

Article from **The Critical Path - June 2006**

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September 13, 2007

## **Potential Benefits and Risks of Offshore Outsourcing**

by *Jeffrey T. Kubes and Margaret Fitzsimmons*

Offshore outsourcing of design support services is rapidly becoming a major business model for domestic architects, engineers and other construction professionals.<sup>[1]</sup> By utilizing offshore outsourcing and sending non-core work to offshore service providers in South America, India, China, Eastern Europe and elsewhere, construction professionals save a substantial amount of money and time. This reduction in cost and increase in efficiency allows construction professionals in the United States to remain competitive in an industry that has major financial pressures for timely and efficient project delivery. Despite these benefits, there also are great risks associated with offshore outsourcing. Before deciding whether to use offshore outsourcing, it is essential that a construction professional be aware of potential issues that may arise.

### **Responsible Control**

In the architectural context, a major issue that arises with offshore outsourcing is whether workers in foreign countries are under the direct control of the Architect of Record. An architect who seals the documents, the Architect of Record, must have "responsible control" over the production. "Responsible control" is

that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by architects applying the required professional standard of care. Merely reviewing or reviewing and correcting the technical submissions or any portion thereof prepared by those not in the regular employment of the office where the architect is resident without control over the content of such work throughout its preparation does not constitute responsible control.

225 ILCS 305/14.

A problem with offshore outsourcing is that an Architect of Record has no personalized observation over documents as they are produced by offshore workers. Without this observation, an Architect of Record really cannot have "responsible control" of the work. Offshore outsourcing via the internet is extremely different from outsourcing to a firm in the same city or state, where regular communication and contact is available. Although the internet has limited the idea of "distance," and email correspondence can bridge communication on a global level, there are different standards and customs in each country and daily and regular contact may be impossible due to time zone differences and access to communication methods. (H. Carelton Godsey, Jr., President, NCARB, AIA Roundtable, p. 18). In addition, communication solely via email does not allow the Architect of Record to have "detailed knowledge of the technical submissions during their preparation." At a minimum, without phone conversations between the offshore drafters and the Architect of Record, it seems impossible for the Architect of Record to have any real "responsible control" over the documents.

In addition, if a firm is contemplating offshore outsourcing, they should be advised to review the offshore drafters' work in a similar manner to that of an intern in order to maintain quality control. Domestic architects are ultimately responsible for the work of offshore drafters and should delegate one domestic architect to review the offshore work on a daily basis.

### **Professional Liability**

Outsourcing construction, architecture, and engineering services to foreign workers that do not have the legal capacity to provide services in the United States could lead to extensive professional liability

exposure. (Victor O. Schinner & Company, Inc., "Outsourcing Professional Services" AIA Roundtable, p. 24). Construction professionals are vicariously liable for the offshore workers' services regardless of whether they have the practical means to control it. Liability coverage in some instances is extremely broad. However, if an offshore worker is uninsured or legally unaccountable, then the potential for liability for the construction professional greatly increases. In addition, some coverage is only for services performed in the United States or for non-outsourced services, and many construction professionals may find that they are solely at risk for the work of the offshore workers. In addition, if professional liability insurance requirements are only imposed on domestic professionals because of the difficulty enforcing those requirements on foreign providers, then domestic professionals will have a hard time competing with lower-cost foreign providers. This competition would completely undermine the status and expertise of domestic construction professionals.

### **Steps to Prevent Potential Issues of Offshore Outsourcing**

There are no guidelines or regulations to control offshore outsourcing because the business model is so new for construction professionals. However, the AIA has created some steps and directions to guide those planning to conduct offshore outsourcing. These steps include:

- Adhere to ethics, disclose if asked. Under most circumstances, the choice of an offshore sub-consultant poses no special disclosure requirement and would be treated like the choice of any other sub-consultant. If the owner asks, however, the professional has an ethical responsibility to disclose.
- Be aware of differing foreign legal requirements that would affect architects under that contract in that country, e.g., taxes on services.
- Service contracts should address intellectual property and confidentiality. Enforceability of intellectual property rights and confidentiality is an important issue that may be more difficult to manage in a foreign country, so include pertinent conditions in your contracts with providers to the extent possible.
- Review the Contract Documents for suitability regarding offshore outsourcing. The Documents Committee will consider that aspect during the next round of revisions.
- Standards and quality assurance. International interoperability standards for computer modeling and clear lines of communications will support the control of records and changes. (Chris Noble, Esq., Jay Wickersham, FAIA, Esq., AIA International Committee Offshore Outsourcing Roundtable Reader, September 15, 2006, p. 28)

### **Conclusion**

Although offshore outsourcing may be a cost effective way to complete production needs in construction, it is vital that professionals recognize and address the potential problems and liabilities that may arise. In order to avoid numerous issues, a construction professional should understand his or her potential liability for the work produced by the offshore worker. In addition, the construction professional should have constant contact via internet and phone communication with the offshore workers in order to regulate and guide the work. Without these precautions, the liabilities surrounding offshore outsourcing appear to outweigh the benefits.

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<sup>[1]</sup> According to the *2006 AIA Firm Survey*, 5% of firms currently use offshore outsourcing to fulfill production needs, and this percentage will increase 20% by 2008. ("AIA Board Considers Offshoring Report" Douglas E. Gordon)

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