

## Take steps to keep business organized

Contractors and project owners can prepare for work in 2011 by asking themselves several questions



### CONSTRUCTIVE ADVICE

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Questions for contractors and project owners:

#### **Are there forms for recurring work?**

Save time and money (and avoid drafting errors) by developing standard forms. The most convenient form has standard terms that don't change from one job to another, along with blanks to be filled in with project-specific information (such as scope of work and price). Review will be easier if the blanks are gathered in one place rather than scattered through the document. Forms can include contracts, change orders, notices, and cover letters for claims and other recurring correspondence.

#### **Are standard form documents up to date?**

Many of the AIA form documents have changed in the last couple of years, and the AIA software no longer supports the older forms. Some of the changes are significant, so don't assume a switch can be made to a newer form and yield the same results. Also, ConsensusDOCS forms are worth consideration.

#### **Do employees understand and enforce the contract forms?**

Contract forms tend to lengthen over time, as parties (or their lawyers) insert new provisions. At some point, however, the employees charged with administering a contract may give up trying to understand it in detail. Or the employees may fail to understand how the different parts of the contract work together, so they may amend one part without amending other related parts. Or the employees may even decide that their own contract is unfairly one-sided and decline to enforce it. Reviewing the contract forms (and other forms) with responsible employees from time to time can prevent these problems from arising, and may generate useful feedback.

#### **Are project documents organized with production in mind?**

In a civil lawsuit, court rules require a party to respond to "requests for production" sent by any other party. Such requests are typically broad, such as: "Please produce for inspection and copying all documents in your possession relating to the project or your work on the project."

Things were bad enough in the old days, when one might

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have to allow the adverse party to rummage through paper files. But today most documents are kept electronically, such as e-mails that may end up on multiple devices: the desktop in the project office, the laptop carried by the project manager, the project engineer's home computer, the superintendent's iPhone, and maybe a dozen other places.

On each machine, documents from various projects may be mixed together, and personal documents may be mixed in as well. It may take months and hundreds of thousands of dollars to collect and review millions of electronic documents contained on all the machines connected to the project and to sort out documents that you don't want to produce (there are laws against disclosing employee social security numbers and health information, for example).

Now is a good time to consider ways to mitigate the financial burden of producing project documents in a future dispute. Writing a dispute resolution provision that calls for resolution outside of court may help. Also, consider routing all project correspondence through a project server, or at least routinely copying all correspondence and other project documents to a project server. Later, managers can be confident that the server contains a full set of project documents, and that other machines have nothing more than copies. That might not prevent an adverse party from asking for "all documents," but it might convince a court to require the adverse party to pay the cost of production if it wants to see the copies.

#### **Are documents being reasonably preserved?**

If a dispute comes up and relevant project documents have been destroyed, a court may rule that the jury is permitted to infer that the documents, if preserved, would have contained information helpful to an adversary. To avoid that, whenever a dispute arises or seems likely to arise, order all custodians of project documents to retain those documents, even if a company policy would normally result in their destruction. Good project organization can help ensure that document preservation is carried out appropriately.

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