



# AIA<sup>®</sup> Document A142<sup>™</sup> – 2004 Exhibit D

## *Determination of the Cost of the Work*

for the following PROJECT:  
(Name and location or address)

THE DESIGN-BUILDER:  
(Name, legal status and address)

THE CONTRACTOR:  
(Name, legal status and address)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

### ARTICLE D.1 CONTROL ESTIMATE

§ D.1.1 Where the Contract Sum is the Cost of the Work, plus the Contractor's Fee without a Guaranteed Maximum Price pursuant to Section 4.3 of the Agreement, the Contractor shall prepare and submit to the Design-Builder prior to the Contractor's first Application for Payment, in writing, a Control Estimate. The Control Estimate shall include the estimated Cost of the Work plus the Contractor's Fee. The Control Estimate shall be used to monitor actual costs.

§ D.1.2 The Control Estimate shall include

- .1 the documents enumerated in Article 8 of the Agreement, including all Addenda thereto and the Terms and Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Contractor in the preparation of the Control Estimate, including assumptions under Section D.1.4, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems and the Contractor's Fee; and
- .4 contingencies for further development of design and construction as required by Section D.1.4

§ D.1.3 The Contractor shall meet with the Design-Builder to review the Control Estimate. In the event that the Design-Builder discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Contractor, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Design-Builder, the Design-Builder shall acknowledge its acceptance in writing. The Design-Builder's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ D.1.4 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ D.1.5 The Contractor shall develop and implement a detailed system of cost control that will provide the Design-Builder with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Design-Builder, in writing, no later than the Contractor's first Application for Payment and shall be revised monthly or at other intervals as mutually agreed.

## ARTICLE D.2 COSTS TO BE REIMBURSED

### § D.2.1 Cost of the Work

The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with the prior consent of the Design-Builder. The Cost of the Work shall include only the items set forth in this Article D.2.

### § D.2.2 Labor Costs

§ D.2.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Design-Builder's approval, at off-site locations.

§ D.2.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Design-Builder's approval.

§ D.2.2.3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ D.2.2.4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections D.2.2.1 through D.2.2.3.

### § D.2.3 Subcontractor Costs

Payments made by the Contractor to Subcontractors in accordance with the requirements of their subcontracts.

### § D.2.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ D.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ D.2.4.2 Costs of materials described in the preceding Section D.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### § D.2.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ D.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Contractor at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Contractor. The basis for the cost of items previously used by the Contractor shall mean the fair market value.

§ D.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, whether rented from the Contractor or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Design-Builder's prior approval.

§ D.2.5.3 Costs of removal of debris from the site.

§ D.2.5.4 Cost of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ D.2.5.5 That portion of the reasonable expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work.

§ D.2.5.6 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Design-Builder.

#### § D.2.6 Design and Other Consulting Services

§ D.2.6.1 Compensation including fees and reimbursable expenses paid by the Contractor for design and other consulting services required by the Contract Documents.

#### § D.2.7 Miscellaneous Costs

§ D.2.7.1 That portion of insurance and bond premiums that can be directly attributed to this Contract.

§ D.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work.

§ D.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay.

§ D.2.7.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Contract Documents, and which do not fall within the scope of Section A.13.5.3.

§ D.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Design-Builder's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.18.1 of Exhibit A, Terms and Conditions, or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ D.2.7.6 Data processing costs related to the Work.

§ D.2.7.7 Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility to the Design-Builder as set forth in the Contract Documents.

§ D.2.7.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Design-Builder and Contractor, reasonably incurred by the Contractor in the performance of the Work and with the Design-Builder's prior written approval, which approval shall not be unreasonably withheld.

§ D.2.7.9 Expenses incurred in accordance with the Contractor's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, if approved by the Design-Builder.

#### § D.2.8 Other Costs and Emergencies

§ D.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Design-Builder.

§ D.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions.

§ D.2.8.3 Cost of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Contractor and only to the extent that the cost of repair or correction is not recoverable by the Contractor from insurance, sureties, Subcontractors or suppliers.

### ARTICLE D.3 COSTS NOT TO BE REIMBURSED

§ D.3.1 The Cost of the Work shall not include:

§ D.3.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Sections D.2.2.2 and D.2.2.3.

§ D.3.1.2 Expenses of the Contractor's principal office and offices other than the site office.

§ D.3.1.3 Overhead and general expenses, except as may be expressly included in Article D.2 of this Exhibit.

§ D.3.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

§ D.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section D.2.5.2.

§ D.3.1.6 Except as provided in Section D.2.8.3 of this Agreement, costs due to the negligence or failure of the Contractor to fulfill a specific responsibility of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ D.3.1.7 Any cost not specifically and expressly described in Article D.2, Costs to be Reimbursed.

§ D.3.1.8 Costs, other than costs included in Change Orders approved by the Design-Builder that would cause the Guaranteed Maximum Price, if any, to be exceeded.

#### ARTICLE D.4 DISCOUNTS, REBATES AND REFUNDS

§ D.4.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Design-Builder if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Design-Builder, or (2) the Design-Builder has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Design-Builder, and the Contractor shall make provisions so that they can be secured.

§ D.4.2 Amounts that accrue to the Design-Builder in accordance with the provisions of Section D.4.1 shall be credited to the Design-Builder as a deduction from the Cost of Work.

#### ARTICLE D.5 SUBCONTRACTS AND OTHER AGREEMENTS

§ D.5.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed by others under subcontracts or by other appropriate agreements with the Contractor. The Design-Builder may designate specific persons or entities from whom the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Design-Builder. The Design-Builder shall then determine which bids will be accepted. The Contractor shall not be required to subcontract with anyone to whom the Contractor has reasonable objection.

§ D.5.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Contract, and shall not be awarded on the basis of cost plus a fee without the Design-Builder's prior consent.

#### ARTICLE D.6 ACCOUNTING RECORDS

§ D.6.1 The Contractor or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Design-Builder. The Design-Builder and the Design-Builder's accountants shall be afforded access to, and shall be permitted to audit and copy, the Contractor's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ D.6.2 When the Contractor believes that all the Work required by this Agreement has been fully performed, the Contractor shall deliver to the Design-Builder's accountant a final accounting of the Cost of the Work.

§ D.6.3 The Design-Builder's accountants will review and report in writing on the Contractor's final accounting within 21 days after delivery of the final accounting. Based upon such Cost of the Work as the Design-Builder's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section A.9.10 of the Agreement have been met, the Design-Builder will, within seven days after receipt of the written report of the Design-Builder's accountants, notify the Contractor in writing of the Design-Builder's intention to make final payment or to withhold final payment.

§ D.6.4 If the Design-Builder's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to initiate resolution of the dispute pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, for the disputed amount. If the Contractor fails to so initiate resolution of the dispute within the period of time required by Section A.4.1.2 of Exhibit A, Terms and Conditions, the substantiated amount reported by the Design-Builder's accountants shall become binding on the Contractor. Pending a final resolution pursuant to Article 6 of the Agreement and Article A.4 of Exhibit A, Terms and Conditions, the Design-Builder shall pay the Contractor the amount, if any, determined by the Design-Builder's accountant to be due the Contractor.

§ D.6.5 If, subsequent to final payment and at the Design-Builder's request, the Contractor incurs costs in connection with the correction of defective or non-conforming work as described in Article D.2, Costs to be Reimbursed, and not excluded by Article D.3, Costs Not to be Reimbursed, the Design-Builder shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings as provided in Section 4.4.3.1 of the Agreement, the amount of such savings shall be recalculated and appropriate credit given to the Design-Builder in determining the net amount to be paid by the Design-Builder to the Contractor.

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