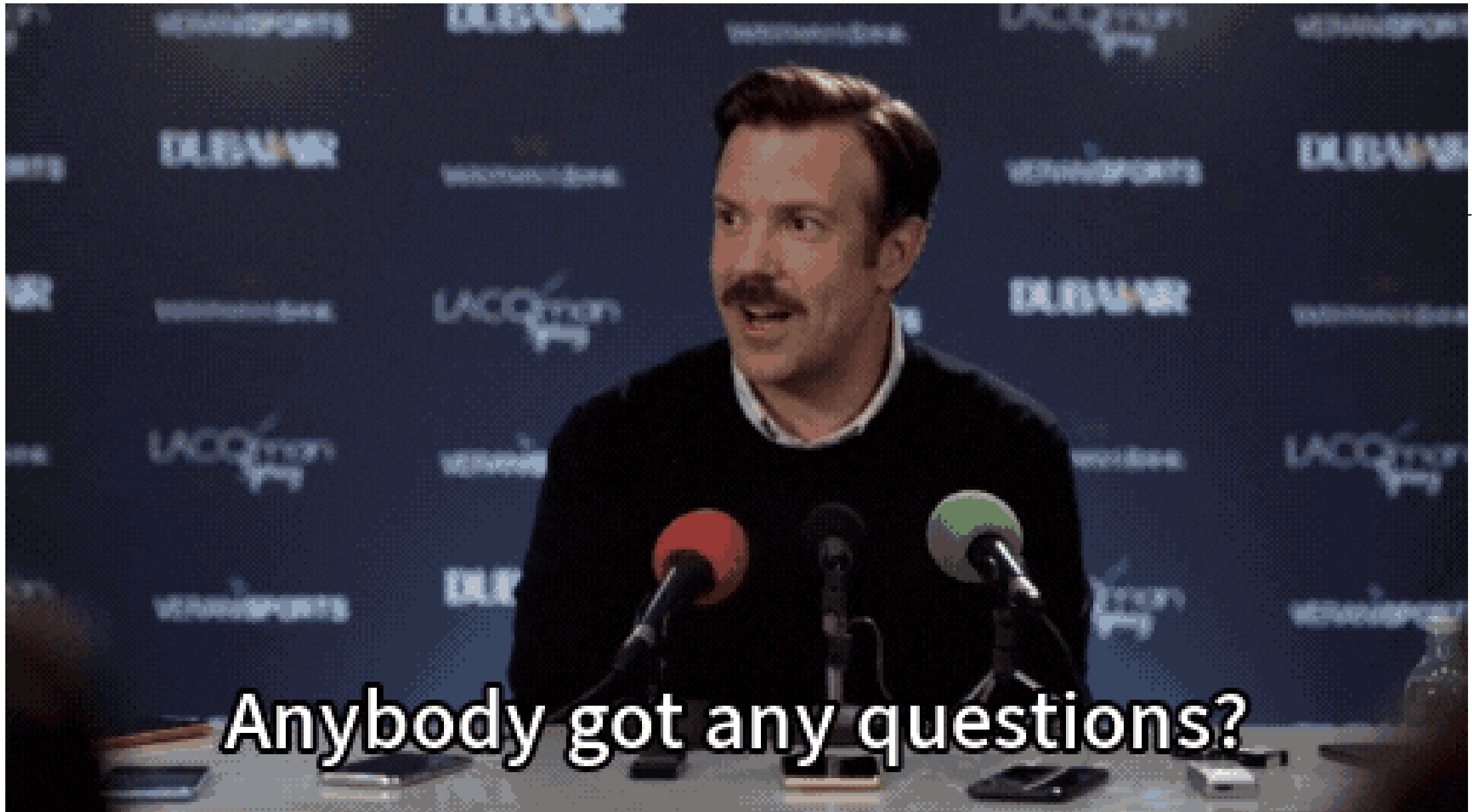
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- ▶ The contractor hired a design-build plumbing subcontractor to prepare the plans and install the plumbing
- ▶ Owner or the contractor wants you to check the plumbing subcontractor's design for errors, omissions, or anything that is “off”

# Options for a Response

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- ▶ Check the plans per the request and write a detailed report of your findings
- ▶ Write back and explain that this is not your responsibility, but that you will coordinate your plans with the plumbing subcontractor's plans per your contract
- ▶ Write back and say “sure, but it will cost you” and attach and add-service request





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