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November 14, 2007

The AIA Releases 2007 Editions of Its Construction Contract Forms Amid Competition from Upstart "ConsensusDOCS" Forms.

For the first time in a decade, the American Institute of Architects ("AIA") revised several of the key standard forms of contract it publishes for use on construction projects. The various AIA forms are widely used as the starting point for negotiating the terms of contracts between various project participants. The AIA last revised its key documents in 1997.

For project Owners and Prime Contractors, two important documents are the A101 lump sum "Standard Form of Agreement Between Owner and Contractor", and the A201 "General Conditions of the Contract for Construction." This blog discusses a few of the many changes to new 2007 edition AIA forms A101 and A201. One is an abandonment of binding arbitration as the parties' default binding dispute resolution procedure. Unless the parties affirmatively select arbitration, litigation in court is the new default. A related change to the "Governing Law" section provides that, if the parties do affirmatively elect binding arbitration, the Federal Arbitration Act will govern the arbitration.

Several changes appear to benefit Subcontractors. The AIA added a requirement that the Prime Contractor pay its subcontractors within seven days of receiving payment from the Owner. There are new procedures allowing the Owner to issue joint checks to Subcontractors and directly communicate with them to assure they have been paid. Another change involves assignment of subcontracts to the Owner in the event the prime contract is terminated. It states the Owner assumes and remains legally responsible for obligations owed to a Subcontractor, even *after* the subcontract is further assigned by the Owner to the replacement Prime Contractor.

Important changes were also made to the insurance related sections of A101 and A201. Completed operations coverage is now required. Also, the Prime Contractor's commercial liability coverage must now name the Owner and Architect as additional insureds for certain claims arising during Prime Contractor's operations, and name the Owner as additional insured for certain claims arising during the Prime Contractor's completed operations. Gone now are the 1997 A201 provisions related to "Project Management Protective Liability Insurance." Other new revisions concern submittals, disputes, sharing digital information, concealed conditions, superintendents, requests for information ("RFIs"), claims, and the commencement of statutes of limitation.

Meanwhile, the AIA has a new competitor in the business of publishing standard forms of construction contracts. The competing set of forms, called "Consensus Docs", is the product of collaboration between several construction industry associations, including for example the Associated General Contractors ("AGC"). The ConsensusDOCS forms are touted as presenting a "better path forward" by "fairly and appropriately allocat[ing] risks to the Party in the position to manage and control the risk." Stay tuned for our upcoming comparison of the different

treatment given to some key construction issues as between the 2007 editions of the AIA and ConsensusDOCS forms.