



BY SUSAN VAN BELL

The AIA Describes UPDATED AND EXPANDED DESIGN-BUILD DOCUMENTS FAMILY

IN 2014, THE American Institute of Architects (AIA) released revised versions of its 2004 Design-Build family of documents. Subsequently, the AIA expanded that family with a new residential design-build agreement and payment application forms for use in design-build projects.

Design-build is a process in which the owner contracts directly with one entity to provide both the design and construction of the project. The design-builder may be a design-build entity, an architect, construction contractor, real estate developer, or any person or entity legally permitted to do business as a design-builder in the jurisdiction where the project is located.

The AIA's design-build documents are flexible with respect to the type of entity that performs the design-build services. Along with the owner/design-builder agreement (A141™-2014), there is a design-builder/contractor agreement (A142™-2014) and a design-builder/architect agreement (B143™-2014), either of which may be used, depending on what services are performed by the design-builder. Other agreements in the 2014 design-build family include owner/consultant (C141™-2014), architect/consultant (C441™-2014), and contractor/subcontractor (A441™-2014) agreements. This article focuses primarily on the A141 owner/design-builder agreement.

The AIA made substantial changes in the 2014 design-build documents involving format and substance,

including incorporation of the general conditions into the prime agreement between the owner and the design-builder, an expanded exhibit for insurance and bonds, a sustainable projects exhibit, and a more robust design phase.

The 2004 owner/design-builder agreement only required the design-builder to provide minimal design documents prior to preparation of the construction documents. The 2014 owner/design-builder agreement sets forth a detailed process for the pre-construction phase of the project. This more robust process is intended to encourage owners to better consider their project requirements and to enhance collaboration between the owner and design-builder, early on in the process.

The 2014 owner/design-builder agreement requires the owner, upon engaging the design-builder, to provide owner's criteria, such as the owner's program, design requirements, and sustainable objectives. Once established, the owner's criteria become part of the design-build documents and can only be changed by mutual agreement in writing.

The design-builder prepares a preliminary evaluation of the owner's criteria, reviews it with the owner, and then develops a preliminary design. After the preliminary design is approved by the owner, the design-builder develops a proposal that includes the proposed contract sum and contract time. If the owner agrees to the proposal, the Design-Build

Amendment (Exhibit A) is executed. This includes a compensation section with check boxes for selection of stipulated sum or cost of the work plus the design-builder's fee, with or without a guaranteed maximum price, as the design-builder's compensation for work performed after execution of the amendment.

Compensation for work performed by the design-builder prior to execution of the design-build amendment is set forth in the owner/design-builder agreement. The design-builder is compensated for work performed prior to execution of the design-build amendment even if the parties do not reach an agreement on the design-builder's proposal and the amendment is not executed.

Construction services are provided in accordance with the terms and conditions set forth in the owner/design-builder agreement. Unlike the 2004 document, which has a separate exhibit for the terms and conditions, A141-2014 contains the terms and conditions in the body of the agreement and they have been updated to be more consistent with those in the A201-2007 (conventional) family of documents. For example, rather than mediation followed by mandatory arbitration, as in the 2004 document, the 2014 document now contains a checkbox section in which the parties select the method of binding dispute resolution between arbitration, litigation in court, or "other."

The 2014 Insurance and Bonds exhibit (Exhibit B) is more

comprehensive than the 2004 exhibit. A141™-2004 had some insurance provisions in the terms and conditions exhibit and some in the insurance and bonds exhibit. For ease of use, the 2014 version contains all of the insurance provisions in Exhibit B. Separate fill points are provided to list required policy limits for each type of insurance. New insurance requirements in 2014 include professional liability and pollution insurance. The exhibit contains a table to list the type and penal sum of performance and payment bonds.

