

# Talk to Me About A&E: Episode 24 — Why We Don't Stamp Shop Drawings, Part II

DALE MUNHALL: Know the difference between contract documents and noncontract documents. And most of all, know what's in those contracts and write the specs accordingly.

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SPEAKER: Welcome to Talk to Me About A&E, a podcast series focused on risk management for architects and engineers. Host, Dan Buelow, Managing Director of Willis A&E will engage experts across the A&E spectrum on topics ranging from contract details to the broadest trends impacting design professionals in North America.

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DAN BUELOW: Hello, and welcome to Talk to Me About A&E. I'm Dan Buelow, Managing Director of Willis A&E, and today we will be continuing our discussion on managing risks associated with shop drawings with Dale Munhall, National Director of Construction Phase Services for LEO A DALY. Hello, Dale, welcome back.

DALE MUNHALL: Hey, Dan. Good to see you again,

DAN BUELOW: It's good to be back. So in part one of our two-part series on shop drawings with Dale, Dale talked to us about his provocatively titled, AIA best practices article, "Why We No Longer 'Stamp' Shop Drawings." We discussed why this article provoked so much interest within the design community, and what Dale and his firm have done to manage the risk associated with shop drawings.

If you haven't listened to that podcast, which again, is part one of a two-part series, I would strongly encourage you to do so prior to listening to this. In fact, given all the information that we covered specific to a review of the misconceptions around this, risks, errors surrounding these basic construction administration procedures, the standard of care, contractual risks, and so on. So it's a good lesson, and it certainly sets the stage for what we're going to be talking about here with Dale.

Quick overview. Again, I gave a good overview with Dale in the last program, but Dale is AIA. He has been a National Director of Construction Phase Services for LEO A DALY for the past 28 years. And in his four-decades career, he has gained unique experience as an architect, construction manager, and field superintendent.

His articles and presentations on project delivery have been published by the AIA, two of which have been AIA best practices, and by the Construction Owners' Association of America, as well as DBIA. Prior to this podcast series, Dale presented a recent Willis A&E webinar on the same topic where we broke a record for attendance of over a thousand-plus registered attendees.

For those Willis A&E clients, you can find taping of that webinar as part of our Willis A&E on-demand education library at [www.wtwae.com](http://www.wtwae.com). So check out that website for that and any of the other programs that we have. So I wanted to continue our discussion with Dale because we received a lot of questions.

Here are some questions from our webinar, and we begin with the first question was, does the language differ between AIA and EJCDC with regards to the definition for shop drawings as shown in AIA 3.12.14. Well, I'll answer that one Dale, if you don't mind, because we touched on this earlier is that they really are equivalent. What we're seeing in the EJCDC is equivalent to what we're seeing in the AIA 201, and we also use architect maybe or engineer interchangeably. They're the same standard of care when it comes to this, right? So we could call it the AE or design professional, but that's the important point on that.

So the next question here, Dale, the AIA standard form contract document still includes the word, approved. This perpetuates misunderstandings with owners and contractors, wouldn't you agree?

DALE MUNHALL: Oh, do I agree. And I've had discussions with the AIA Document Committee about that, too, and eventually one day I may get them to change the word shop drawings to contractors workplan, but that's another adventure.

But yes, the word approved is not-- used in the contract, documents in a contract form, it is not the same as the common understanding of the word approve, which implies accepting responsibility for as your own work. Which, of course, is a violation of license law if we did that because the contractor shop drawings are not prepared by the architect, and/or on the direct supervision as would be required if it were our professional seal. And that was the root of the problem, actually, that started that whole need for that article.

And to make that differentiation, we don't stamp the shop drawings, we review them and take appropriate action on them. And that's exactly what the AIA language limits. They define the word approved that's nonintuitive to the average contractor, owner, attorney, frankly.

And the AIA in 4.2.7 says, and I quote, "The architect will review and approve or take other appropriate action upon the contractor submittals, but only for the limited purpose of checking for conformance with the information given and the design concept expressed in the contract documents," end quote.

Now, that's a mouthful, and any time you use the word approve and you have to spell out a paragraph, that tells you that there's misunderstanding out there because the word approved does not mean what you think it does.

DAN BUELOW: The next question continues this is that, when using project management software like Procore, the pull-down menu has limited options, such as approved and approved as noted. Is it possible to revise these if you're not the administrator of the Procore site? How do you suggest handling this situation?

