A valued client has asked your firm to take over for another design professional on a project in the design phase. What do you do? The very thought of supplanting (replacing another design professional) is more than enough for some firms to immediately, and without reservation, say no. Other design professionals may, however, find supplanting an opportunity worth exploring. Answering these questions will help decide whether to jump in with both feet or stay on the sidelines.

Why Does the Owner Want to Make a Change?
Being pulled into a dispute between a project owner and another design professional is never a good thing. Fee disputes, personality clashes, philosophic differences, illness and firms that are no longer in business are all plausible reasons for a parting of company. Some terminations are amicable and some are not. Be careful. Don’t expose your firm to a project with preexisting problems. Do your homework and make an informed decision. Design and construction is challenging enough without inheriting someone else’s headaches.

What Are the Risks?
Supplanting another design professional places you in the role of the designer of record. You will assume all the risks, duties and responsibilities that come with any project, but with the added complexity of reviewing and managing the previous designer’s work product going forward. While contractual protection may be of value, don’t expect the client to be overly willing to give you a free pass. It is likely that the client has already agreed to indemnify the terminated designer in return for using the design. There is no problem in asking but don’t count on any meaningful concessions.

What About Subconsultants?
Be prepared to negotiate agreements with subconsultants that were contracted with the former design professional. Clearly articulate that there will likely be design changes that will impact their fee structure. Address all outstanding subconsultant fee and schedule issues in negotiating your agreement with the client.

What Should the Fee Be?
Clients pay a significant price when they replace a design professional in terms of both time and money. The project schedule is derailed, construction costs escalate and design budgets are blown. When developing the fee structure don’t use the client’s remaining design budget as the target to hit. Learning curve and document review costs, alone, will drive your fees higher. Consider time and materials (T&M) fee that brings the design to completion for the current design phase. For example if the design is in the design development phase use T&M through client approval and then shift to an agreed upon fixed fee for the remainder of the design and construction phase services.
What Are the Copyright Implications?
Don’t take copyright issues lightly. Make sure you understand and comply with all restrictions that apply to using the terminated design professional’s design. Address copyright issues in your agreements with the client and subconsultants. Seek written confirmation from the terminated design professional that there is complete agreement on all copyright issues and rely on legal counsel skilled in copyright law to make sure all the i’s are dotted and t’s are crossed.

What Are My Legal Responsibilities?
You should seek guidance from your professional licensing board to make sure that you are complying with state regulations that govern your profession. Responsible design supervision and the protocol for using the instruments of services of the prior design professional are two issues that board regulations are likely to address. The Missouri Board for Architects, Engineers and land Surveyors provide an example of what can be expected:

20 CSR 2030-13.010
IMMEDIATE PERSONAL SUPERVISION
PURPOSE: This rule defines what shall be considered immediate personal supervision for architects, professional engineers and landscape architects.

(1) Specifications, drawings, reports, engineering surveys or other documents will be deemed to have been prepared under the immediate personal supervision of an individual licensed with the board only when the following circumstances exist:

(D) In circumstances where a licensee in responsible charge of the work is unavailable to complete the work, or the work is a site adaptation of a standard design drawing, or the work is a design drawing signed and sealed by an out-of-jurisdiction licensee, a successor licensee may take responsible charge by performing all professional services to include developing a complete design file with work or design criteria, calculations, code research, and any necessary and appropriate changes to the work. The non-professional services, such as drafting, need not be redone by the successor licensee but must clearly and accurately reflect the successor licensee’s work. The burden is on the successor licensee to show such compliance. The successor licensee shall have control of and responsibility for the work product and the signed and sealed originals of all documents.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION Division 2030—Missouri Board for Architects, Professional Engineers, Professional Land Surveyors, and Landscape Architects Chapter 13—Supervision

What Are My Professional Responsibilities
Professional organizations have also published rules of conduct to help guide design professionals when supplanting another design professional:

THE NATIONAL COUNCIL OF ARCHITECTURAL REGISTRATION BOARD (NCARB)

