

Who's "By Others"?

By Ronald L. Geren, AIA, CSI, CCS, CCCA, SCIP

A curtain wall subcontractor, in preparing his bid, is reviewing a set of procurement documents for the curtain wall work. As he reviews the drawings, he notices that in curtain wall details the sealant joint between the curtain wall frame and the adjacent wall construction is noted as "By Others." Thinking it is not part of his scope of work, he does not include the sealant joint in his bid.

Unbeknownst to the curtain wall subcontractor, a metal wall panel subcontractor is reviewing the same procurement documents for the scope of the exterior metal wall panel work. The metal wall panel details also indicate that the joints between the panels and adjacent construction are "By Others." So, without thinking about it any further, he excludes the sealant joint from his bid.

Months later, when the building is well under construction, the two subcontractors meet on the project site to install their respective portions of the work, only to leave the joint between the two systems vacant of any sealant. The architect, during one of his site visits, notices the missing sealant and brings it to the attention of the contractor. The contractor contacts the curtain wall subcontractor, who quickly informs him that it is not part of his work. The contractor then takes the issue to the metal wall panel subcontractor, who gives the contractor a nearly identical response.

After the two subcontractors point out to the contractor the note on the drawings, the contractor, unwilling to cover the cost of the sealant joints, files a claim with the owner for compensation to cover the cost of installing the necessary joint sealant on the basis that in the notations, the joint sealant was not part of their contract. Thus the finger pointing begins. What is the resolution of this quandary? Who knows...

This is just an example, a minor one at that, of what can happen when drawings are not properly notated. A similar situation involving more complex building components or systems could lead to a very serious problem on a project.

When a problem such as this arises, there may be several ways to approach it. Depending on the working

relationship and personalities of the parties involved, the cost may be shared by everyone concerned, the owner may decide to cover the cost entirely, or the owner may reject the claim. In the latter case, the issue may move into mediation, arbitration, or possibly into court.

The use of the note "By Others" in construction documents could easily be considered ambiguous (Is it meant to identify work performed by another contractor hired by the owner?). It may boil down to intent, but when intent cannot be clearly identified, court decisions on ambiguous contract requirements usually go against the preparer of the contract.

The owner, being one of the two parties of a construction contract, is typically responsible for hiring the design professional who prepared the contract drawings and specifications. Therefore, the owner may be found liable for the consequences of the ambiguous language. The owner, through separate action, may decide to seek recovery from the design professional.

Going back to intent, the use of "By Others" on construction drawings is generally meant to identify work of another *subcontractor* under the same contract, and not work by another contractor under a separate contract. However, as innocuous as the note may seem, it violates one of the key principles of preparing construction documents: Do not assign portions of the work to specific subcontractors.

In regard to construction specifications, the Construction Specifications Institute's (CSI) *Project Resource Manual* (PRM) states:

Specifications address the contractor. A section does not necessarily relate to the work accomplished by a single subcontractor. It is not the intent of the specifications to define the work of individual trades. Each contractor will divide the work differently among subcontractors. The contractor executes an agreement with the owner to construct the project. Responsibility for construction remains with the contractor regardless of how the work is divided among subcontractors and suppliers.

Further, CSI's *Uniform Drawing System*, which is a component of the *U.S. National CAD Standard*, makes specific reference to the use of notations to assign subcontractor work:

Drawing notes, as part of the contract documents, have important legal consequences. Just as in creating a specification section, care must be taken to en-

sure that drawing notes do not establish a subdivision of the work; assign portions of the work to subcontractors; or create unintended obligations between the parties to the design and construction of the work.

Although the use of “By Others” does not directly assign the work to a particular subcontractor, it does have the appearance of assigning the work to someone other than the contractor or the subcontractor assigned the major portion of the work indicated in the drawing that utilized the “By Others” notation.

This all leads up to the point that the contract documents should clearly indicate *what* work is included in the contract and should not attempt to identify *who* is to provide the work beyond the contractor. When the contractor signs the agreement, he is agreeing to comply with all of the contract requirements, regardless of how he assigns the work. Additionally, most general conditions of construction contracts place the responsibility for means and methods in the lap of the contractor.

