

**WEBINAR**



UNIVERSITY

**WED., AUGUST 21, 2024  
2:00 - 3:00 PM ET**

**THE FIVE**

**Cs**

**of Design Teams**



**PRESENTER**

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**NSM**  
Insurance Group

Build Success.®

# Today's Agenda

- PUA Overview
- 5 Cs of Successful Design Teams
- Q&A



# 1

## **PUA Overview**

WHEN IT COMES TO  
PROFESSIONAL LIABILITY

WE'RE THE  
PROFESSIONALS



New website! [puainc.com](http://puainc.com)

### Formed in 1990

- Stability & proven track record
- \$65M+ in GWP
- 1,500+ Insureds

### Four lines

- A&E
- Design-build contractors
- Miscellaneous PL
- Excess limits

### Strong paper & broad coverage

- Arch – admitted
- Lloyd's – E&S

### Assist in navigating difficult, complex risks and issues

- NEW! PUA Market Solutions

### Value-added CE webinars via PUA University

- Library of past webinars on [puainc.com](http://puainc.com)



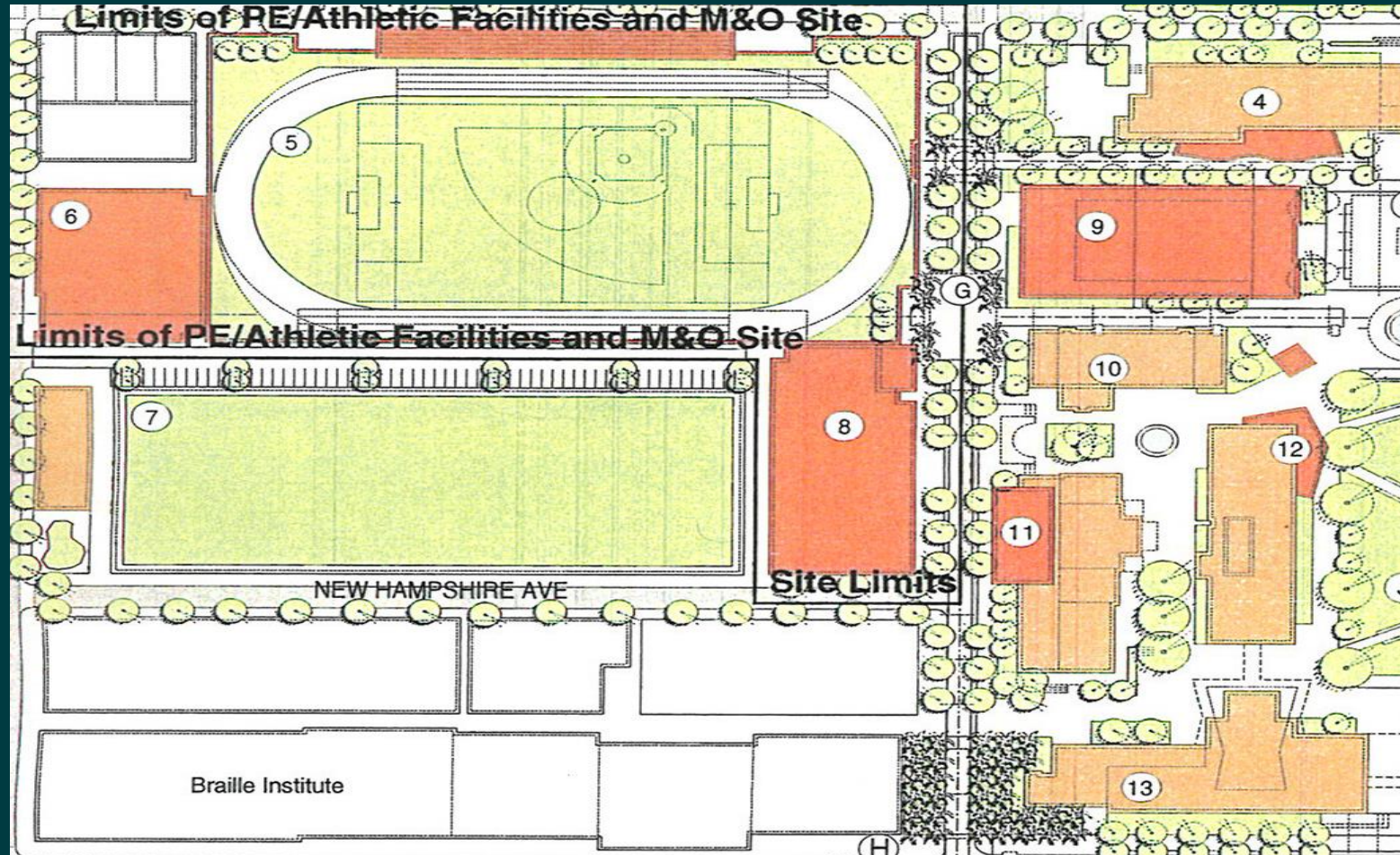
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# The Moving Target Story