5.2 An architect may sign and seal technical submissions only if the technical submissions were: (i) prepared by the architect; (ii) prepared by persons under the architect’s responsible control; (iii) prepared by another architect registered in the same jurisdiction if the signing and sealing architect has reviewed the other architect’s work and either has coordinated the preparation of the work or has integrated the work into his/her own technical submissions; or (iv) prepared by another architect registered in any United States jurisdiction and holding the certification issued by the National Council of Architectural Registration Board if (a) the signing and sealing architect has reviewed the other architect’s work and
NSPE Position Statement No. 1745 — Responsible Charge
ADOPTED: April 2005
LATEST REVISION: July 2010
NSPE CONTACT: NSPE Board of Directors

In matters involving engineering services and engineering services providers, it is the position of NSPE that the public health, safety, and welfare is best served by having qualified licensed professional engineers in “responsible charge” of the engineering services.

For purposes of this statement the term “responsible charge” means that degree of control an engineer is required to exercise over engineering decisions made personally or by others over which the engineer provides supervisory direction and control authority. In making and approving engineering decisions, the engineer should be physically present or, if not physically present, be available in a reasonable period of time, either personally or through the use of electronic communication devices. Responsible charge and direct supervision are not satisfied with drawing or other document review after preparation without involvement in the design and development process as described above.

(Continued next page)

has integrated the work into his/her own technical submissions and (b) the other architect’s technical submissions are prototypical building documents. An architect may also sign and seal drawings, specifications, or other work which is not required by law to be prepared by an architect if the architect has reviewed such work and has integrated it into his/her own technical submissions. “Responsible control” shall be that amount of control over and detailed professional knowledge of the content of technical submissions during their preparation as is ordinarily exercised by a registered architect applying the required professional standard of care, including but not limited to an architect’s integration of information from manufacturers, suppliers, installers, the architect’s consultants, owners, contractors, or other sources the architect reasonably trusts that is incidental to and intended to be incorporated into the architect’s technical submissions if the architect has coordinated and reviewed such information. Other review, or review and correction, of technical submissions after they have been prepared by others does not constitute the exercise of responsible control because the reviewer has neither control over nor detailed professional knowledge of the content of such submissions throughout their preparation.

Rules of Conduct 2013-2014,
Rule 5 Professional Conduct

NATIONAL COUNCIL OF EXAMINERS FOR ENGINEERING AND SURVEYING (NCEES)

B. Licensee’s Obligation to Employer and Clients

2. Licensees shall not affix their signatures or seals to any plans or documents dealing with subject matter in which they lack competence, nor to any such plan or document not prepared under their responsible charge.

240.15 Rules of Professional Conduct
August 2013
Further:
1. An engineer in “responsible charge” should be capable of answering questions relevant to the engineering decisions made as part of the engineer’s professional services with such answers being in sufficient detail to demonstrate reasonable knowledge of and proficiency with those engineering issues related to the services provided.

2. An engineer in “responsible charge” should be completely in charge of, and satisfied with, the work product of the engineering services rendered. Additionally, an engineer in “responsible charge” should have and exercise the authority to review and to reject or approve both the engineering work in progress and the final work product.

3. An engineer in “responsible charge” should also have personal knowledge of the technical abilities of personnel doing the work and be satisfied the technical credentials of such personnel are suitable for the performance of the work.

4. By affixing one’s engineering seal to the product of one’s professional services, the engineer in “responsible charge” should be deemed to have exercised that degree of control and supervision described above and should accept full responsibility for the work product content.

IN 2010, THE NSPE UPDATED ITS POSITION ON “RESPONSIBLE CHARGE.”

See Side Bar.

Supplanting another design professional involves legal, copyright, state licensing and professional conduct issues that most designers rarely, if ever, encounter. Your duty to be in “responsible control/charge” of the design is critically important. When asked to replace another design professional do your homework. Ask the questions that will allow you to make the right decision for your firm. It’s a good idea to know how deep the water is before you jump in.

NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS (NSPE)

II. Rules of Practice NSPE

2. Engineers shall perform services only in the areas of their competence

b. Engineers shall not affix their signatures to any plans or documents dealing with subject matter in which they lack competence, nor to any plan or document not prepared under their direction and control.

NSPE Code of Ethics for Engineers 2007