Have You Checked Your Front End Lately?

Documents That Is . . .

By Urban Rump

Ask yourself this question—when was the last time you took the time to read the front end documents of a job? If you are like most subcontractors, you are pressed for time on your estimate and your attention to the contract documents is a review of the section that you are concerned about, the alternates and addendas, sometimes the bid form and occasionally the general and supplementary conditions.

Conversely the General Contractor and other prime contractors are required to review the front end documents much more thoroughly since these documents are vitally important to their overall contractual relations with the owner. In addition to their own review of these conditions, their bonding and insurance companies as well as their attorneys must review these documents to offer the protection the prime contractor is required to furnish to the owner and to himself.

You say, “Why should I concern myself with these front end documents when so many others have this primary responsibility?” Of course the answer is that these conditions are contractually passed on to the subcontractor in his contract with the General Contractor.

To quote the Construction Specification Institute (CSI) Manual of Practice, “Construction documents are defined as all of the written and graphic documents prepared or assembled by the architect/engineer for communicating the design and administering the construction contract.”

The conditions in the front end documents are passed on to the subcontractor in his contract with the general contractor.

These are broken down into the following categories:
-- Bidding requirements
-- Contract forms
-- Conditions of the contract
-- Specifications
-- Drawings
-- Addenda
-- Contract modifications

The figure shown illustrates the relationship of these categories to each other. We are primarily concerned in this article with contract conditions and, to a lesser degree, how bidding requirements, contact forms, addendas, and contract modifications can affect us as subcontractors.

It is interesting to note how this format developed over the years. Most of us take for granted the format used by CSI and the American Institute of Architects (AIA). Not too many years ago, almost all written instructions were contained on the drawings and each architect or owner had their own way of producing written documents. From placing these instructions on the drawings, documentation began to be written in separate, bound manuals but with little uniformity among the architectural profession.

In the latter part of the 1940s CSI began to emerge from a group of specification writers who recognized the need to produce a standardized method for organizing project specifications. By the middle 1960s more and more architects began to subscribe to the developing CSI format. In addition, the AIA began to produce the title of “Project Manual,” and from this we have seen the term Project Manual gain acceptance as
standard terminology in the industry. In subsequent years we have seen these documents refined and upgraded so that today we have a process which, with few exceptions, works well in the construction industry.

The following is a brief outline of bidding requirements, contract forms and contract conditions and how Division One of the Specifications-General tie into the General Conditions.

**Bidding Requirements**

From a subcontractor’s standpoint the bidding requirements are of somewhat lesser importance to the extent that they identify such specifics as bid opening date, bid security, bid form, bonding requirements and the like, as they relate to the prime contractor’s bid.

**Contract Forms**

Contract forms take on more significance. As the figure shows, the agreement, performance bond, payment bond and insurance requirements are identified.

A commonly used form of agreement is the AIA document A101, Standard Form of Agreement Between Owner and Contractor. In this form we have the following elements:

--Definition of the contract documents
--The work
--Time of commencement and completion
--Contract sum
--Progress payments
--Final payment

More often than not the agreement, in its executed form, is not included in the project manual. If it is necessary to obtain this in its executed form, it is necessary to request this in writing--and unless your reason is valid your request will probably be denied. However, as bound in the project manual in its unexecuted form, it furnishes you with the necessary information regarding progress payments, payment for stored materials, liquidated damages, retainage, and final payment to name some of the important items. Some of these items are also covered in other sections of the Project Manual, but they are identified more fully in the agreement.

The Payment and Performance Bonds are of equal importance to the owner as well as the subcontractor. The owner is assured his project is to be built as agreed to and that vendors and subcontractors are going to be paid. The subcontractor is assured that he will be paid by the General Contractor.

The same provisions would apply in the insurance section whereby the owner and subcontractor have the assurance that the project is insured against peril.

**Conditions of the Contract**

Again, to quote the CSI Manual of Practice, “Conditions of the Contract define basic rights, responsibilities, and relationships of the entities involved in the execution of the contract.”

There are two conditions:
--General conditions
--Supplementary conditions

These are the two specifics that this article will address.

**General Conditions**

The general conditions are typically published standard documents which are all inclusive for principles most common to the construction industry. Supplementary conditions are prepared specifically to modify and expand the general conditions as needed for the requirements of a specific project.

The most common general conditions we in the building industry use are the AIA A201 series documents. AIA also has short form general conditions for less complex jobs. In some cases large corporations and government agencies will produce their own standard general conditions for their own projects. CSI has based their documents on the AIA publications. By standardizing over the years and refining the language, these documents are now understood and familiar to the users and have proven themselves in court.

