

AIA CONTRACT DOCUMENTS

A101, A102 and A201

Sanjay Kurian

Becker & Poliakoff, P.A.

Forms of Documents

- AIA A101-2017 (Lump sum)
- AIA A102-2017 (Guaranteed Maximum Price)
- AIA A201-2017 (General Conditions)

What form is being used?

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- Reasons to favor one or the other
- Intent of the parties
- What is your client trying to accomplish?
- What are the essential items for your client?

Who are the parties?

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- Easy enough question?
- Who is the actual Owner?
- Who is the Contractor?
- Who are the members of the design team?

Consistency of Terms

- What are the obligations of the Architect?
- Are those obligations spelled out in Owner-Architect Agreement?
- Are those terms consistent with the Owner-General Contractor Agreement?
- What are the obligations of the sub-consultants?

§ 1.1 Basic Definitions

- Are the terms defined as the parties intend?
- Should any definitions be added?

1.2.1.1

- Invalidity of any provision shall not invalidate other provisions. However the provision “shall be revised” to make provision legal and enforceable.

§ 1.5 Ownership of Documents

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- Instruments of Service
- “Solely and exclusively for execution of the Work”
- Written consent of Architect
- License to use post-termination

§ 1.7 Digital Data Use and Transmission

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- No longer optional (“Shall Agree”)
- E203-2013 Building Information Modeling and Digital Data Exhibit to be utilized

§ 2.2 Owner's Information

- Reasonable evidence that Owner made financial arrangements to satisfy obligations
- At time of Contract and Post-Contract
- Condition precedent to continuation of the Work
- Failure to do so now allows the Contractor to stop work on 14 days notice.
- 2.2.4 – Confidential information shall be kept so by the contractor unless required under law.

§ 2.3 & § 2.4 Owner Stopping Work

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- Contractor's failure to correct Work
- Owner's right to issue stop Work order
- Owner's right to carry out Work
- Subject to approval of Architect
- How does this Work in practice?

§ 3.2 Contractor's Review of Contract Documents

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- Representation that he visited site
- Familiar with local conditions
- Correlated personal observations with Contract Documents
- Contractor must make known to Architect any errors, inconsistencies or omissions discovered
- Contractor has no obligations to discover errors

§ 3.3 Jobsite Supervision

- Contractor controls means and methods
- Unless Contract provides otherwise
- [NOW] Contractor “shall propose alternative” methods 3.3.1
- Contractor responsible for jobsite safety
- If dangerous condition discovered then cannot proceed without Architect’s instructions
- Contractor responsible for subs

§ 3.4 Labor & Materials

- Contractor responsible for labor, materials, equipment, etc.
- Architect allowed to authorize minor changes in Work. These are changes other than changes in price or schedule.
- Paint.

§ 3.5 Warranty

- Warrant material and equipment are of good quality and new
- Work free from defects “except those inherent in the quality of Work”
- 3.5.2 - Requires special or manufacturer warranties to be issued or transferred to Owner

§ § 3.6 & 3.7 Taxes & Permits

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- Contractor pays all taxes
- Contractor pays and secures all permits
- Change the agreement if this is not the case

§ 3.7.4 Concealed Conditions

- Materially different conditions than set forth in Contract Documents
- Unknown conditions that differ materially from those inherent in the character of these construction activities
- Contractor must report within 21 days of discovery
- Human remains/burial markers

§ 3.9 Superintendent

- On site Superintendent
- Superintendent binds Contractor
- Reasonable objection to Superintendent by Owner or Architect

§ 3.12 Shop Drawings & Product Data

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- Defined terms
- Not Contract Documents
- Architect approval of submittal
- Contractor remains responsible for deviation from Contract Documents

§ § 3.15 & 3.16 Clean up and Access

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- Shall not allow accumulation of waste
- How often measured? Daily?
- Access to Work must be provided to Owner and Architect?
- Special requirements for access?