DALE MUNHALL: I suggest it contractually. You and I have talked before, Dan, about the importance of CA beginning at the time of signing this professional services agreement with the client. And defining what that means

when you get down to selecting a project website on behalf of the owner. Or are you going to just delegate it and defer it and let the contractor run it?

If the contractor runs things, it's for the convenience of the contractor for making-- and Procore, since you mentioned that one, I'm quite familiar with that. There are multiple others, CMiC and so forth. But all of them have a thing in common. They are for the purpose of helping the general contractor administer the subcontract accounting for their trade contracts.

They do not allow customization to the project like some websites, like some little change that I use all the time. They should be accessible to everybody and be flexible, that one isn't. And if you do that, and you are forced because of the owner saying that the contractor gets to do that, and you haven't written a good 013100 spec about a good project website, now you're letting the contractor control it.

And the only thing I can do, and I have done with our staff is say, when you respond to these things that are controlled by the contractor, you have to specify our transmittal form that we've talked about doing as the cover for that, and only take action A, B, C, D, E. So cross out all the words of the definition on those, or ignore them and say, see transmittal form, and put your action language on the specified transmittal form. Again, another great reason never to use a stamp.

DAN BUELOW: I know we had a comment during that webinar where one of the audience members noted that they've had success in getting the GC make custom response options to the dropdown menu on Procore. So it is possible to do this according to this, but—

DALE MUNHALL: It may be in some limited cases, but it also involves changing the basic underlying program. And my experience with doing that is that it gets added on at the end not changed in the body. So either way you're going to have to still make reference to the actual things.

And, also, to tie it back to-- remember that these are not contract documents. The contract is in the specifications. You can fix that in your 013100 specification and 013300 for some submittals, you can fix that. Those are contract documents; the website is not.

DAN BUELOW: OK. Great points. OK. So next question. Our shop drawing stamp has good disclaimers that the AIA and Willis A&E has helped us with. We currently use the term reviewed as noted on the stamp, but after listening to you, perhaps it would be better to say comments noted on the stamp. Is that a better way to assert that the architect is only making comments about the contractor's work documents? Your thoughts.

DALE MUNHALL: I think that's a good thought, too. And I think that particular listener had understood the basis for that requirement not to use the word approved if you don't-- can avoid it. Anything other than that that implies that it was reviewed, and that the responsibility remains with the contractor is the idea. And, also, MasterSpec, which we use AIA Deltek editing does make a recommendation in their notes to specify, or to say-- or wording that is acceptable to your legal counsel. So I always defer to them, and any of those things that

are using and clarifying the common use of the language showing that it's reviewing for conformance, that's all, it's not the word approval. And if you can avoid that word, do.

DAN BUELOW: Right. And I would just echo that. And as the broker, Willis A&E will always say, seek legal advice. Seek counsel advice on what—

DALE MUNHALL: Oh, we always do, and it's better to do that before than after.

DAN BUELOW: Right. Exactly. So, OK, next question. Is there a reason the sample questions you have for the submittal stamp does not have a quote, "for record only quote," end quote, stamp?

DALE MUNHALL: Yes. Because the word record in that question is the giveaway. Because if you allow submittals for means, method, sequences, techniques, and procedures of construction, you are-- not to, again, supersede legal counsel advice here, but those are the trigger words that we've all been taught to avoid.

The contractor does those and they submit them to you just saying, you have now constructive notice of information that you could've, would've, should've known, and something goes wrong, I don't want to have a record that some of those means and methods are now in our files for discovery, and what did we do about it?

It's much like going on to a job site and not addressing some issue that you could've, would've, should've seen. But if you allow those into your files for the record only, it takes your time, it takes your-- you're not being paid to do it, you're taking on greater liability for no compensation, and why would you do it?

DAN BUELOW: Why would you do it? It's passive, right? It's not action required. I'm looking at your transmittal cover page here, which we went into some detail during our first podcast with you. And you have, in there, your listing of things that are all action, right?

DALE MUNHALL: Yeah.

DAN BUELOW: That you're going to take, which approved is not one of them.

DALE MUNHALL: No. And no action taken, not required. Sometimes some contractors use both the submittal and the RFI process to bury the architect with a lot of paperwork and show that there must be some defect there. So avoid those kinds of spurious things. And, again, goes back to how well you write and edit section 013100 and 3300 for submittals. Those are contract documents. These others are not.