Some typical headings of the general conditions:
--Ownership and use of project drawings and specifications
--Definition of Owner, Architect and Contractor
--Owner’s right to stop work
--Owner’s right to carry out work
--Warranty, taxes, permits, fees and notices
--Superintending, scheduling, inspection, etc.
--Claims and disputes
--Subcontractors and subcontractural relations
--Change orders
--Partial payment-final completion and final payment
--Termination or suspension of the contract

Take time to read and understand how these conditions apply to the relation between the architect general contractor and owner.

The following are excerpts from AIA A201 which should be of interest to you. (The following italicized lan-
The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice or enforce mechanics’ lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, and the Owners interest therein at the time of execution of the Agreement.

3.2.1 . . . The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized such error, inconsistency or omission and knowingly failed to report it to the Architect.

3.7.3 It is not the Contractor’s responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification Claims and Disputes

Several paragraphs are written concerning claims and the procedures for filing claims. It would be well to read this section carefully and then to determine if the supplementary conditions have modified this section. Following are excerpts from this section. (Note: some general contractors are striking out arbitration as a mean of settling disputes between them and the subcontractor.)

4.3.1 . . . The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.3 Time Limits on Claims: Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later....

4.3.4 Pending final resolution of a Claim including arbitration, unless otherwise agreed in writing the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

5.3.1 . . . The Contractor shall require each Subcontractor . . . to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor . . . assumes toward the Owner and Architect.

Changes in the Work

We also want to identify some points that you must be aware of concerning change orders.

There are three types of changes in the work defined in AIA A201.

--Change Order
Construction Change Directive

Minor Change in the Work

Article 7 of A201 covers change orders, and you should be familiar with the entire article. These are some aspects that will be most important to wall and ceiling contractors as quoted from A201:

7.1.2

A Change Order shall be based upon agreement among the Owner, Contractor and Architect a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

7.3.1

A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Sum or Contract Time, or both.

7.3.2

A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

The Construction Change Directive is frequently used on “fast track” projects but has been used on projects with conventional or normal schedules when agreement cannot be reached between the owner and the contractors involved. This form of change in the work can severely impact you as a subcontractor if your change is disputed. You may want to resolve this condition prior to entering into your subcontract agreement.

The balance of AIA A201 deals with Payment and Completion, Insurance and Bonds, Safety, Uncovering and Correction of Work, Miscellaneous Provisions and Termination or Suspension of the Contract. Of these, it would be well to review Payment and Completion as it impacts you as a subcontractor more profoundly than the other sections.

While many of the statements made in the AIA A201 document appear to be very positive and conclusive in wording, there will be other sections containing wording and definition which mitigate or create other conditions which must take place before a condition is final.

Supplementary Conditions

Supplementary conditions modify and expand on the general conditions. While the general conditions are often used in their standard form, the supplementary conditions are normally custom written for each project. This condition is of equal importance and more often more important to the subcontractor as it deals with the nitty-gritty conditions of the individual project.

Some of the subjects that are identified within the supplementary conditions are: Davis-Bacon Act; liquidated damages; retainages; equal opportunity requirements; specific insurance needs; utilities; hoisting conditions; tax exempt status of the owner and other subjects the architect, engineer and owner may want to identify.
Specifications: Division One--General

In addition to the contract conditions section, it is necessary to mention here that Division One--General of the specifications will tie in with the general conditions. This division deals with the administrative and procedural needs of the project. Some of the subjects addressed in Division One are shop drawings, progress schedules, cash allowances, schedule of values and contract close-out to name a few.

It would be impossible to cover, in depth, all of the elements of the contract documents in an article as short as this. The purpose of this article is to re-acquaint you with the importance of these documents and suggest you have those members of your staff who deal with these contingent conditions study the relationship of them to your operation.

A complete study of contract documentation can be gained by obtaining a copy of the CSI Manual of Practice. In addition, CSI offers a study program entitled The Construction Documents Technologist (CDT) which is offered to all persons in the construction industry. Those who complete the course successfully are recognized by CSI as Construction Documents Technologists. A good investment on the part of each firm would be to have their estimators and project managers take this course or at least furnish the Manual of Practice for use within the office. When ordering the Manual of Practice, include the Master-format which lists titles and numbers for the specification divisions.

Information on the Manual of Practice can be obtained from your local CSI chapter or from The Construction Specification Institute, Inc., 601 Madison Street, Alexandria, Virginia 22314-1791.

About the Author:

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