



## Conflicting Categories of Drawings in Contracts

### Two lists means two sets of obligations

Contracts for ship construction or conversion typically contain a series of “Contract Plans” or “Contract Drawings” that are listed and identified as essential elements of the contract. However, often there is a second list of drawings categorized as ‘Contract Guidance Plans,’ ‘Guidance Plans,’ ‘Reference Plans,’ ‘Information Plans’ or some comparable categorization. Unless the intended use and purpose of the second list is clarified, the identification of two sets of plans or drawings within the contract is a starting point for significant problems. Let’s look at the fundamentals of this situation.

#### Multiple Plans Indicates Different Rights, Responsibilities, and Obligations

If the rights and obligations of both parties were the same for both lists, they would have been consolidated into a single list of Contract Plans. The presence of two lists of plans in the contract signifies that the contracting parties have different rights, responsibilities and obligations for each list. The problems associated with that second list of plans usually start to develop because the contractor (shipyard) has a different interpretation of those rights and responsibilities for the second list than does the purchaser (ship owner). The contractor cannot know what was in the mind of the owner’s technical team when it developed and/or provided the second list of plans unless the intended use of those plans—and how that is different from use of the Contract Plans—has been communicated in the contract documents.

Upon assisting in the resolution of numerous problems arising from the inclusion of two lists of plans within the contract, many different intended uses—or limitations on their use—have been realized. Unfortunately, in many instances this has occurred only after disputes had arisen. There are many possible interpretations of the

#### LESSON LEARNED #41: Knowingly Defective Products

A prospective vessel owner brought to a shipyard the design of a tourism boat for use in the open sea, seeking to have the vessel constructed. The shipyard’s review of the presented structural design (using finite element analysis—FEA) indicated that fatigue cracks would develop because the design was originally intended for river service, not a more rigorous open sea service. Upon receiving the shipyard’s recommendation for structural redesign, the owner insisted that the vessel be constructed per the original design. The shipyard complied. Two years later, the owner complained of the development of fatigue cracks. The shipyard observed that the cracks were exactly as predicted, thereby validating the use of the FEA. The lesson learned: this was a near miss. The casualty could have been far more severe than the onset of cracks—i.e., ship sinking with loss of life.

If the casualty had led to personal injury or death, besides civil (monetary) damages, there may have been criminal charges, resulting in imprisonment of persons who knowingly constructed a vessel that was unsuitable for the announced intended service. This vessel should never have been constructed in the manner it was. The shipyard should have considered far more than the immediate financial benefit of constructing the vessel; they should have considered possible personal injury or loss of life, as well as possible imprisonment of some of its personnel, inasmuch as it was known to be an unsuitable design unless modified.

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# What Does “Approval” Mean?

## Multiple levels of approvals may be confusing



Many technical specifications for ship repair and construction require that the shipyard submit to the ship owner reports, equipment selection choices, or drawings showing proposed installations, for which the shipyard is to receive the owner's approval before proceeding. The owner's approval is usually construed to mean that the shipyard can proceed as suggested by the shipyard. However, there are other 'approvals' involved in the ship repair or construction processes, usually from classification and/or regulatory authorities, as well as possibly from technical specialists. When 'approval' is

When a regulatory authority approves a drawing, or equipment installation, it means only that there is no immediately apparent inconsistency with the applicable regulations. It is not a guarantee of safety or seaworthiness. Further, it is not a guarantee that a regulatory violation or inconsistency will not be found later upon closer review. Regulatory approvals do not substitute for approvals by any other party, and certainly not a contractually required approval from a ship owner.

When a drawing receives approval from classification, it is a representation that the contents and depictions communicated by the drawing reasonably comply with classification's own interpretation of its own rules. Subject to further review by classification's on-site surveyor, the incorporation into the vessel of the features conveyed by the drawing will be acceptable for issuance of a certificate of classification. When equipment selection or workmanship is approved by classification, it has the same significance stemming solely from classification's own perspectives. Certainly these classification approvals do not carry or even imply approval by the ship owner, although obtaining classification approvals is a necessary part of the shipyard's workscope.

When a coatings manufacturer's technical representative approves the conditions for application of coatings, the approval serves only to activate the warranty given by the coating manufacturer. The same is true of technical representatives of equipment manufacturers: their approval of installation means only that the manufacturer's warranty is activated—the equipment has been installed in a proper manner.

But a ship owner's role in ship construction, conversion or repair is not as narrowly focused as are the roles of regulators, classification or manufacturer's representatives.

