



Documenting Changes

HIGHLIGHTS OF THE AIA DOCUMENTS CHANGES

IN OCTOBER 2007, the American Institute of Architects (AIA) released revisions to its Contract Documents templates. The AIA previously updated the documents in 1997. You should be aware of five areas of significant changes made to A201—General Conditions of the Contract for Construction.

Arbitration and consolidation

The new AIA forms no longer require mandatory arbitration. While mandatory mediation remains the first step in dispute resolution, the parties to a contract now have an election to make regarding arbitration. The parties may select from arbitration, litigation or other. If the parties make no selection, the default method is litigation.

In addition, the 2007 documents permit and expand the ability to consolidate arbitrations. In order to consolidate arbitrations under the new contract terms, all contracts involved must allow consolidation, all arbitrations to be consolidated must involve common issues of fact or law, and the arbitration provisions must provide procedural rules that are materially similar. If all parties on a project are using the standard AIA 2007 forms, all three requirements for arbitration consolidation will be satisfied.

Time limit on claims

In order to limit the liability of contractors from continuing indefinitely, AIA contracts have previously dictated a statute of limitations. Under the older versions of these documents, the clock would start to tick upon substantial completion, final completion or the date warranty work was completed. This approach resulted in some claims being barred before they even occurred. In order to compromise, the 2007 documents have been modified to provide that the time limits for commencing claims are determined by the applicable state statute of limitations law, but in no

event can a claim be brought more than 10 years after the date of substantial completion of the project.

Consequential damages

Despite being a much-debated provision, the mutual waiver of consequential damages remains in the newly revised contracts. The only minor modification was the removal of the word “despite,” because it was confusing and awkward. The meaning and impact of the waiver remains intact.

Additional insured provisions

The older versions of the insurance provision requirements documents required parties to purchase a special project-specific insurance policy in order to protect the contractor from claims for property damage, bodily injury and even death. The 2007 documents have been modified to require the parties to name each other as additional insureds under certain policies. This modification to insurance provisions supports the enforcement of indemnification provisions already established in the contract and matches current business practices.

Financial information

Requests to view an owner’s financial information now are limited to situations where the owner fails to make payments to the contractor in accordance with the contract, there are change orders that materially alter the total contract price,

or the contractor reasonably identifies—in writing—concerns about the owner’s ability to make payment in accordance with the contract. If an owner fails to provide financial information to the contractor, the contractor retains the right to stop work.

Owners have a right to request certain financial information from contractors regarding payment to subcontractors or materials or equipment suppliers. In the event the contractor fails to provide such information, owners have the right to directly contact any subcontractor or material or equipment suppliers to determine if they have been paid. If the owner determines that the subcontractor, material or equipment supplier has not been paid, the owner may issue joint checks to the contractor and to any subcontractor or material or equipment supplier to ensure payment.

The basic framework and responsibilities of the parties’ overall rights and obligations under the AIA contracts remain the same. On the fringes of this basic framework, substantial changes can be seen in such areas as financial information review rights and dispute resolution avenues. It is important to note that a group broke away from the AIA discussions to draft and release a set of competing contract forms. Therefore, it has yet to be determined whether the 2007 versions of the AIA documents will be as widely accepted and used in the industry as previous editions. ■

This article is not intended to provide specific legal advice but instead as general commentary regarding legal matters. You should consult with an attorney regarding your legal issues, as the advice you may receive will depend upon your facts and the laws of your jurisdiction.

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