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AGC Document 200 – General Conditions

In late 1997, at about the time that the AIA released its updated A201, the Associated General Contractors of America (AGC) released its own version of the General Conditions: Document No. 200. This document combines the owner-contractor agreement with the general conditions of the contract for construction. As such, it is meant to replace AIA Documents A101 and A201. Interestingly, the AGC approved and endorsed the AIA documents.

While an in-depth comparison of the AGC document with AIA's A201 would fill a book, an overview of the documents is instructive for anyone, particularly owners, contemplating the use of the AGC form. One must remember that, in most projects, an architect has been engaged by the owner prior to the contractor's involvement. Usually an AIA document is the document of choice for the owner/architect agreement. As such, the AGC's owner/contractor agreement will produce a conflict between the two differing families of documents.

The first thing that catches one's eye is that there is no mention of the architect in Document 200. This is not surprising considering the unfortunate animosity that frequently exists between contractors and architects. Also not surprising is the fact that Document 200 seems slanted in favor of the contractor to the detriment of the owner, although this slant is sometimes subtle. Owners who consider the AIA documents biased should carefully review the AGC documents.

Examples of these biases can be found throughout the document, starting with the definitions:

.2 The Contract Documents consist of this Agreement, the drawings, specifications, addenda issued prior to execution of the Contract, approved Shop Drawings, subsurface information, if available, and other documents listed in this Agreement and any modifications issued after execution of this Agreement.

Contrast this with the corresponding definition found in AIA Document A201:

1.1.1 The Contract Documents The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General,

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Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

Two important differences are apparent in this example. First, the AGC considers approved shop drawings to be contract documents. This places an added burden on the architect to catch changes made in the shop drawings, whether intentional or not. By missing some seemingly innocuous revision in a shop drawing, the contract is modified, probably to the detriment of the owner. This also means that the architect can modify the owner-contractor agreement, although the architect is not even mentioned in the document.

Second, "subsurface information" is included as part of the contract by the AGC. The AIA document, on the other hand, does not include this information automatically, but leaves it up to the architect to determine whether such information will be included. Also, the "if available" language implies that the contractor may not necessarily obtain this information from the owner in order to make it a part of the contract. "Available" might mean that the contractor has such information left over from the last project.

An interesting provision in the AGC document is found at Par. 13.6:

13.6 JOINT DRAFTING The parties hereto expressly agree that this Agreement was jointly drafted, and that they both had opportunity to negotiate its terms and to obtain the assistance of counsel in reviewing its terms prior to execution. Therefore, this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

Normally, the law requires that contracts be construed against the party drafting the contract. What this means is that if two parties are negotiating a contract, and the contract is drafted by one of the parties, any ambiguities will be construed against the drafting party and in favor of the party that did not prepare the contract. In other words, any doubt is resolved in favor of the party who was given the contract by the other party. In this case, however, the AGC has inserted this provision, which a court would likely accept, that the contract will not be construed against the contractor. Of course, in a situation where this contract form is used, the owner likely will have had little or no opportunity to draft any part of this document.

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Let's look at a provision in the AGC document that would create a problem if the owner also contracts with an architect pursuant to an AIA owner-architect agreement:

12.4 MULTIPARTY PROCEEDING The parties agree that all parties necessary to resolve a claim shall be parties to the same dispute resolution proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of such dispute resolution procedures.

This directly conflicts with the non-consolidation provision found at ¶ 1.3.5.4 of AIA Document B141-1997. Thus, if there is a dispute between the owner and contractor and the contractor asserts that the architect is somehow at least partly at fault, the contractor could try to have the owner declared in breach of the AGC contract, since the architect could not be made a party to the arbitration because of the AIA language, while the AGC language requires such consolidation.

Under the payment provisions, the AGC permits subcontractor liens to be filed (¶ 9.4), but the general contractor must remove them within 30 days after such liens are filed, so long as the owner has promptly made all payments. This permits contractors to withhold payments to their subcontractors even though the contractor has received payment for the subcontractor's work. Only 30 days after the lien is filed is the contractor required to have the lien released, presumably by paying the subcontractor. The A201, on the other hand (¶ 9.5.1.2), allows the owner to withhold payment to the general contractor in an amount necessary to cover any filed or threatened liens. The AGC provisions regarding liens could be a disaster for the owner's project.

It is difficult to see why an owner would opt for the AGC contract instead of any other version. An architect involved in a project where the owner is considering the use of the AGC documents should seek immediate legal assistance, as both the owner and the architect are likely to be adversely impacted by such a decision. In the end, the owner probably will be unhappy and blame the architect for the negative outcome.

Open communications between the architect and owner are always required for a successful project. If the architect takes the time to explain the options for contract forms, the owner should, in all likelihood, choose AIA forms over the AGC documents.

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