DAN BUELOW: OK. Next question. Why do you say the review is not for the purpose of determining the accuracy and completeness of other details? To me, this implies some details are reviewed.

DALE MUNHALL: Well, the language that was taken for that not for the purpose comes directly out of the 801 general conditions, and the AIA contracts that says, specifically, that it's not for the purpose of checking for

dimensions or quantities, and it's certainly not for taking liability onto the architect, but the reference for other details.

If a contractor has provided information and calls it to our attention-- and, again, I've said this before that the use of noncontract documents like submittals and RFIs, contractors have good ideas, too, and they also catch things.

And we should use that as an opportunity to say, if there is something in there, we're not perfect either, and we're not required to be, but we are required to be smart enough to pay attention when somebody mentions something that we may want to explore further. But other details, they can't slip on by us and expect that we are now responsible.

One of the things, too, Dan, that goes on the same subject about slipping things past the architect goalie goes with the authority having jurisdiction. I think all of us know about submitting shop drawings and things to fire marshal, particularly on fire suppression, sprinkler systems, or any of our drawings for life safety for those reviews.

I recently had a fire marshal; they had a really good stamp of theirs saying that this was just to facilitate the progression of construction and anything on it that was not called out for a specific waiver is still under the requirements of all the code requirements which remain with the design professional.

So we can't slip one by the fire marshal, or the building plans examiner, or the permit authorities, and say, oh, you approved it. No, they called us responsible, and exactly the same logic and the same contractual and legal responsibility remained with the contractor for their own work plans.

DAN BUELOW: And as you noted there, in A201 4.2.7 is reviewing is not the same as verifying. And so great point. Next question. How do you respond when contractors push back and ask or demand the AE's approval?

DALE MUNHALL: Oh, I love that, demand and pushback. Because we talked about contracts in the contract documents, if you do them right and are knowledgeable about them, they are not suggestions. It doesn't say a suggestion book. It's a specification, and it is a contract document.

What you put in there should be discussed and understood by your client, the owner, before you issue anything for construction. And in there, there are some requirements that you ought to have explained to your client, and they've agreed is in their best interests. And, frankly, the interests of the owner and the interests of the architecture and construction are about identical.

And so if they understand it, and they understand that we're doing this for their benefit, it only helps the relationship. So we don't allow the contractor to say, I don't want to do that, or I choose not to. Well, in the bidding process and in the contractual process, those are requirements.

And they were not only assumed but designated as having-- everything that's in those drawings and specifications is included in their bid through our money, and the time, and their contract. And if they refuse to do any of them, it's a breach of contract.

DAN BUELOW: Yeah. Breach of contract. Good point. All right, next question. What do you do if you see dimensions are wrong on a shop drawing? You said we can be liable if we start correcting dimensions, but often we see dimensions that are totally wrong.

DALE MUNHALL: You can cross it out, and say, see sheet AE 101.

DAN BUELOW: Just don't take responsibility.

DALE MUNHALL: Do take the responsibility of saying that, I see this. I am giving you contract or constructive notice that that correct information was located on sheet number whatever, but you don't go back in and change all their dimensions or quantities.

If you see something that they're flying 37 or something and you think there should be only 34 and it turns out to be later 35, we're not doing this for quantities. We're not doing a purchase order. That's another thing to shop drawings or not. It's not a purchase order.

DAN BUELOW: OK. Here's an interesting one here. We're seeing a trend in the construction industry where the GC is sending the reviewed shop drawings with a similar traditional stamp similar to the design professionals that doesn't show approved as required per project specifications and AIA 201 general conditions.

We view this as an attempt to bind the design professional's liability to the accuracy of the shop drawings and their trade partners beyond what's stipulated under A201 4.2.7.

DALE MUNHALL: That is a great question. And if I had my way, I would explain it by saying every general contractor should have two stamps. One stamp when they receive something from their subcontractor stamping it saying, OK, I've reviewed this. You didn't slip anything by me. I'm holding you to the terms of your subcontract, and I just reviewed it for you.

Then they have another stamp that they stamp that says, architect, engineer, I am responsible for my review of the work of my-- because there's only one contract, and I guess this goes back to the basic CA 101. There's only one contractor, only one contractor on the project, typically, and that's a general. And they hire their friends and neighbors to help them under whatever terms they do.

