RESPONSIBILITY FOR
DEFECTIVE PLANS AND SPECIFICATIONS

Background: In the 1907 Texas Supreme Court case, *Lonergan v. San Antonio Loan & Trust*, the court held that it was the responsibility of Lonergan, the builder, to reconstruct a collapsed building even though the collapse was due to a fatal defect in the design plans and specifications prepared by the architect of the owner and provided to Lonergan by the owner, San Antonio Loan & Trust. In the 2012 Texas Supreme Court case, *El Paso Field Services v. Mastec*, the court reaffirmed its decision in *Lonergan*.

In 1918, the U.S. Supreme Court ruled on a question similar to the *Lonergan* case in *United States v. Spearin* and came to a different conclusion holding that it is not the builder's responsibility to determine the sufficiency of plans and specifications provided to it by the project owner. Since that ruling, 36 states and the District of Columbia follow the *Spearin* decision, not holding the builder liable for defective plans and specifications provided to it.

Problem: In Texas, while it seems reasonable for a builder to rely on plans, specifications, and other documents provided to the builder, if the work is defective due to an error in the plans and specifications, the builder bears the risk of liability for the defective work. This liability gets passed via contract to the subcontractors. Typical insurance does not cover this obligation and the possible loss may well exceed a company's net worth. Thus, a builder may not legally prepare design documents that a licensed professional is required to design; however, in accordance with the *Lonergan* doctrine, the builder impliedly warranties those documents.

Solution: A builder should not be responsible for the consequences of defects in, and should not be required to warranty the accuracy, adequacy, sufficiency, or suitability of, plans, specifications, or other design or bid documents provided to the builder by the person with whom the builder has entered into a construction contract.