§ 3.17 Royalties & Patents

- Contractor pays royalties and license fees
- Contractor defends and holds harmless Owner from infringement claims
- UNLESS - Copyright violation in Drawings or infringement required by Contract Documents

§ 3.18 Indemnification

- Contractor indemnifies and holds harmless Owner and Architect (?) arising out of performance of Work
- Attorney's fees
- Limited to damages attributable to: bodily injury, sickness, disease, death, injury or destruction of tangible property (other than Work itself)

§ 3.18 & § 725.06, Fla. Stat.

- § 3.18 - “regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.”
- § 725.06
- Is this an indemnification for one’s own negligence?
- Impact?

Article 4 Architect

- Is there an Architect?
- What is his role at the project?
- Who does he deal with?
- What is the flow of communications?
- What is his authority?
- § 4.2 Contract Administration
 - 4.2.4 Owner allowed to communicate directly with Contractor
 - Owner must identify Architect of substance of an direct communications

Article 5 Subcontractors

- § 5.1.6/5.1.7 Retainage
 - Option to identify specific exceptions to retainage
 - Entire retainage released unless other conditions identified
- § 5.2 Written list of proposed subs
- Objection by Owner?
- § 5.3 Flow down clauses to subs
- § 5.4 Assignment of subcontracts on termination (14.2)

Article 6 Work by other Contractors

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- Owner may have Work done by other forces, including its own
- Owner responsible for coordination
- Delay then Contractor makes a claim

Article 7 Changes in Work

- Change Order
- Construction Change Directive
- Order for a Minor Change in the Work
- Who is preparing each of the above?
- Who is approving?
- What is the process?
- Lack of documentation will lead to claims

Article 8 Time

- Time runs from commencement date
- § 8.2 - Contractor represents time is reasonable;
Time is of the essence
- § 8.3 Claims for time per Article 15
- § 8.5 Insurance/Bond Separate Exhibit

§ 9.1 Contract Sum

- Schedule of Values
- AIA G702 and G703
- Must be delivered before first Payment Application
- A102 – The inclusion of items in the cost of Work is very important (Article 7 and 8 of that document)

§ 9.3 Applications for Payment

- Supported by backup documentation as required by Owner and Architect
- Include authorized changes to Work
- Contractor warrants title to Work covered by Application will pass to Owner no later than payment
- Contractor warrants all previously applied for and paid Work is free of liens and claims

Payment Applications in Cost Plus

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- In A102, Owner may want greater backup
- Receipts and timesheets
- Difference between GMP and lump sum

Lien Releases & Payment Applications

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- Owner wants unconditional lien releases
- Contractor wants conditional lien releases
- § 713.20 (6)
- Was another form of lien release agreed to by the parties?

§ 9.4 Certificates for Payment

- Architect issues Certificate for amount owed within 7 days of Application
- Owners may want to change this provision to keep control
- Architect is representing that Work has progressed to the point indicated

§ 9.5 Withholding Certification

- Set forth reasons for withholding
- Previously issued Certificate can be nullified
- Protection of the Owner
- Unpaid sums not covering liquidated or actual damages
- Joint check option

§ 9.6 Progress Payments

- After issuance of Certificate, Owner must pay per Contract terms
- Contractor pays subs within 7 days of receipt of payment
- Payment or occupancy not acceptance of nonconforming Work
- Florida Prompt Pay Law
- § 713.06(3)(d)(2) – Direct payment to sub

§ 9.6.8 Lien Claims

- Contractor must now indemnify and defend owner against lien claims “provided owner has fulfilled its payment obligations under the contract”
- HOWEVER, Owner may have fulfilled payment obligations but still not have paid contractor. This results in contractor removing lien before actually receiving payment.