So between them and their sub, they don't take responsibility, they keep it with their sub. They push it down to the lowest level they can. That's their job. That's what keeps them in business. However, on their contract with the owner that we now administer, they are responsible for everything that goes across that shop drawing regardless of what they said to their sub.

So yes, I see that all the time with a just reviewed, that's why we do the transmittal form because right above the contractor signature, we make them sign it saying, I have approved this submittal. Not reviewed it, approved it. And that's why you can separate that from their stamp. Another good reason not to use our stamp.

DAN BUELOW: Another good reason. OK. Next question here. You reviewed the seven deadly words, what are those again?

DALE MUNHALL: That used to be posted on the AIA Construction Administration Knowledge website. And right off the top of my head, I know that the things are add, delete, move, change, modify, or revise, and I forget the seventh one. But there is actually a lot more. But any of those words exceed the authority vested in the architect by the owner when you're doing a review or a shop drawing.

If you instruct the contractor to change any of the contract requirements, the drawings, the specs, and your directions on those responses, you've now incurred liability you did not have before you used one of those seven words. There's, at least, seven ways you get in trouble by telling the contractor to do something that wasn't in the contract document and not using a change order signed by the owner. That's the intent of that phrase about the seven deadly words.

DAN BUELOW: OK. Here we go. Here's one. Why is this presentation titled, Why We No Longer 'Stamp' Shop Drawings? Seems to be more about how to stamp them and understand what reviewing and stamp them means. Do you actually suggest not stamping shop drawings?

DALE MUNHALL: There's a yes, and a no, and a yes, I said that. We do not stamp-- in the phrase in the title of the article, the word stamp is in single quotes. We don't stamp them. We specify that that cover transmittal form contains all the information that a stamp would have and more. And so we don't stamp them. We specify compliance with the contract.

So, again, that was part of the reason because people and sometimes owners, contractors, and some attorneys still think of our stamp, act of stamping as the application of our professional seal of responsibility. We don't stamp or seal the contractor's work plans. Again, we don't stamp them. We just specify their compliance with the contract.

DAN BUELOW: And discussing this with a respected attorney that represents architects and engineers, he feels there's a very good argument not to stamp shop drawings. He notes that the problem occurs when there is an error on the submittals.

Then there will always be an expert out there that will testify that the standard of care would have been to carefully review whatever feature was missed up or messed up. And in a deposition, the design professional either has to say, I did not look at that feature, which does not look good, or I saw that feature and ignored the error, which does not play well.

DALE MUNHALL: Yes. Those are awkward situations, and it's the real world. But, again, it goes back to the fact that you can't imply that you're being responsible. And just slipping it by for the record, then, I think, maybe the overriding concept that we're doing here is know the difference between contract documents and noncontract documents. And most of all, know what's in those contracts and write the specs accordingly.

Be sure you know in the AIA a201 general conditions and comply with it. If you don't know them, and the contractors do know them, that puts you at a disadvantage. Make sure that all of those things, you're utilizing all of

the tools. And the AIA contract documents are really good. They've been tested as you well know for well over a hundred years, and they have more core tests than any other document in the world.

And they are there to keep things straight, but you have to know what's in them to keep your own work in compliance with it. So if you violate that, yes, you can violate your standard of care, but if you're complying with the terms of those contract documents that you understand and explain to your client, they will never-- My experience is no client that I've ever had a chance to start with from the beginning, and tell them their choices, carry them through in the front-end specs and in the contracts have ever been disappointed with the lack of total perfection in the architecture. It's a matter that our interests are their interests.

DAN BUELOW: Yeah. Two more questions. I think this next one segues nice into that. Here's the question is that, why do we need to include legalese within the body of a submittal transmittal/stamp, question mark? Presumably, this is all covered in the general conditions.

DALE MUNHALL: It's supposed to be. Do you know what's in your general condition? Did you get them part of the contract? Too many of my colleagues will defer and say, well, I can save some time by letting the contractor-- especially if you've got a construction manager on board-- write the front-end specs. Well, they write the front-end specs to apply to their subcontractors not to them.

And that's the biggest single misunderstanding, I think, in letting a construction manager write those front-end specs. They do not apply to them. And so you need to start with your client and help to select a construction manager when you're doing CM at risk. And that's a good system, I love it, when it's done right. But it can be done wrong, too. And if you're not in there at the beginning, then what it becomes is just a hostage of the project where the CM doesn't really have to do anything until they wait around for 100% CDs to be done in CM at no risk. Get a collaborative partner, select them well, convince your client that you need a partner not an opponent.

