

# The 2017 AIA Document Revisions

*Everything You Wanted to Know But Were Afraid to Ask*

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# Background re AIA Docs

- **AIA History:** preparation of construction agreements since 1888
- **AIA Committees:** representatives of owners, architects, contractors
- **AIA Documents:** Entire range of construction docs – Owner/GC, Owner/CM, Owner/Architect, Architect/Consultant, Subcontracts, Special Docs, including bonds
- **Revisions:** Every 10 years

# AIA Documents Overview

- Users must purchase and maintain a license from AIA to use and edit the documents
- Contract documents are in a Word format that can be edited – with exhibits, riders as appropriate
- Users finalize the contract documents using AIA software, which produces a PDF document
- AIA documents are divided into series
  - A series – Owner/Contractor, Owner/Construction Manager agreements; Subcontracts
  - B series – Owner/Architect agreements
  - C series – Architect/Consultant agreements

# Updated/Revised 2017 Documents

- The AIA documents dated 2007 were “retired” and new revised documents dated 2017 were published in their place
- The “old” 2007 documents can no longer be finalized using the AIA software
- Updated documents include:
  - AIA A101 – 2017 Standard Form of Agreement between Owner and Contractor where the basis of payment is a stipulated sum
  - AIA A201 – 2017 General Conditions of the Contract for Construction
  - AIA B101 – 2017 Standard Form of Agreement between Owner and Architect
  - AIA A401 – 2017 Standard Form of Agreement between Contractor and Subcontractor

# Newly-Revised Contractor Docs

- A101™–2017, Owner and Contractor – Stipulated Sum\*
- A102™–2017, Owner and Contractor – Cost Plus Fee w/ Guaranteed Maximum Price (GMP)\*
- A103™–2017, Owner and Contractor – Cost Plus Fee w/o GMP\*
- A104™-2017 (formerly A107-2007), Abbreviated Form of Agreement Between Owner and Contractor
- A105™–2017, Short Form of Agreement Between Owner and Contractor
- A201™–2017, General Conditions of the Contract for Construction
- A401™–2017, Agreement Between Contractor and Subcontractor

\* with new Insurance Exhibit

# Newly-Revised Architect Documents

- **B101™–2017, Standard Form of Agreement Between Owner and Architect**
- **B102™–2017, Owner and Architect without a Predefined Scope of Architect’s Services**
- **B103™–2017, Standard Form of Agreement Between Owner and Architect for a Complex Project**
- **B104™–2017, Standard Abbreviated Form of Agreement Between Owner and Architect**
- **B105™–2017, Standard Short Form of Agreement Between Owner and Architect**
- **C401™–2017, Standard Form of Agreement Between Architect and Consultant**
- **E204™–2017, Sustainable Projects Exhibit**

# Key Revisions in 2017 Documents

- New Insurance Exhibit
- Revised General Conditions Provisions (A201)
- Termination and Fees Associated with Termination
- Notice Provisions
- New BIM Exhibit
- New Sustainable Project Exhibit (SP)

# Insurance Exhibit

- Most, but not all, of the A201-2007 Insurance and Bonds requirements (Article 11) are moved to the Exhibit:
- Owner's Insurance
- Contractor's Insurance
- Optional Coverages
- Additional Insureds
- Performance & Payment Bonds



# Insurance Exhibit (cont'd)

## **Reasons for Exhibit –**

- Changing range and types of coverage
- Flexibility in developing Project Insurance Requirements
- Need to allow for adaptation to changes in the insurance market w/o edits to A201
- Facilitate transmission to insurance advisors/brokers
- Exhibit for 2014 Design-Build documents (not revised in 2017)

# Insurance Exh. – Contractor Coverage

Contractor Required Coverages for all Projects:

- Commercial General Liability
- Automobile liability
- Worker's compensation
- Employer's liability

# Insurance Exh. – Contractor Coverage

Possible Contractor-Required Coverages depending on the nature of Project:

- Jones Act and Longshore & Harbor Worker's Compensation
- Professional Liability
- Pollution liability coverage
- Maritime Liability
- Coverage for use or operation of manned or unmanned air

# Insurance Exh. – Contractor Coverage

Other coverages the Contractor might obtain:

- Railroad Protective liability
- Asbestos Abatement liability
- Coverage for physical damage to property while in storage or transit
- Property coverage for property owned by the Contractor and used on the Project

Payment and Performance Bonds

# Insurance Exh. – Owner Coverage

- Owner should obtain and maintain property insurance written on builder's risk "all-risk" completed value or equivalent policy form
- Premise that Owner will obtain and maintain property insurance, but allow parties to shift burden to Contractor
- Sufficient to cover the value of the entire Project on a replacement cost basis – and existing structure in case of renovation or remodeling
- Maintained until Substantial Completion and thereafter continued or replaced through the Contractor's one-year period for correction of the Work

# Insurance Exh. – Owner Coverage

Additional property insurance Owner may carry:

- Loss of Use, Business Interruption, and Delay in Completion Insurance
- Ordinance or Law Insurance
- Expediting Cost Insurance
- Extra Expense Insurance
- Civil Authority Insurance
- Ingress/Egress Insurance
- Soft Costs Insurance
- Cyber Security Insurance

