

The Authority of a Ship Owner's Representative

During the performance of a project at a shipyard, the vessel owner's team is likely to be called upon to make decisions in at least four areas: (a) technical content and workscope, including optional and necessary changes to the workscope; (b) project schedule; (c) project cost including timing of progress payments; and (d) legal issues. The extent to which the owner's on-site project team has the authority to make such decisions in each of those four areas varies considerably within the industry.

Often, some decisions are needed in a relatively short time in order to keep the project running more-or-less smoothly. This is especially relevant for ship repair and conversion. Some other decisions are not time critical until the project is about to be concluded. The maritime industry has experienced a wide variation of the assignment of those responsibilities to the on-site staff by the vessel's owner's senior management.

Many government contracts are subject to bifurcated project management in order to comply with the applicable government procurement regulations. Some government organizations allow the on-site technical staff to make only technical and schedule decisions, but the cost negotiations and cost decision-making are made by a separate set of contract specialists. A variation on that is to allow the government's on-site technical team the authority to make cost decisions that do not exceed a pre-defined limit.

In contrast to that arrangement, many commercial organizations give the owner's on-site team the authority to make all decisions that do not affect the project schedule or project cost more than some ill-defined limits.

Of course, there are many other variations of the type and extent of authority given to the owner's on-site team. For example, typically for naval combatant vessels, technical decisions affecting what that navy considers "configuration management" can be made only by the home office

naval engineering staff; not by any on-site staff.

The assignment of the scope of authority that is given to a vessel owner's on-site staff has to be clearly communicated to that staff prior to the commencement of a shipyard project. The persons being assigned to that role should ensure that there is a clear understanding of any limits on their authority before they get to the shipyard to commence oversight of the project. The shipyard that is accomplishing the project would also be wise to inquire about the on-site staff's authority in order

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LESSON LEARNED #58: The Timing of Owner-Furnished Information

The contract for construction of a large, twin-screw, special purpose vessel provided for an owner-supplied spectacle frame (to support external portions of the propeller shafts). The frame was scheduled for delivery via barge, but the shipbuilder stated that it could not accept delivery until lifting calculations and finite element strength analyses were provided to ensure compatibility with the rest of the vessel's structure. The necessity of receiving those calculations in advance had not been addressed in any contract correspondence, causing the vessel owner to have failed to timely procure those calculations from the designers and builders of the spectacle frame. The frame's delivery voyage was delayed with unavoidable costs being incurred.

The lesson learned: When there will be large items of owner-furnished equipment or materials, the parties should negotiate the delivery dates of the associated information (OFI) as well as the separate dates for delivery of the equipment.



A newsletter
for the Maritime
Industries from:



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Project Managers



We appreciate your
comments. You can
reach us at:

800 732 3476
+1 973 660 1116
Fax: +1 973 660 1144

e-mail:
email@fishermaritime.com
www.fishermaritime.com

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to understand the expected durations of decisions when needed.

During a project, it is typical for a shipyard to submit inspection-condition reports to the owner as defined by the contract. At times, the shipyard also requests change orders to address unexpected conditions aboard the vessel or delays in receipt of owner-furnished equipment. From the outset of a project, the shipyard needs to know what turn-around times from the owner (in the form of notices to proceed) it

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can rely on in response to those shipyard submittals. Those times are often identified within the contract or negotiated at the project kick-off meetings. When dealing with government organizations, however, it is common to see the owner (i.e., governmental organization) unable to achieve timely turn-arounds due to the need to get approvals from multiple sub-organizations.

Some vessel owner's appoint an independent project manager to oversee the project at the shipyard, with that appointed project manager requesting changes and amendments to the workscope as needed. However, as a negotiating mechanism, when it comes time for the shipyard to get paid, the owner's organization states that it never authorized the appointed project manager to request that extra workscope. This places the shipyard in a challenging position when it comes time to get final payment. Shipyards can address that commercial risk in advance by getting the contract to clearly state that the owner's organization will bear all responsibility to pay for work that is requested in writing by the independent project manager appointed by the owner's organization.

The many variations of decision-making authority that a vessel owner's on-site team may have indicates that there is no industry standard that can be cited as the expected basis of assignment of authority for content or timing. Any assumptions made by either the owner's on-site staff or by the shipyard as to the assignment of such authority constitutes a risk of misunderstanding that may later affect project execution or payment. For these reasons, among others, it is best practice to minimize business and technical risks by having these matters addressed in writing prior to commencement of the project work.▲

LESSON LEARNED #59:

Optimism is not a well-defined plan

A naval order for 10 gunboats that would be delivered over a period of about five years required that all the vessels have common components to ensure consistency of training, maintenance and spares inventory. However, after the fuel system components had been delivered for the fourth boat, the system's manufacturer was dissolved in bankruptcy, necessitating the use of components from a replacement supplier because the intellectual property (design) of the first manufacturer was not available to the government. The ministry of defence decided to retrofit the first four boats with the replacement manufacturer's system to restore commonality of training, maintenance and spares for all ten vessels. Thereafter, the ministry determined, they would place orders for smaller groups of vessels, and build into the supply contracts the requirement that in the event of supplier bankruptcy all engineering information (intellectual property) would be owned by the government and would be transmitted to the government.

The lesson learned: For long duration, multi-vessel projects, project planners should consider including contractually-supported mechanisms for supply contingencies and/or intellectual property rights in the event of commercial failures of suppliers of key components.