DAN BUELOW: Yeah. And Doug Palandech, the attorney that was on the webinar with us who joined you, Dale, he noted in that is that documentation is your defense counsel's best friend, and you want to make sure you have good documentation practices.

And then, also, I'll quote from your article that you say, quote, "Contractors and too many owners erroneously believe that approved by architects means that architect is now solely responsible for this item. Knowing this, we must proactively but gently educate them no later than, at least, the start of CA about contractual roles and responsibilities.

So here we're coming back and closing this discussion on the importance of talking to your client, right? Educating and taking responsibility and understanding what's in these agreements and conveying that and getting the parties in sync.

DALE MUNHALL: Exactly. And you mentioned the other best practices article that I wrote that AIA published was on that exact subject. And I did one on "Standard of Care-- Confronting the errors and omissions taboo up front." That's the article that I know is still on the best practice as part of the AIA website.



And I still get a lot of calls about that because we're not perfect, but we need to establish that shared expectations. The mantra is shared expectations with your client. Not so much manage. I know that you've mentioned that, and yes, that is part of it. But having established shared with your mutual, with your client up front before you sign your contract.

How perfect do you need to be? The more perfect you have to be, the better fee you better be getting, and you also need to make sure that there's a contingency and a specific-- your understanding of what the problems are ahead. I know that our whole industry's selection process for architects and engineers is for qualification-based selection where we do proposals and interviews and tout our wonderful accomplishments and all the positives. No architect or engineer ever wants to go the day after being selected and sit down with that same client and explain to him how we're not quite perfect. And what we see as the potential hurdles and bumps in the road for that project, but we've got to do it.

And we've got to say, specifically, OK, the nature of this project, and the task, and for the expectations that the client has, and the needs, here's what the complexity is, and here's the commensurate level of contingency that we need to make sure is provided and how we're going to handle that during the project. If you do that, that will actually put a lot of litigation lawyers out of work.

DAN BUELOW: And, again, what I mean by manage is that you can't just, for example, with a contract sign it, stick it in a drawer, and then go-- never sees the light of day. You might have to certainly actively amend that agreement if and when scope changes, or in the case of this discussion here if, as you say, a substitution is snuck in as a shop drawing or we don't agree with that substitution, we have to manage that. We have to talk through and memorialize this in writing here.

So last question, Dale. OK. I think we all agree about the AE's level of responsibility according to the AIA. Are these cases adjudicated accordingly? If not, what are the top two or three items we must make sure to take care of first?

DALE MUNHALL: Well, the word adjudication is a scary one. And, obviously, if you have understood the contract that you have with your client and also participated and educating them gently about the contract for construction, whether it's an A101 or A132 CM contract, whatever it is, being involved, I would say, that's the number one issue. You have to be involved, or what happens always to the person who's not present is you get the liability, you get elected to it. So I would say that to protect your interests and make sure the client understands your interests are their interests, you've got to sit down from the beginning. And then, also, include that builder whenever they're brought on and whatever the delivery method, and make really sure that everybody understands.

And just like you say, Dan, the worst thing that ever happens is taking that paper, electronic, or otherwise, put it in a drawer in the dark, and only doing it when problems arise because that's too late. Because contracts should be a working tool not a club to beat people with at the end.

I know I tried to train all of our-- as a part of our quality control process to do a checklist at the beginning of construction to summarize all of those terms and conditions of the specs in our contract and the contractor's contract. And keep it under their pillow. Keep it handy as a key point to remember, and don't let it just go retroactive to the part where you're now trying to fix a problem after it is.

Be proactive. Know what the conditions are. Make sure that your order and your contractor know. Stay ahead of the game. If you're behind, that is where the problems come. You've got to lead the process, not wait for the phone to ring.

DAN BUELOW: Excellent points, Dale. Well, that concludes our program, Dale. I want to thank you, Dale, for being our guest today. It's been great spending some time with you.

DALE MUNHALL: We can do this for a whole semester.

DAN BUELOW: Two semesters.

DALE MUNHALL: Two semesters.

DAN BUELOW: Yeah. Well, thanks, again, Dale. You really are a wealth of information and a passionate advocate for the design profession. It's been a real honor. And, again, you can get a copy of Dale's articles, and/or the webinars. Just go on our website at [willisae.com](http://willisae.com), and I want to thank everyone for joining us for this podcast. Talk to you soon.

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