

## ***Assessing the Owner's Responsibility and Authority***

After a 30-ft-long section of a 20-ft-tall, 12-in.-thick reinforced concrete wall was placed; honeycomb or rock pockets were noted on the surface of the wall. The general contractor's project superintendent took photos of the wall's appearance before the concrete contractor repaired the surface voids, as required by the specifications. The photos were distributed to the owner, engineer, and architect. Prior to any responses, the concrete contractor patched the wall. Then the e-mail responses came.

The architects stated the wall could be repaired and recommended chipping until reaching sound concrete, then patching the wall. They also stated that if structural repairs were required, the engineer of record would detail how those repairs should be done.

The engineer of record stated, with regard to structural integrity, that he could not say if the concrete was sound or not, and suggested that ground-penetrating radar, impact-echo, or x-ray testing methods might be needed to verify that there were no large void areas in the wall.

The owner acknowledged that the surface patching was performed in accordance with the specifications, but stated that they were concerned about concrete durability because the wall performance would be threatened by either frost damage or reinforcing bar corrosion. The owner then declared that the wall must be removed and replaced.

The general contractor agreed with the owner's decision and told the concrete contractor to remove and replace the wall. But what about the architect's or engineer's opinion?

Owners usually contract out the design of the project and construction administration to the architect. The architect retains the services of an engineer to perform the structural design and provide on-site periodic construction observation. The AIA Standard Form of Architect's Services for Design and Contract Administration states that the Architect shall make interpretations and decisions consistent with the intent of and reasonably inferable from the contract documents. When making such decisions, the Architect is to secure faithful performance by both the owner and contractor with no partiality to either party.

The concrete contractor for this project had some interesting questions. Does the owner have the right to unilaterally reject the concrete contractor's work? Does the owner over-ride the architect's choice to repair or the engineer's desire to test? Because the owner is making an engineering judgment about the concrete durability, is he practicing engineering without a license?

Section 1.7.1.3 of ACI 301 -10 states the following:

"To bring rejected Work into compliance, use repair methods that meet applicable requirements ... as determined by Architect/Engineer."

ACI 301-10—which was cited in the contract documents for the project—also indicates that when there is a potential strength or durability deficiency, the architect/engineer may require the necessary actions. This document does *not* state that the owner makes the decision on necessary actions.

It's difficult to assess the owner's responsibility and authority without understanding the contract between the owner and design team. Although contractors probably have a feel for this relationship during the project, owners may suddenly make a decision that is at odds with the design team's recommendations. According to the AIA contract for architect services the architect is an impartial decision maker. But is that really true?

We aren't sure how to best respond to this concrete contractor with respect to his questions. We encourage contractors who have been in similar situations to help us strategize ways to move forward on projects like this. Please call Ward or me or send an email to let us know your thoughts and possible solutions to these kinds of issues when the owner makes the call.