LESSON LEARNED #60:

Incomplete Compatibility of Construction Rules

A naval vessel was to be constructed in compliance with both naval construction rules and a classification organization's rules. The specifications stated that the watertight doors were to be type-approved by the classification organization. What was expected to be a fairly routine acquisition of watertight doors became a costly and lengthy process due to the fact that no manufacturer's doors had yet been type-approved by that classification organization for a naval vessel. The process of getting a manufacturer's doors type-approved but satisfying naval rules had to be accomplished with significant fees being paid to the classification organization to undertake and accomplish that process. Project delays were also incurred during that process.

The lesson learned: Vessel construction requiring concurrent compliance with naval and classification vessel construction rules is still evolving. Until that process is demonstrated to be 'mature', almost routine, it has to be expected that in a construction project, there will be multiple instances of incompatibilities between the two sets of rules or approvals. Further, since a contractor is allowed to rely on the implicit representation that all the 'bits and pieces' of the owner's bid package are compatible with all the other bits and pieces, the owner becomes responsible for the consequences of any such inconsistencies.

Casualty Analyses and Expert Witness Testimony



Fisher Maritime routinely prepares maritime casualty analyses and provides the expert witness services to present them to courts. These are additional to Fisher Maritime's analyses of situations and claims pertaining to ship construction, repair and design.

The casualty analyses cover the range of vessel capsizing or sinking, vessel collisions, navigation errors, boating accidents, and equipment failures, among other underlying causes. Each year we provide numerous expert reports analyzing the underlying factors and causes of the accidents, whether they are design issues, operational errors, equipment maintenance, or safety management issues. Fisher Maritime has presented forensic analyses in connection with maritime claims involving all types of vessels, including commercial, offshore, naval, megayachts, and recreational.

Our consultants rarely have to testify in court, inasmuch as the cases resolve or settle shortly after our reports are disseminated to the involved parties. The consistent basis of those analyses is the application of proven engineering, operational management and safety procedures, coupled with the insights and experience of the analysts.

Recent examples include:

- (a) structural failure of a barge while being towed;
- (b) breach of bulk carrier hull by a rudder that had fallen off another vessel;
- (c) injuries stemming from failure to comply with applicable regulations and to observe industry custom and practice;
- (d) loss of vessel at sea due to improper loading of cargo; and
- (e) severe personal injury due to inadequate design of recreational boat hull form.

Additional examples are described on our website, <http://fisher-maritime.com/samplecases.html>.



**FISHER
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*Consulting Naval Architects and
Marine Engineers, Project Managers*

147 Columbia Turnpike, Suite 203,
Florham Park, NJ 07932 USA
www.fisher-maritime.com
email@fisher-maritime.com
+1 973 660 1116 or 800 732 3476
Fax. +1 973 660 1144

On-Site Contract Management Training Course Enhancing Professional Management Capabilities for Shipyard Projects

Dr. Kenneth Fisher's very well-attended training course, *Contract Management for Ship Construction, Repair and Design*, can be presented at your organization's facility for a low fixed fee. Already the program has been presented on-site over 230 times in 18 countries, in addition to another 170 open-registration presentations. About 5,000 persons from 27 countries have benefitted from this course. A description of the course that is certain to enhance the professional management capabilities of persons associated with shipyard projects is available at www.shipcontractmanagement.com.

If your organization has seven or more persons whose professional capabilities could benefit from such training, it is cost-effective to bring the program to you, instead of having those persons travel to a distant open-registration program. For details and information, send an inquiry to: register@fisher-maritime.com. (Can you identify these 18 countries in which the course has been presented? Hint: these are internet domain identifiers. AU, CA, DE, ES, GR, HK, HR, MY, NL, NO, NZ, PA, PL, PT, SE, SG, UK, and US.)▲

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a newsletter for
the Maritime Industry
Late 2015



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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

2016 Essential Management Training Programs

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FISHER MARITIME has been offering these popular training programs since 1988, both of which are scheduled for open-registration in 2016 on the dates and locations shown below.

Outlines of the programs can be viewed on our website, www.fisher-maritime.com, or you may call to request a detailed brochure via fax or mail. Each of the programs can be presented on-site at your organization's facility for seven or more per-

sons at less cost than sending your staff to an open-registration presentation. Almost 150 organizations in 17 countries have had these programs presented on an in-house basis 230 times over the past 27 years. To receive details for arranging an on-site presentation of any of the programs listed below, contact us: tel. 800-732-3476 or 973-660-1116, fax 973-660-1144, email: email@fisher-maritime.com. Program Details can be seen at:

www.fisher-maritime.com/projecttraining/projecttraining.html

Contract and Change Management for Ship Construction, Repair and Design. This 3-day course is designed for all members of the contract management team for ship owners, shipyards, design firms, vendors, subcontractors, regulatory agencies, whether commercial or government. Senior and middle management of all those types of organizations benefit from the "lessons learned" approach to managing all contractual commitments.

London, UK	Wed.-Fri.	Apr. 27-29, 2016
Philadelphia, PA, USA	Tues.-Thurs.	June 14-16, 2016
Seattle, WA, USA	Tues.-Thurs.	Aug. 9-11, 2016
London, UK	Wed.-Fri.	Nov. 2-4, 2016
Tampa, FL, USA	Tues.-Thurs.	Dec. 6-8, 2016

The Port Engineer's and Owner's Representative's Course. This 3-day course is designed for shipowner's personnel who prepare specifications, who accompany the ship to the shipyard, and who arrange for new/growth/change work during contract performance. This course helps assure getting maximum value for money spent.

Portland, OR, USA	Tues.-Thurs.	May 17-19, 2016
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Shipyard Management of the Customer and Contract. This 2-day course for project managers, production supervisors, estimators and planners is the only training program specifically developed for mid-level managers of shipyards and subcontractors. Presented in-house only. Contact Fisher Maritime for details.