

CONSTRUCTION

AIA RELEASES 2017 CONSTRUCTION AND DESIGN AGREEMENTS

At the end of last month, the American Institute of Architects (“AIA”) released several revised documents including the primary agreements between the owner and contractor and the owner and architect.¹ Many of the revisions are attempts to clarify existing provisions. A number of changes, however, are more significant. This update summarizes some of the significant changes in the 2017 release.

General Conditions of the Contract for Construction (A201)

Building Information Modeling and Digital Data. The use of AIA Document E203–2013 to establish protocols for the development, use, transmission and exchange of digital data is the default. Also, if the parties fail to agree upon protocols governing the use of and reliance on information in a building information model (“BIM”), a party relies on such BIM at its own risk. *Sections 1.7 and 1.8.*

Evidence of Owners’ Financial Arrangements. The new A201 expands and strengthens the Contractor’s ability to enforce its right to evidence that the Owner has made financial arrangements to fulfill its payment obligations. *Section 2.2.*

Minor Changes in the Work. The provision regarding minor changes in the Work has been expanded. Importantly, if the Contractor performs work in an architect’s order for minor changes without objection, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time. *Section 7.4.*

Indemnification Against Lien Claims. The A201 includes a new provision that specifically requires the Contractor to indemnify against lien claims and nonpayment claims asserted by subcontractors or suppliers. *Section 9.6.8.*

Insurance. A significant change in the 2017 documents is in the approach to insurance. Most of the insurance provisions are now contained in an exhibit to the agreement. Further, the exhibit provides for much more detail regarding the specifics of the builder’s risk insurance and other coverages. *Article 11; A101TM – 2017 Exhibit A.*

Agreements Between Owner and Contractor (A101, A102 and A103)

Assumptions. The new A102 requires that assumptions upon which the Guaranteed Maximum is based be incorporated in the Contract Documents by revision. *Section 5.2.6.*

Contractor Progress Payments. The schedule of values, progress payment calculations and retainage provisions have been expanded and rewritten to be more consistent with common practice. *A101, Article 5; A102, Article 12.*

Owner Termination. The agreement now specifically provides that the Owner pay a termination fee if the Owner terminates for convenience and that costs and damages be deducted from any amount owed the Contractor if the Owner terminates for cause. *A102, Section 14.1.1.*

Agreement Between Owner and Architect (B101)

Supplemental Services. The B101 introduces a new term – Supplemental Services, which are services in addition to Basic Services that are identified and authorized in the agreement. Additional Services are now limited to extra services that arise after the signing of the agreement. *Sections 4.1 and 4.2.*

Modifications to Reduce Costs. If the Architect could not have reasonably anticipated certain market conditions that caused a bid or proposal to exceed the Owner’s budget, the Architect is now entitled to Additional Services for modifying the Construction Documents to comply with the budget. *Section 6.7.*

Termination Fee. The agreement now provides for a termination fee in the event the Owner terminates for convenience. *Section 9.7.*

Architect Progress Payments. The payment provisions provide more clarity on calculating compensation based on a percentage basis. *Sections 11.1, 11.5 and 11.6.*

¹ The AIA released 14 documents, including the A101, A102, A103, A104 (formerly A107), A105, A201, A401, B101, B102, B103, B104, B105, C401, and E204.

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