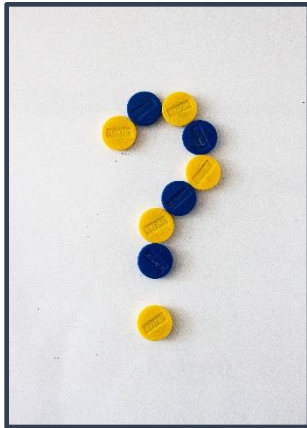


Know Your Audience – Legally and Practically

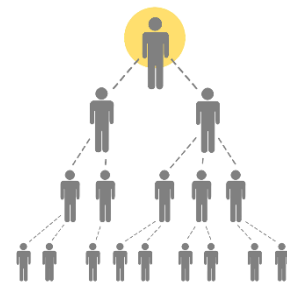


Executive Summary. When communicating in any manner, written or otherwise, knowing who your audience is can make a huge difference in communication on a project. It not only serves a legal purpose, but it can also massively increase efficiency.

The legal side of knowing the parties. On every project there is a contract and that contract defines who reports to who. If you are the Contractor and you write a letter to the wrong party you may hear a lawyer say during the dispute resolution process that “at no point did you ever inform my

client of the issue.” And you’re thinking, “but all the while I’ve written [pick one: the Construction Manager, the inspector, the Project Engineer] these emails and letters – what do you mean?” The problem is, these parties were not recognized in the Contract. Therefore, you really never told anyone. What it said in the Contract was to notify the agency’s Comptroller or Director of Public Works or the Officer in Charge or the Contracting Officer.

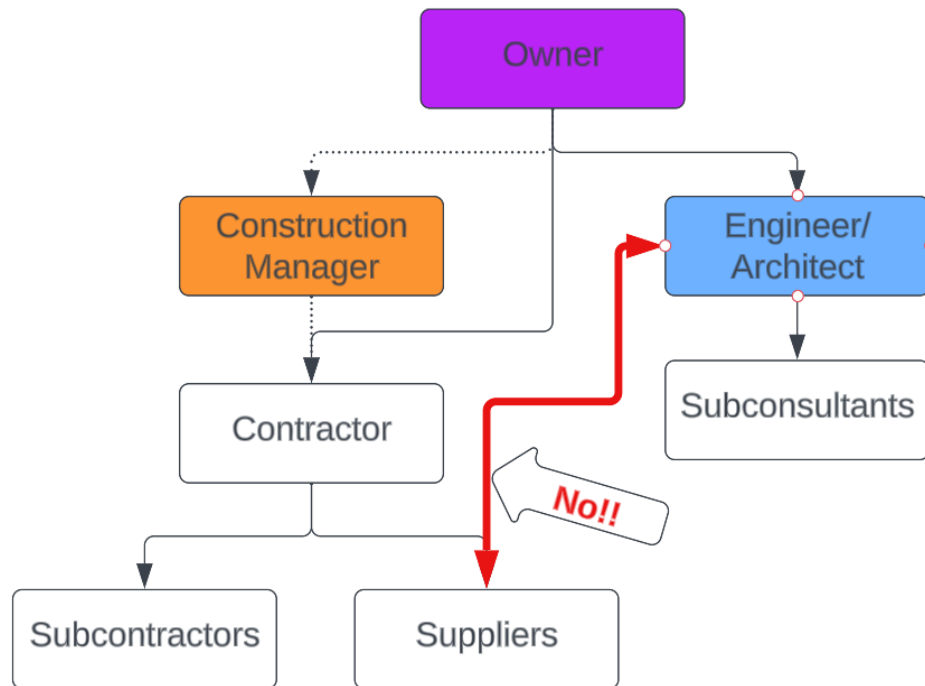
The practical and operational side. As the Contractor, your primary mission is to get things done now. Not next week and not later in the month. No better way to do that than to know who makes the decisions and to talk directly to those people, or that person. Tell them exactly what they need to know to get you the decision you need. But, do this while still knowing the contractual relationships.