- National architectural practice with multiple practice focuses and track record of success and awards
- One focal point in practice: higher education
- Multiple projects, millions in construction, multiple awards
- No established procedures, but knew instinctively how to succeed here and especially based on strong, institutional client relationships

# Moving Target

- Architect identifies opportunity to pursue community college project in inner-city location.
- Original project is eight academic/public buildings and a parking structure and golf driving range
- Will lead on buildings, but will essentially sub out all design on parking structure







# The 5 C's of Successful Design Teams

**Contracts**

**Communication**

**Coordination**

**Costs**

**Closeout**

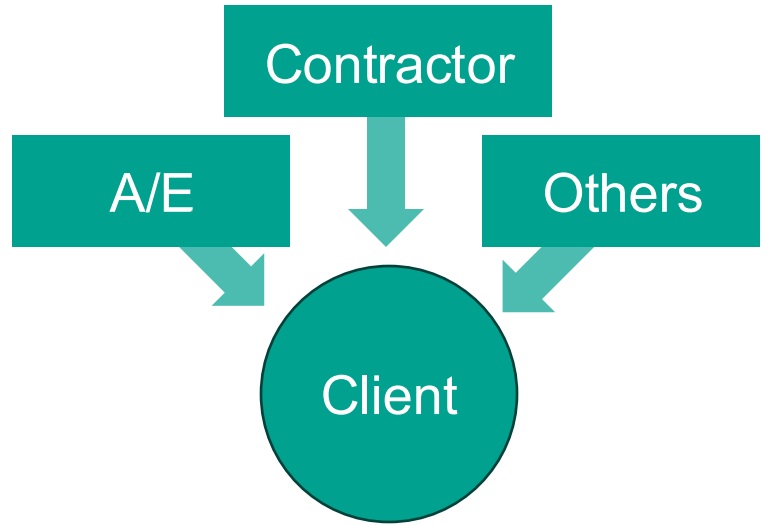
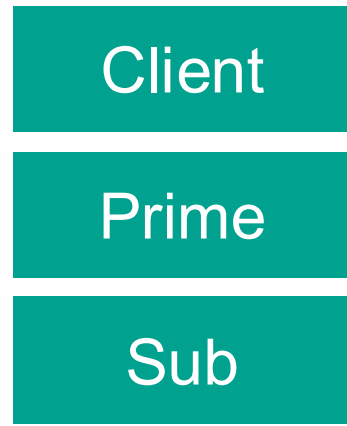
# Traditional Prime/Sub Drivers

- Vicarious Liability vs. Joint/Several Liability
- Prime Contract Flow Down & Resistance (or inconsistency)
- “Coordination”
- Indemnity, Insurance, and Payment

# Joint & Several Liability

## Vicarious Liability

- **Joint & Several Liability** allows an injured party to recover 100% of its damages from anyone who contributed to their indivisible harm.
- **Vicarious Liability** imposes responsibility on one person for the failure of another with whom they have a special relationship – usually a contract.



