

NEW INDEMNIFICATION LANGUAGE IN CONNECTICUT STATE CONTRACTS

December 7, 2009 - Architects and Engineers providing services to public owners in Connecticut need to be aware of recent changes in State contracting practices. A February 2009 Connecticut Superior Court decision holding that statutes of repose are enforceable against the State elicited a sharp response from the Attorney General's Office who vowed to "get tough" with firms who work for the State. As a result, it appears that sweeping indemnification language has made its way into State contracts. The Connecticut Department of Public Works and other agencies have used the following language when contracting with design professionals:

The Architect shall indemnify, defend and hold harmless the State...against any and all (1) claims arising directly or indirectly, in connection with the contract, including the noncompliance with applicable statutes, codes and regulations, or the acts of commission or omission...of the Architect or Architect Parties.

In other words, the design professional must indemnify the State not only for acts of alleged negligence of the design professional, but for any claim in connection with the project. Furthermore, the State requires:

The Architect's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the contract, without being lessened or compromised in any way, even where the Architect is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

Even if the State has allegedly contributed to the acts giving rise to claims, the design professional must indemnify the State for the claims.

Professional Liability Insurers have reviewed these new provisions and announced that they are uninsurable. Ironically, other provisions of Connecticut State contracts require that the signatory represent that it is fully insured for the work described therein. Therefore, a breach of contract occurs immediately upon execution. The AIA Connecticut and the ACEC of Connecticut, believing that these provisions originated with the Connecticut Attorney General's Office, are currently attempting to eradicate this kind of language. If not resolved, the indemnification language could eventually cause irreversible financial harm to firms working for the State of Connecticut.

Donovan Hatem LLP will continue to monitor the situation and provide our clients with relevant updates. But, until such time as the problem is effectively addressed, Donovan Hatem LLP strongly urges its clients to contact us prior to signing any contracts with the State of Connecticut.

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