# Insurance: A201 Article 11

- Owner and Contractor must provide each other with notice of an impending or actual cancellation or expiration of coverage
- Notice provided within 3 business days of the date the party becomes aware
- Party receiving notice has the right to stop the Work until lapse cured— unless lapse caused by that party
- Notice does not relieve party of the contractual obligation to provide any coverage
- Additional provisions protect the interest of the Contractor and Subs if the Owner fails to purchase required coverage

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# Insurance Exhibit – Key Take-Away

- Exhibit allows parties to develop project specific owner and contractor insurance requirements
- If parties simply want the standard coverages historically required by A201, they simply need ignore optional coverage sections and fill in required policy limits/sub-limits and penal sums for bonds, if any.

# A201 – General Conditions Revisions

- Notice Provisions
- Proof of Owner's Financing
- Owner Right to Carry Out Work
- Termination
- Liquidated Damages
- Schedule

# A201 – Notice Provisions

- **A201-2017 § 1.6.1:** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.
- **A201-2017 § 1.6.2:** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

# A201 General Conditions

- Evidence of Financing

§ 2.2.1 Prior to commencement of the Work, and upon written request by the Contractor may request in writing that the Owner provideshall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, theThe Contractor may only request shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

- Contractor has no obligation to commence work until Owner provides evidence of proper financing
- Extension of time to complete the work if there is a delay in producing evidence of financing

# A201 General Conditions

- Owner's Right to Carry Out Work

## § 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of ~~written~~ notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. ~~In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor~~ default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. Such action by the Owner ~~If current and amounts charged to the Contractor are both subject to prior approval of the Architect. If future payments then or thereafter due the Contractor~~ are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

- Owner's actions are subject to approval by the Architect
- Contractor may file a Claim under Article 15 to object to the amount of Owner's back-charges

# A201 General Conditions

- Termination for Owner's Breach

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' ~~written~~ notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including as well as reasonable overhead and profit, on Work not executed, and costs incurred by reason of such termination, and damages.

- Contractor receives overhead and profit on Work not performed.

# A201 General Conditions

- Termination for Owner's Convenience

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor shall be entitled to receive payment for Work properly executed, and; costs incurred by reason of such the termination, along with reasonable overhead and profit on the Work not executed including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

- Termination fees are set forth in A101 section 7.1.1

# A101 Owner/Contractor Agreement

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:  
(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

- Parties now specify the methodology for calculating “termination fees”
- AIA revised this section in reaction to feedback from contractors that owners tend to strike “termination fees” language



# Termination Fee Provisions

- AIA documents allow Owner to terminate for convenience
- In 2007 documents:
- Contractor and Subs were entitled to “reasonable overhead and profit on work not executed”
- Architect and Consultants were entitled to “anticipated profit on the value of services not performed”

# Termination Fee Provisions

- 2017 documents:
- Owner-Contractor, Owner-Architect , and Architect-Consultant agreements eliminate automatic entitlement to OH&P and prompt parties to discuss and negotiate a termination fee
- A401 retains entitlement to OH&P on unperformed Work
- Nothing prevents Contractor and Sub from negotiating a termination fee in lieu of arguing over lost OH&P calculation

# Liquidated Damages and Incentive Provisions

- Earlier editions of Owner-Contractor Agreements had parenthetical note prompting parties to insert liquidated damages and incentive provisions
- Liquidated Damages can be used to offset waiver of consequential damages
- 2017 Documents have separate fill points to prompt the parties to discuss liquidated damages provisions and incentive provisions

# Contractor's Construction Schedule

## § 3.10.1: Expansion of basic content required in the Contractor's Construction Schedule

- Show dates of commencement, required milestones, and Substantial Completion
- Apportionment of Work by construction activity
- Time required to complete each portion of Work
- Demonstrate an orderly progression of the Work
- Revised and updated at appropriate intervals

# Claims and Disputes - IDM

Clarified that claims first discovered after the warranty period are not required to go through the Initial Decision Maker (IDM):

- **§ 15.1.3.2:** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated

# Progress Payments and Retainage

- **Progress Payments (A101-2017 § 5.1.6)**
  - Provisions pertaining to the calculation of progress payments clarified and simplified to clearly delineate the basis for each progress payment.
- **Retainage (A101-2017 § 5.1.7)**
  - Now in a new independent section
  - Specification of retainage amount
  - Items that should be excluded from retainage
  - How retainage may be reduced at or before substantial completion.

# BIM and other Digital Data

- 2017 Agreements require the parties to agree on protocols governing the use and transmission of digital data, and
- Require the use of E203, G201 and G202 to establish those protocols
- With respect to BIM, the 2017 agreements further provide that any use of, or reliance on, information contained in a Model, without first having established the protocols, is at the using or relying party's own risk and without liability to any other project participant

# CONCLUSION

- New AIA Documents contain many new and useful features
- Not just “more of the same”
- Careful review and analysis required
- Riders, other forms currently in use must be revised accordingly.