# An Ambiguous Flow Down

- *“Consultant, as an independent contractor, in addition to any other obligations imposed under this Agreement, shall perform Consultant's Services in the same manner and to the same extent that Architect is bound to perform such services for the Owner under the Agreement between Owner and Architect.”*

# The AIA Bilateral Flow Down

**C401 § 1.3** *To the extent that the provisions of the Prime Agreement apply to this Portion of the Project, the Architect shall assume toward the Consultant all obligations and responsibilities that the Owner assumes toward the Architect, and the Consultant shall assume toward the Architect all obligations and responsibilities that the Architect assumes toward the Owner. Insofar as applicable to this Agreement, the Architect shall have the benefit of all rights, remedies and redress against the Consultant that the Owner, under the Prime Agreement, has against the Architect, and the Consultant shall have the benefit of all rights, remedies and redress against the Architect that the Architect, under the Prime Agreement, has against the Owner. **Where a provision of the Prime Agreement is inconsistent with a provision of this Agreement, this Agreement shall govern.***

# A Preference for Consistency and Intentionality

*The provisions of the Prime Agreement shall control except as expressly set forth herein or as otherwise agreed between the Parties in writing.*

# The Three Rs of Design Agreements

- Relationships
- Rewards
- Risks



# Dominant Functions in Contract Clauses

- Relationships
- Scope of Responsibility
- Performance Standards
- Procedures
- Financial Rights & Responsibilities
- Liability



# The Pareto Six Pack

- Scope of Work
- Standard of Care
- Warranty/Guarantee
- Indemnity (& Defense)
- Dispute Resolution
- Third Parties
  - Intended Beneficiaries
  - Assignments



# The “Others”

- Design Rights
- Payment
- Termination



# A Contained Scope of Work

**C401 § 2.6 *The Consultant shall only be responsible for services within its design discipline and agreed scope of work.*** *The Consultant shall not be responsible for the acts or omissions of the Architect, Architect's other consultants, Contractor, Subcontractors, their agents or employees, or other persons performing any of the Work.*

*The Consultant shall provide prompt written notice to the Architect if the Consultant becomes aware of any errors, omissions or inconsistencies in the services or information provided by the Architect or other consultants.*

# Subconsultant Scope

*Subconsultant's Scope of Work and Project Responsibility shall be as set forth below as well as all other services reasonably necessary to complete the obligations of the Prime Agreement within Subconsultant's expertise and qualifications except as set forth below or expressly to be provided by others.*

# Inverse Contained Scope of Work

*The Architect shall only be responsible for architectural portion of the design services. As between The Architect and the Consultant, the Architect shall not be responsible for the acts or omissions of the Consultant, Consultant's other consultants, or their agents or employees, or other persons performing any of the Consultant's portion of the Work.*

# A Team Indemnity & Defense

*In the event of a third-party claim, demand, or liability the Architect and the Consultant shall each investigate, evaluate, respond to, and defend any and all such claims, demands, or liabilities upon notice of same to the extent such claim, demand, or alleged liability arises out of their respective scopes of work, services, communications, actions, or inactions and shall indemnify the other for any third-party financial liability arising therefrom.*

# Communication

- How
- Access
- Authority
- Records Creation
- Records Retention



# Committed Communications of Consequence

*Except as otherwise agreed in writing, official project communication as to design intent or requirements or Contract or Project requirements shall be valid only if issued by or submitted in writing to the Party Representatives designated herein.*

*Writing as set forth above may include hard copy or electronic communications but shall not include text messaging or social media communications.*



# Email as an Exemplar

*This Communication is intended for the sole use and benefit of the initial intended recipient and is not intended for any other party or use or to extend any third-party benefit or right.*

*This may only be considered an official Project related communication if issued by the Responsible Person as identified in the Agreement applicable to the Project.*