Sometimes it may be necessary to identify on the construction drawings pieces of equipment or building elements that are not part of the contract, but, when included, improve the readability and understanding of the drawings. Generally, items such as these will be provided by the owner’s other contractors, by purchase contracts, or by means unknown at the time of contract preparation. If indicated on the drawings, they should be clearly marked as items not in the contract.

One of the reasons “By Others” appears on construction drawings and in construction specifications is that manufacturers routinely use the phrase on their product drawings (See Figure 1) and in their guide specifications (See Figure 2) to identify work that is not provided as a part of the installation of their product. Thus, when design professionals use these drawings and specifications in preparing construction documents, they will either inadvertently, or intentionally, use the same notations and specification text that the manufacturer used.

It is not wise to utilize manufacturer-provided information blindly. Design professionals should closely examine the information before inserting drawings or specifications in order to tailor them for the specific project. For example, the sill detail in Figure 1 should either indicate grout or not. If the design professional wants the grout, the notation should state, “Grout between sill and finished floor.” For the specification in

Figure 2, the offending sentence should be deleted entirely.

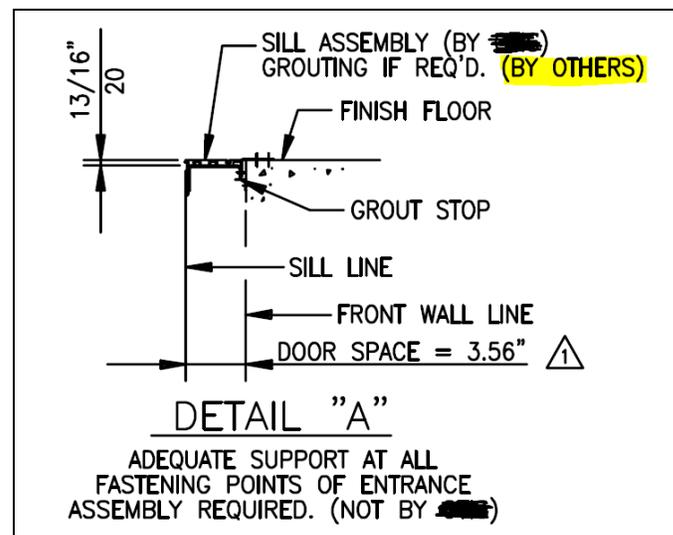


Figure 1 - Manufacturer's drawing using "By Others" in the notations.

2.02 DOORS AND FRAMES

A. Requirements for all doors and frames.

1. General: All door and frame sections shall be chemically welded at factory or knockdown (KD) type for site assembly.
2. Reinforcing: FRP chemically welded at factory. All structural members shall utilize a chemically resistant UV stabilized resin system.
3. Hardware Preparation: In accordance with DHI A115 Series, or as indicated on drawings. All door stiles shall have integral FRP reinforcement, chemically welded in place, and shall not contain corrosive material embedded as reinforcing for hinge locations. Doors & frames shall be factory drilled and mortised for all hardware indicated on drawings. **Hardware provided by others.** See Specification Section 087100- Door Hardware.
4. Finish: Factory primed, for field finishing or factory finished with manufactures standard color. Custom color available as an option.

Figure 2 - Portion of a manufacturer's guide specification using "By Others" in the requirements.

The four C's of effective communication—Clear, Concise, Correct, and Complete—have been the mantra of CSI for many years. “Clear” is aptly listed first in a position of prominence; for without clear construction documents, it would be very difficult for any reader to interpret the contents, even if they were concise, correct, and complete.

So the next time you have the urge to use “By Others” on drawings or in specifications, think of this: what would your reaction be if your design services agreement with the owner stated that payments on your invoices will be “By Others”?

To comment on this article, suggest other topics, or submit a question regarding specifications or construction documents in general, contact the author at ron@specsandcodes.com.

About the Author: Ronald L. Geren, AIA, CSI, CCS, CCCA, SCIP, is a Certified Construction Specifier, and is the principal of RLGA Technical Services located in Scottsdale, Arizona, which provides specifications and code consulting services to architects, engineers, owners, and product manufacturers. A 1984 graduate of the University of Arizona, Ron has over 26 years of experience with military, public, and private agencies.