Typically, through the contract, the ship owner has required the contractor (shipyard) to obtain the approvals of representative of certain other organizations as previously described. Inasmuch as the ship owner is the party that has required the

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### LESSON LEARNED #42: Identify all project participants in advance

The owner of an offshore construction support vessel, operationally limited to coastal waters, had already contracted to have additional equipment placed aboard the vessel to serve the needs of the new charterer. Subsequently, the classification organization advised the owner that the equipment changes implied that the vessel would be used in world-wide service, not in coastal waters only. Therefore, to remain in class, the vessel had to undergo substantial additional modifications to be suitable for such worldwide service. The planned one-month modification then became a very costly nine-month conversion.

**The lesson learned:** Project planning should include reviews from all stakeholders and agencies from which approvals are needed, not from only the parties that have financial participation.

used for multiple purposes, there may be confusion as to what it means. At the end of this article, a recommendation is made; but first, here some discussion about the use of 'approval.'

About the 'Lessons Learned' — The brief synopses of lessons learned included in this issue are adapted from analyses presented by participants in the regularly offered training course "Contract Management for Ship Construction, Repair and Design." (Please see back page for list of 2012 training programs.) Lessons Learned numbers 1–33 are based on some of Fisher Maritime's project management assignments, and can be found at: <http://www.fishermaritime.com/Publications/PDF/FisherProjectInsights.pdf>. Other lessons learned (34 - 40) are found in the Fall 2010 and Summer 2011 editions of Upright and Afloat in the Publications section of our website: [www.fishermaritime.com](http://www.fishermaritime.com).

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intended use of such second categories of ‘guidance’, reference’ or ‘information’ plans that are listed in the contract documents. **The wide variation of possible intended uses of that category of plans raises questions that should have been explicitly addressed during contract formation.**

(1) Is the Contractor is expected to achieve full compliance with the Guidance Plans unless there is an interference between a component shown on the Contract Plans and one shown on the second category plans?

(2) Can the Contractor rely on the accuracy and/or completeness of those second-category plans and use them without alteration for the construction or conversion?

(3) Can the Contractor rely on those second category plans being entirely consistent with the Contract Plans and Contract Specifications?

(4) If used for a ship conversion or repair, can the Contractor rely on those second category plans being consistent with the actual arrangement and condition of the vessel?

(5) Does the Contractor have to receive permission from the Owner to vary from the second category plans?...and if so, is a formal Change Order necessary?

(6) If it is necessary to vary from the second category plans in order to remain consistent with the Contract Plans and Contract Specifications, which party has responsibility to analyze, understand and take responsibility for the operational consequences of the necessary variations?

Those are some, but not all of the possible interpretations of the intended use of second category plans that are listed in the contract documents. The wide variation of the intended use of second category plans raises questions that need to be addressed when the intended use is not explicitly stated. These problems are generally avoidable if the contract documents describe, in plain and simple words, how the Contractor is to use the plans in that second list, and how that usage is different from the use of the Contract Plans.▲

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shipyard to obtain those approvals, a perception may have been created that a ship owner’s approval of a particular item is superior to, or in place of, the approval of one of the other organizations, such as classification, regulatory or manufacturers’ technical representatives.

### Approvals of the Owner Do Not Substitute for Other Approvals Required by the Contract

That is, the approval of anything by a ship owner could easily (though improperly) be construed to mean that the owner considers the approval of the item to be in place of, or superior to, approvals by any other organization. It could be (and unfortunately has been) interpreted to substitute for approvals by other organizations. This is not the intent of owner’s approvals. The owner does not intend that its approvals are a substitute for any other approvals required by the contract.

Overall, then, it is realized that approvals are being obtained from the representatives of organizations that did not sign the contract with the shipyard, but whose approvals are a necessary part of the contract workscope. Thus, to avoid misunderstandings, the word approval should be associated only with those secondary organizations.

In order to avoid having any party improperly construe a ship owner’s approval to be in place of another organization’s approval, an alternate word is suggested: acceptance. That is, when (for example) the shipyard has to select an item of equipment, the specifications could state that it has to be ‘accepted’ by the ship owner. Similar word substitution of ‘acceptance’ for ‘approval’ could be made throughout the contract documents and specifications whenever it is originating with the ship owner. This word substitution eliminates the inadvertent substitution of actions by a ship owner for the actions of a secondary organization.▲

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### *The Management of Shipyard Projects*

Any project at a shipyard is certain to involve a complex relationship between the Owner's and Yard's organizations, as well as multiple supporting organizations. Cost controls, schedule impacts, changes, unexpected conditions aboard the vessel, engineering problems, and supplier delays, among many other factors, create a very challenging situation for all parties. To obtain more insights into the management of these many types of problems, consider reading the on-line articles and papers that are available at the Publications section of the Fisher Maritime website: [www.fisher-maritime.com](http://www.fisher-maritime.com)

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