

Sustainable Design Practice Management Precautions

With the public and professional enthusiasm for sustainable design, it is vital that firms use sound practice management techniques to keep green projects from creating unmanageable exposures or situations where a firm is subject to uninsurable risks.

Firms need to recognize the challenges in green design that are intrinsic in every project. Often on sustainability projects, the goal is less than altruistic. Many clients want the perceived marketing advantages that a “certified green” project can provide, or are intent on gaining regulatory advantages or tax, development, and energy incentives. Despite the motive for a green project, practice management procedures are needed.

Setting Expectations Is Critical

On every project—especially those in which green design is expressed as a goal—design firms should consider the following questions:

- What is the carefully-defined scope?
- How are goals and expectations defined?
- Is there compensation for a continual review of integration and changes?

- Is a warranty being implied or expressed?
- Who is responsible for the investigation of materials, products, and systems?
- At what stage are contractors involved and do they have design responsibilities and design liability coverage?
- How is the client’s acceptance of design decisions documented?
- Who provides construction oversight?
- What expectations of construction adequacy have been created?
- How is the client/operator being trained to maintain systems and performance?
- How will performance be documented and compared to a specific standard?
- Can extended services be provided that would mitigate the likelihood of performance failing to meet expectations?

Design firms can meet the challenges presented by emphasizing sustainability in project design by recognizing the risks in holding oneself out as an expert in sustainability. Firms should also take proactive efforts to manage client expectations by:

- specifying the applicable standard of care;
- controlling the project scope;
- setting reasonable contract requirements; and
- requiring adequate compensation for the increased level of services and risks.

Contractual obligations that are based on aspirations rather than measurable accomplishments are especially problematic. Firms should use a contract that recognizes professional judgment and defines both the scope and fee. Such a contract must avoid express warranties or guarantees and should limit the liability of the design firm for consequential damages related to certification, energy or water use, or other attributes of green design.

Firms should be careful to document the “buy-in” by the client to the cost and time factors of green design and the risk of using unproven products and systems. It is important that firms emphasize the requirement of the client’s informed consent. Firms need to document a rational selection process in which they request technical material as opposed to promotional material. Firms should research products, as well as the reputation and capacity of the manufacturers, and inform clients of risks discovered. Managing the product or system selection process includes cautioning the client on the availability of products and making the client aware of the danger of substitutions.

Staying Current on What Sustainability Means is Vital

From third-party certification programs to rapidly developing government edicts to developments in the codes and standards that increasingly emphasize energy and water conservation, what it means to be “green” is changing. Firms have to invest in staying current on sustainability developments.

- Monitor green legislation and changes in standards or codes in the jurisdictions where your projects are located.
- Know what the current standard of care is for your profession. Examine the standard of care for a specific project type, including green design services.
- Read your professional society code of ethics.
- Be familiar with the major green rating systems and state or local green design regulations.

- Be careful that advertising and marketing staff are not overselling firm expertise or experience with green design.
- Understand your client’s green expectations early in the process. If their expectations are high or unattainable, explain the design process to them and discuss realistic outcomes.
- If the client expects specific quantifiable savings, absolute results, or 100% perfection in design, carefully consider whether to accept the project.
- Examine to what extent the design contract requires services to be focused on sustainability.
- Do not promise, warrant, or guarantee specific results such as a certification or third-party approval, waste reduction, decreased energy or water use, or anything else beyond your control.
- Use a contract form that clearly indicates if the client wants a third-party certification, high-performance operations, life-cycle savings, or specific government incentives. The contract should limit risk for consequential damages if these goals are not attained.
- Use a scope of service form that clearly outlines selected sustainability measurements and the physical and procedural duties of the client, design firm, construction team, and any third-party sustainability coordinator.
- Educate the client on the importance of the construction team in implementing the design and documenting the construction process.
- Use informed consent forms indicating the client’s awareness of risks intrinsic in green design services and unproven or experimental materials, products, or systems.
- Record the client’s involvement in decisions on all aspects of design and construction.

Green Design Risks are Evolving

As the value of “green” projects increases because of financial benefits tied to sustainable design, clients will demand contractual assurances that they will realize a commensurate return on their investment in a high-performance design. As the measurement of performance increases, clients will look more closely at the difference between the design requirements and the actual use of energy, water, and other operational expenses.

One way to avoid claims from unreasonable contractual provisions or unrealistic expectations is by educating the client and having the client understand that design services are recommendations that the client has to understand and, once satisfied, accept.

Green design too often relies on enthusiasm and third-party definitions of success or deficiencies. Working with a client who does not understand the realities of construction is problematic. Allowing third parties to

determine whether a design is successful or not can lead to unforeseen exposures despite meeting the standard of care for the design services provided.

Designing for sustainability should not be based on third-party dictates or ambiguous expectations. Responsibilities for designing and constructing projects to meet sustainability metrics must be carefully assigned by contract, and warranties and unfulfillable expectations must be avoided in designing “green.”

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