When a professional agrees to provide services for a client, that professional takes the same level of responsibility for the service whether the service is performed directly by the professional or by a subconsultant. The legal concept of vicarious liability is the imposition of liability on one party, in this case the prime professional, for the conduct of another party, the subconsultant, based solely on the relationship between the two parties.

The legal system strives for efficiency; holding one party vicariously responsible for the acts of another eliminates the need to apportion fault. This concept extends to the negligence of a subconsultant providing services through a prime consultant.

For various reasons, a client may want specific consultants as part of the professional service team. Indeed, clients should have the right to select specific consultants; if they do so, however, they should have the obligation to contract separately for the services of consultants. When a client demands a specific interprofessional consultant, a prudent design professional will use one of these two risk management techniques:

- Negotiate the use of subconsultants for whom the prime professional is willing to take responsibility, or
- Require an arrangement for the consultants or specialty service providers to contract directly with the client so that the prime professional is not vicariously liable for their actions.

The latter arrangement may necessitate greater coordination of the independent services of the client-selected consultants. The prime professional’s coordination of the documentation requires careful attention, and this service should be appropriately compensated. Because the prime design professional does not have authority over the independent consultants’ services, the prime design professional should not be held responsible for their accuracy. In an arrangement where the client is contracting directly with individual consultants, each should be acknowledged as being able to rely on the technical sufficiency and timely delivery of documents and services furnished by the others.

Moreover, it would be appropriate for the client to agree to indemnify the prime design professional for any costs resulting from the negligence of the independent consultants. There are significant risks for a prime design professional when the client contracts separately for the services of consultants. If the client insists on separate consultants or the use of specific consultants by the prime design professional, the client should acknowledge that the prime design professional should not be held responsible for the adequacy of their services. The prime design professional should be paid for providing a review of the information by other consultants, which should be generally limited to conformance with design concepts. This issue is addressed in AIA Document B503-2007, *Guide for Amendments to AIA Owner-Architect Agreements*, which includes the following sample provision when the owner contracts separately for consultants:

*The Owner shall contract separately for the design services listed below. Unless otherwise indicated, those services shall be performed by licensed professional consultants, who shall affix their seals on the appropriate documents prepared by them. The contracts between the Owner and Owner’s consultants shall require the consultants to coordinate their drawings and other instruments of service with those of the Architect and to advise the Architect of any potential conflict. The Architect shall have no responsibility for the components of the Project designed by the Owner’s consultants. Review by the*
Architect of the consultants’ drawings and other instruments of service is solely for consistency with the Architect’s design concept for the Project. The Architect shall be entitled to rely upon the technical sufficiency and timely delivery of documents and services furnished by the Owner’s consultants, as well as on the computations performed by those consultants in connection with such documents and services. The Architect shall not be required to review or verify those computations or designs for compliance with applicable laws, statutes, ordinances, building codes, and rules and regulations, or certify completion or payment for the Work designed by the Owner’s consultant. The Owner shall indemnify and hold harmless the Architect, Architect’s consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of the services performed by the other consultants of the Owner.

If a firm has professional liability insurance, its policy usually defends it against allegations of its negligence and pays on its behalf if the firm or its employees are found to have performed professional services in a negligent manner and caused harm. The Schinnerer and CNA professional liability insurance program does provide coverage for the vicarious liability of the insured firm for the negligence of its consultants, but does not defend or pay on the behalf of the consultants. Some other professional liability insurance policies will not cover such vicarious liability.

Because a prime professional is always responsible for the actions—including negligence—of those providing services through the prime design professional, care should be taken to select interprofessional consultants who are qualified and capable of providing their services; who are insured or otherwise have the financial strength to stand behind their professional and contractual commitments; and who do not attempt to shift risk to the prime design professional by unreasonably limiting their liability either through their contract with the prime design professional or because of their lack of insurance coverage or assets to support an indemnity provision.