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March 2011

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Changes to the ConsensusDOCS: Some Selected Modifications

By: [Paul S. Sugar](#)

ConsensusDOCS has modified certain of its contracts for the first time since 2007. While some of the changes are little more than editorial, many are substantive. Discussed below are some of the key changes to the CD 200, Agreement and General Conditions Between Owner and Contractor. The short form CD 205 has also been modified to conform to the changes in the base document.

Other documents have been updated as well. They include CD 240, Agreement Between Owner and Architect-Engineer, as well as the short form CD 245; CD 410, Agreement and General Conditions between Owner and Design-Builder; CD 420, Agreement Between Design-Builder and Architect-Engineer; CD 500 Agreement and General Conditions Between Owner and Construction Manager (GMP with option for Preconstruction Services); and CD 750 Agreement Between Contractor and Subcontractor, as well as the short form CD 751.

The changes made to the General Conditions of CD 200 appear as modifications to many other documents. In particular, be on the lookout for the following changes:

Tax Identification Number (TIN)

The Constructor (formerly known as the Contractor) is required to provide the Owner its TIN so that the Owner can issue a Form 1099 as now required by IRS to all vendors paid more than \$600.

Contract Document Review

Section 3.1.1 requires the Constructor to review the Contract Documents so that all Work is provided "in full accord and reasonably inferable from the Contract Documents." Language which requires that review to "produce the indicated results" has been eliminated. The net result is a broadening of the definition of the scope of work required to be performed by the Constructor.



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Submittals

Section 3.14.1 now requires the Constructor to submit submittals not only to the Owner but also the “Design Professional” (previously called the Architect/Engineer). Also, the Constructor is responsible at its own cost to deliver the submittals in accordance with the schedule.

Compliance With Laws

New Section 3.21.1 has been added which states expressly that the Constructor “shall comply with all Laws at its own costs” and is liable to the Owner for any losses for failure to comply with applicable law. There is an exception that if the Constructor gets advance approval from the Owner and from “appropriate authorities” then the Constructor will not be liable.

Time is of the Essence

The explicit statement “Time is of the essence of the agreement” has been added to Section 6.1.2.

Improper Termination for Cause

If the Owner terminates the Constructor for default and it later is determined that the default was improper, then Section 11.3.5 requires the termination be treated as a termination for convenience. While the change allows recovery of profit for work performed to the date of termination, it prohibits the recovery of anticipated profit for work not performed.

Attorneys’ Fees

Section 12.5.1 now requires the losing party in a binding dispute resolution to pay the prevailing party’s reasonable attorneys’ fees. The prevailing party is determined by the “adjudicator” of the dispute.

There are other changes to the General Conditions not discussed here. The 2007 and 2011 editions should be carefully compared to identify all of the changes which may affect your relationship with the other party to the contract.