§ 9.7 Failure to Pay

- Contractor may stop Work
- Must provide 7 days written notice
- Must not be fault of Contractor
- Contract sum will be adjusted for shut down/start up

§ 9.8 Substantial Completion

- Sufficiently complete in accordance with Contract Documents
- Contractor list of final items to complete
- Architect reviews list and requires completion of items on list, or not, before Certificate issued
- Issuance of Certificate is date of Substantial Completion

§ 9.10 Owner and Final Payment

- Punch list items
- Warranties
- Documentation (especially under A102)
- Lender's documentation requirements
- Waiver of all claims except those identified as unsettled
- 10 year period to make claim

§ 9.10 Final Payment

- Upon Application for Final Payment Architect makes inspection
- Architect issues Certificate for Payment
- Contractor supplies affidavits that bills are paid, insurance information, consent of surety
- Other documentation from Contractor as required by Contract Documents (A102)

§ 10.3.6 Hazardous Materials

- Types of Hazardous Materials
- Generally Owner indemnifies Contractor (unless brought on site by Contractor or Contractor negligent in handling hazardous materials in Contract Documents)
- Contractor must indemnify Owner for remediation where Contractor is negligent

Article 11 Insurance

- Contractor's Liability Insurance
- Owner's Liability Insurance
- Property Insurance – Owner must purchase and maintain builder's risk or equivalent
- Loss of Use Insurance – Owner's option; Waives claims against Contractor to extent of insurance coverage

§ 11.3.7 Waiver of Subrogation

- Notify carriers
- Special Endorsement may be required
- If a loss under property policy then Owner is fiduciary for insured

Article 11 Bonds

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- Form of Bonds should be approved
- Conditional Payment Bond issue
- Specific language of Bonds to be issued
- Specific sureties

Article 12 Uncovering of Work

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- Whose cost?
- In what circumstances?
- Owner's acceptance of nonconforming Work?

Article 13 Miscellaneous

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- Governing Law
- Successors
- Notices
- Rights and remedies
- Interest
- Time limits on claims
- Project specific items

§ 14.1 Termination (Contractor)

- Situations to terminate:
 - Work stopped for 30 days (Not Contractor fault)
 - Court Order
 - Lack of payment
 - Repeated suspensions totaling more than 120 days in a 365 day period
- Only for cause not convenience
- Waiver of consequential damages (Art. 15)

§ 14.1.3 and § 14.4.3

- Remedies for Owner default now include overhead and profit on work not executed. Previously only allowed for termination for owner's convenience.
- Termination fee is a new concept.

§ 14.2 Termination (Owner - Cause)

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- Cause:
 - Insufficient supply of skilled workers or materials
 - Disregard laws
 - In substantial breach under Contract Documents
- Contractor not entitled to further payment
- Notify surety

§ 14.3 Termination (Owner – Convenience)

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- Terminated for Owner's convenience
- Contractor entitled to payment for Work executed and costs incurred by termination plus reasonable overhead and profit
- Contractors hate this provision

§ 15.1 Claims

- Claims initiated by written notice
- Who is the Independent Decision Maker (IDM)?
- Claims for additional cost
- Claims for additional time
- Claims for consequential damages

§ 15.2 IDM

- Defaults as the Architect
- If Architect is acting as IDM, has his role changed with regard to the Owner?
- Initial decision is final and binding but subject to mediation and binding dispute resolution
- Excludes hazardous materials, emergencies and insurance claims under property insurance

§ 15.3 Mediation

- Condition precedent to binding dispute resolution
- Administered by AAA (Parties can agree otherwise)
- Request for mediation can be concurrent with filing for binding dispute resolution

§ 15.4 Arbitration

- Administered by AAA
- Must assert all known claims
- Appeals rights limited in Florida
- Software defaults to this as the option
- § 15.4.4 Consolidation or joinder

Items not addressed by AIA



- Distinction between conditional and unconditional payment bonds
- Liquidated damages [NEW A101 8.3.3 & A102 5.1.6]
- Damages for delays clause
- Contractor indemnifying Owner from subcontractor liens [NEW 9.6.8]
- Supporting Documents needed to support claims for delays?
- Contractor right to share in any savings in a GMP setting?
- Owner's Controlled Insurance Program (OCIP) or Contractor's Controlled Insurance Program (CCIP)
- Subguard
- Applicability of Chapter 558
- Prevailing party attorney's fee provisions

Sanjay Kurian, Esq.

skurian@beckerlawyers.com