My story. All of the above is pretty standard stuff. It’s hard to read this and think that what I’ve written isn’t clear and easy and logical and simple. As I’m writing this, I think some real life examples may help.

The first example – the Owner not signing off. As a Contractor, I often received RFIs back which provided direction from the Engineer or Record (EOR). But, I never had a contract with him or her. The direction from the EOR said change that handrail from aluminum to 316L stainless steel. Well, that was a problem because the SST rail was twice the cost. So, who’s paying for this? I would take these answers – any and all of these RFI responses – and request that the Owner sign off

on the response. This is a broken process and if an Owner does it purposefully it's a shirking of responsibility.



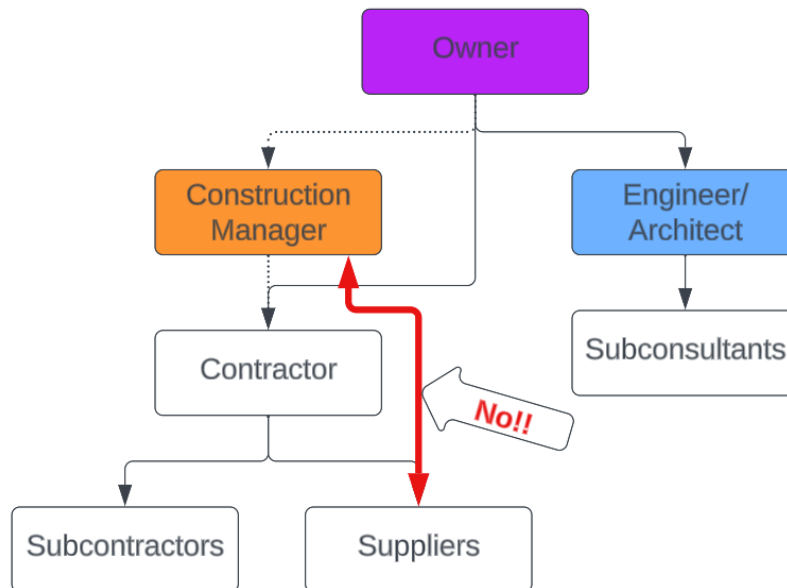
Owner shirking responsibility, or at a minimum, a broken process in the communication.

Now the second example, and this one goes on the Contractor. Contractors should communicate directly with the Owner or his designated representative. The email from the Contractor to the Owner, or his/her representative, which says "see the attached" is just as broken as what the Owner and EOR did above. This is a typical and ineffective way of communication. If the Owner and the Contractor have been talking for a month about why steel stairs are better than concrete stairs and the Contractor has his miscellaneous metals guy write a letter to that effect, the communication is not as effective. This is because the letter from the Supplier (likely addressed to the Contractor, not even to the Owner or his representative) is not personalized to the decisionmaker. Additionally, it may not carry the nuances necessary to provide an answer which "hits the nail on the head" for the decisionmaker. As an Owner or his representative, when the email also states "see attachments" and the reader has to flip through and triangulate documents and link information, it results in a protracted and frustrating process. The solution here is a letter from the Contractor something like this:

Dear Owner:

Thank you for the meetings over the past three weeks discussing the differences and advantages of going with metal stairs over concrete stairs. As discussed, installing metal stairs is advantageous in cost, schedule and maintenance as corroborated by our supplier, ABC Metal Stairs, LLC. Each of the three items of concern for you is addressed in their attached letter of Month Day, Year in the file named Letterwiththegoodstuff.pdf. The attached letter, and accompanying shop drawing (labeled metalstairsrule.pdf), represent the position of XYZ General Contractors, LLC.

A letter like this from the Contractor guides the Owner through the correspondence. To get even more points with an owner, make it all one document and use cover sheets with Exhibit or Attachment numbers/letters.



The no-no of allowing Suppliers, or Subcontractors, to talk directly the Owner's Representative.

The bottom line here is to keep in mind both the Contract and the practical relationships, and to try to appease both when you run the work.

Work safe!