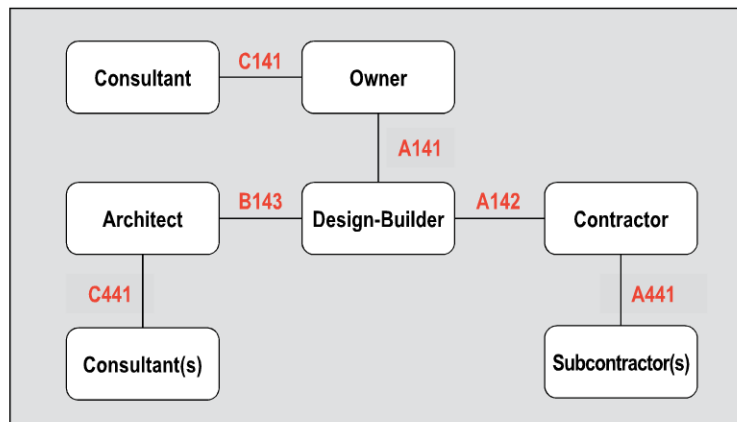
A141-2014 includes a new exhibit for Sustainable Projects (Exhibit C) for use when the owner intends to pursue one or more sustainability goals, referred to as the owner's sustainable objective. Exhibit C is used to identify the scope of the design-builder's sustainability services and the owner's obligations in relation to achieving the sustainable objective. The Sustainable Projects exhibit is derived from the previously published AIA Sustainable Projects Documents.

The format of the A142-2014 Design-Builder/Contractor agreement is similar to the previous edition. The agreement terms are supplemented with exhibits for the terms and conditions (Exhibit A), insurance and bonding provisions (Exhibit B), preconstruction services (Exhibit C), and determination of the cost of the work (Exhibit D). A142-2014 was also generally updated to be more consistent with current AIA Contract Documents language.

The new design-build documents address the use of building information modeling (BIM). The agreements encourage the parties to establish protocols governing the use of BIM. The documents specify that, unless otherwise agreed, the parties will use AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, to establish protocols for the development, use, transmission, and exchange of digital data and building information modeling.

AIA Document A145™-2015, Standard Form of Agreement Between

Design-Build Contract Relationships



DOCUMENTS: AIA Documents **A141™**, Owner/Design-Builder Agreement; **A145™**, Owner/Design-Builder Agreement for a One or Two Family Residential Project; **A142™**, Design-Builder/Contractor Agreement; **A441™**, Contractor/Subcontractor Agreement for a Design-Build Project; **B143™**, Design-Builder/Architect Agreement; **C141™**, Owner/Consultant Agreement for a Design-Build Project; and **C441™**, Architect/Consultant Agreement for a Design-Build Project.

Owner and Design-Builder for a One or Two Family Residential Project, is a new document for residential design-build projects. A145 consists of the agreement and a design-build amendment that is executed when the owner and design-builder have agreed on the contract sum.

A145 is significantly shorter than A141-2014, which is geared toward larger commercial construction projects. A145 is streamlined to include the provisions that are most relevant to residential owners and design-builders. A145 includes flexible compensation provisions, a process for development of the owner's criteria, and fill points for jurisdictional requirements unique to residential construction. A145 is structured so that the articles appear in the same order as in A141, making it easy to perform a side-by-side comparison between the two documents.

The AIA publishes several forms customized for use in design-build projects, including G744™-2014, Certificate of Substantial Completion for a Design-Build Project, and G742™-2015 and G743™-2015, Payment Application and Continuation Sheet for a Design-Build Project.

Another new document is AIA Document C102™-2015, Standard Form of Teaming Agreement Between Team Manager and Team Member for the Purpose of Responding to a Solicitation and Pursuing a Project. C102 is intended to allow multiple or cross-disciplinary parties to form a team to provide services necessary to submit a proposal, in response to a solicitation, for a shared opportunity project. C102 is not limited to use within a single project delivery method and can be used for responses to requests for proposals, design competitions, design-build competitions, or public/private partnerships.

For samples of the 2014 design-build documents, see www.aia.org/designbuild. For samples of the new 2015 documents, see www.aia.org/newdocs. For additional information, see <http://www.aia.org/contractdocs/index.htm>.

Susan Van Bell, Esq. is Senior Director and Counsel for AIA Contract Documents. She works on the development of AIA documents and coordinates their production. She can be reached at susanvanbell@aia.org or 202.626.7397.