# AIA Prime Coordination

**B101: § 3.1.2** *The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants.*

*The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.*

# AIA Subconsultant Coordination

**C401:** § 2.4 *The Consultant shall coordinate its services with those of the Architect and other consultants in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's or other consultants' services.*

***The Consultant shall coordinate all aspects of its design of the Work for This Portion of the Project with the Work designed by the Architect and other consultants, as necessary for the proper coordination of the Project.***

# Coordination

- Establish Project Requirements & Criteria
- Documented Commitment
  - Require all consultants to coordinate their own work.
  - Establish (enforce & facilitate) sequence of coordination.
  - Require written confirmation of coordination and Code compliance at critical milestones.
- Consider Enhancement of Matrix Allocations
  - *Primary, Secondary, Sole, None*



# Coordinated Scopes

## ■ Primes

- Identify services to be provided by others
- Identify and cover any “gaps”
- Establish format and timing of interface

## ■ Subconsultants

- Identify areas of reliance
- Identify areas of interface
- Confirm coverage for related services
- Confirm timing, format, and access

# Sequenced Coordination

## ■ Primes:

- Identify and implement sequence for coordination
- Establish process and format of “backflow” coordination issues

## ■ Subconsultants:

- Establish predecessor design controls
- Identify conflicts
- Communicate conflicts **and gaps**
- **Confirm closure**

# Phased Coordination

- Milestones
- Begin no later than end of design development
- Include incremental and final construction documents



# Documented Coordination

- Require written confirmation of coordination and Code compliance at critical project milestones
- Sequenced
- Reaffirmed



# Costs and Changes

- Design Rights
- Payment
- Termination (or Suspension)



# Costs and Changes

- Common commitment based on Prime Agreement.
- For “team external” issues, provide that it will be compensated only if compensated by client and agree to joint, good faith pursuit of payment.
- For “internal” issues, provide specific provisions for compensation such as “to the extent insured” or beyond a minimum percentage contingency.
- Provide that in the case of dispute, services will be provided and later resolved.

# Costs and Changes

*Regardless of the cause, Consultant shall provide prompt written notice to Prime of any event or issue which it believes may, will, or has caused it to incur additional fees or expenses for which it should be compensated.*

*(Same from Prime?)*

# Costs and Changes

*Upon the event of any event or issue which may, will, or has caused any Design Team Member to incur extra fees or costs for which it should be compensated, Prime and the effected Consultants shall promptly pursue payment from Client or responsible third-parties.*

*Except where such extra fees or costs are caused solely by one Design Team Member, the Prime and Consultants shall accept the final resolution and recovery from Client and/or responsible third parties as complete resolution of the related fees or costs.*

# Closeout

- All Required Project Signoffs
- Final Invoice & Closure Letter



# Closure Letter

*Thank you for the opportunity to provide services on Project. Our services are now complete. Accordingly, our final invoice is attached. If we can ever be of service on this or any other Project, please contact us. Thank you.*

# Prime Protection

*Except as separately and subsequently agreed in writing, Consultant's obligations under this Agreement and for the Project remain in force and effect until the same time and to the same extent as any obligation of Prime.*

# Available Printed Resources

- A Sustainable Standard of Care (AIA Trust)
- Pre-construction Services: Cure or Curse? (PUA)
- Pareto Principles of Professional Service Agreements
- Sixteen Clauses You Need to Know (PE Magazine)
- Know your Limitations: A Design Professional Guide to Limited Liability
- Skating on Thin Ice: Surviving and Succeeding on Projects with Precarious Project Terms



# AIA Registered Course

This course is taught by a Registered Provider with The American Institute of Architects Continuing Education Systems.

To obtain a certificate that you participated, email Brad Lynch at [blynch@puainc.com](mailto:blynch@puainc.com)

**Architects must self-report their participation to the AIA for continuing education credits**

Certificates of Completion for non-AIA members are available on request.

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# Questions?



## COURSE CONTENT

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