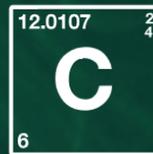


A



ontracts

update and overview

Steve Carlson, FCSI
Dick Eisenbarth, FCSI
Scott Reitano, FCSI

02/08/17 • 10:15 – 11:15 am



Working for an Architect or the Owner

- AIA Document C-401, Standard Agreement between Architect and Consultant
- AIA Document 141, Standard Agreement between Owner and Consultant
- C103 – 2015 Standard Agreement between Owner and Consultant (replacement for AIA Document 141)

Design Build or IPD

- Design Build - Usually a DBIA(Design-Build Institute of America) or ConsensusDocs forms drafted by the design-builder
- Integrated Project Delivery – there are some AIA Documents C191, C195, C196, C197, but not used very often

God is in the Details-What to look for

- “Subject to the Prime Agreement between the Architect and Owner”
 - Make sure you get a copy of the Prime Agreement
 - Try to take exceptions if you don't think its fair
 - Description of Scope – does it match your proposal?

God is in the Details-What to look for

- Copyrights

- Look for “non-exclusive license....solely and exclusively for use in constructing this project.....payment of all amounts properly due....”
- Some Owners may insist on owning the copyright to the design. In that case you want to make sure you get...
- *“a reservation by the design professional of all rights, including the copyright, in its own pre-existing intellectual property; and”*
- *“and agreement by the owner/architect to release and hold the design professional harmless from any re-use of the design professional’s documents”*

God is in the Details-What to look for

- Cost of the Work
 - This usually says that if the project is over budget “the consultant will cooperate with the Architect on redesigning the Work for This Portion of the Project to comply with the budget....
 - If the Architect has a history of designing over budget we have tried to add a clause that basically says “we will meet our budget”

God is in the Details-What to look for

- Mediation, Arbitration, Litigation – pick your poison...
 - This is **not** really **an either/or choice**
 - **Mediation** – this is often required before Arbitration or Litigation
 - **Arbitration** – this used to be less expensive than Ligation, but this is getting much more “Lawyerly” and often it is **Binding, no way to appeal.**
 - **Litigation** - long, costly, **but appealable**
 - Watch out for language that indicated you have to pay for someone to take over the project for lack of performance.

God is in the Details-What to look for

- Hold Harmless and Indemnify Language
 - Ok to **Indemnify**
 - Should be reciprocal – you indemnify them for your mistakes, they indemnify you for their mistakes
 - Don't agree to **defend** the Architect or Owner since this is not usually covered by Professional Liability insurance
 - Beware of is **Patent Indemnities** – something you specify maybe subject to a patent infringement claim

God is in the Details-What to look for

- Standard of Care
 - **OK** -“consistent with the professional skill and care ordinarily provided by professionals in the same area or circumstances”
 - **Avoid** - “highest standard of care,” “high standards,” “first-class,” etc.

God is in the Details-What to look for

- Coordination
 - **OK** “The Consultant shall coordinate its services with those of the Architect and other consultants in order to avoid unreasonable delay in the orderly and sequential progress of the Architect’s or other consultants’ services.”
 - **But, it should be reciprocal** – “The Architect will obligate its other consultants to coordinate with the consultant on a timely basis.”

God is in the Details-What to look for

- Payment

- **OK** “Payments to the Consultant shall be made promptly after the Architect is paid by the Owner under the Prime Agreement.”
- Try to add your terms if they are different from what is written in contract.
- **Interesting Fact**– Most courts hold that if the architect doesn’t get paid it still has to pay you within a reasonable time.

God is in the Details-What to look for

- Basis of Compensation
 - What is written is what counts. Meetings, schedules etc.

God is in the Details-What to look for

- Description of Scope & Scope of Consultants Services
 - Make sure the scope is the same as the proposal and make them identify all the areas we are responsible for.
 - Does this match what you proposed?
 - Stipulate the number of meetings you have proposed upon.
 - Signing and sealing of drawings. May want to indicate that you are not a licensed engineer and will not be responsible for signing and sealing the drawings.

God is in the Details-What to look for

- General Provisions
 - Make sure we define the format we are to provide our work
 - Delays of work? Make sure we are only responsible for our areas of the project

God is in the Details-What to look for

- General Provisions
 - Make sure we define the format we are to provide our work
 - Delays of work? Make sure we are only responsible for our areas of the project

Project Startup Procedure

- Review the following with the Internal team as well as the architect, engineers and Owner/Client
 - Contract and the proposal scope
 - Project areas we are under contract to provide services
 - Scope of services we are to provide
 - Project schedule
 - Determine if the equipment budget is established
 - Roles and responsibilities of the team
 - Obtain a project directory
 - Identify the FTP site address and passwords
 - Commence with the development and verification of the design program

God is in the Details-What to look for

- Insurance

	Rippe Associates	CINI•LITTLE	Reitano Design Group
Commercial General Liability			
General	\$1,000,000 per occurrence/\$2,000,000 aggregate	\$1,000,000 per occurrence/\$2,000,000 aggregate	\$1,000,000 per occurrence/\$2,000,000 aggregate
Products & Completed Work	\$2,000,000 aggregate	\$2,000,000 aggregate	\$2,000,000 aggregate
Personal Injury	\$1,000,000 per occurrence	\$1,000,000 per occurrence	\$1,000,000 per occurrence
Errors & Omissions Professional Liability	\$2,000,000 each claim	\$2,000,000 each claim	\$2,000,000 each claim

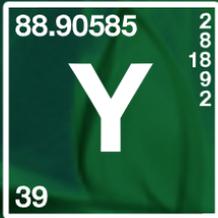
Success and failures –

- When things went wrong did the AIA contract make a difference?

Relevance of the AIA Contract

	Rippe Associates	CINI•LITTLE	Reitano Design Group
AIA Contract	75%	25%	50%
Architect's or Owner's Contract	5%	40%	5%
Consultants Proposal	20%	10%	45%
Consultants Contract	0%	25%	0%

Questions and Comments

thank  ou

CONTACT US:

scarlson@rippeassociates.com

reisenbarth@cinilittle.com

scottr@reitanodeisgngroup.com

