



# Constructive

## COMMENTS

Risk Management Perspectives for the Construction Community

## Industry Takes Two Giant Steps Toward Integrated Project Delivery

### Also In This Issue:

- Integrated Project Delivery Materials
- Changes to AIA Dispute Resolution Procedure

**D**emand from clients for more efficiency in creating capital improvements—condensed delivery times, fewer disputes, and reductions in waste and unproductive expenditures—is propelling design and construction entities to create effective processes. In concert with the technological evolution in design exploration, communication, and documentation, the demand for efficiency is driving significant and rapid changes in the construction industry. Within the last few months, two new tools have been introduced that should move design and construction into a radically different method of project delivery.

In September, a consortium of associations representing clients, contractors, subcontractors, and sureties—the new ConsensusDOCS group—introduced the first standard integrated project delivery contract. The ConsensusDOCS 300, *Standard Form of Tri-Party Agreement for Collaborative Project Delivery*, provides the contractual framework for a truly collaborative interaction between a client, designer, and contractor. The parties sign the agreement at the inception of the project, binding them to collaborate in planning, design, development, and construction.

In November, The American Institute of Architects and its component, the AIA California Council, published *Integrated Project Delivery: A Guide* to help define the concept of integrated or relational contracting for project delivery. It helps identify the many variations in the project delivery process that will develop as the design and construction industry continues to move toward collaborative team approaches. The material in the *Guide* extends beyond a mere definition of integrated project delivery by examining how responsibilities are redefined and financial rewards and risks are reallocated as the design and construction processes blend. It assumes that the use of building information modeling for design and construction is fundamental and looks beyond the technology to the refabrication of the process and the restructuring of the form and relationship of the participants.

These transformative tools were produced separately by the construction side of the industry and the leading design organization for building projects. Together they represent a blurring of the traditional lines of responsibility, established concepts of risk and reward, and typical business models of professional service firms and construction entities.



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## ConsensusDOCS Introduces First Standard IPD Contract

The tri-party collaborative agreement represents just one of the many ways that the integrated project delivery (IPD) process can be structured. Although it is not a “pure” form of alliance or relational contracting, the agreement structures a relationship that will help independent design and construction entities transition to evolving forms of practice.

In the agreement, the project client, lead designer, and contractor sign the same contract and create a core team. The team, which also may include key specialty contractors and consultants, will make consensus decisions based upon the best interests of the project. The project is directed by a management group comprising senior representatives of the three parties. This type of agreement has been used successfully in Australia and other countries that do not have the history of adversarial relationships among project clients, consulting design firms, and construction entities.

This innovative collaborative approach to design and construction fosters a greater alignment of the interest of all project participants with the overall success of the project. New technologies can create, document, and communicate project information so all parties are able to focus on decision making throughout the creative process. The use of building information modeling where design input is provided not only by a prime design team but by specialty subcontractors and manufacturers requires greater collaboration among project

participants to fully utilize the attributes of the technology.

The ConsensusDOCS 300 introduces new opportunities with shared control. Responsibilities are redefined and financial rewards and risk reallocated so that there is a stronger alignment of the interests of all project participants on measurable performance targets. When there is a shared understanding of intended outcomes integrated with client goals, there should be a reduction in dissatisfaction and disputes.

The three parties, together with any critical specialty contractors and suppliers, truly collaborate during

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**Both of these tools will serve as catalysts for refabricating the form and relationship of the participants.**

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design and construction, providing input that will improve the quality, cost, and timeliness of the project delivery. To the greatest extent possible, project decisions are made by consensus. When consensus cannot be reached, the client retains the ability to make a determination in the best interest of the project. Concomitant with this consensus process should be the elimination of placing fault or blame.

More information about the ConsensusDOCS 300 can be found at [www.ConsensusDOCS.org](http://www.ConsensusDOCS.org).

## New Guide Published by the AIA

*Integrated Project Delivery: A Guide* helps define the concept of integrated project delivery and identifies the many variations in the process that will be developing as the design and construction industry

continues to move toward collaborative team approaches. It is offered as a tool to assist clients, design firms, and others in the construction process to move toward integrated models and improved design, construction, and operations processes. The *Guide* begins with introductory material about the principles of IPD and points of consideration in a generic sense. There is also a study of implementation of IPD and a discussion of application of general IPD principles within the specific framework of common delivery models used in the marketplace today.

One purpose of the *Guide* is to assist the AIA Contract Documents program to develop an AIA version of a three-party alliance contract. The information is online at [www.AIA.org/ipdg](http://www.AIA.org/ipdg).

## Initiatives Need to Lead to Significant Cultural Change

Both of these tools will serve as catalysts for refabricating the design and construction processes and restructuring the form and relationship of the participants. Insurance, legal, and educational models will all have to change as new business models evolve, construction entities become more involved in design decision making, and design firms share their control and insular status. With its 50 years of experience in responding to industry evolution, Schinnerer is examining how the ConsensusDOCS 300 and the information provided by the AIA's *Integrated Project Delivery: A Guide* can be accommodated by insurance products and risk management procedures. ♦

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# AIA Changes Dispute Resolution Procedures

In the A201-2007 standard contract form, The American Institute of Architects (AIA) has reacted to concerns expressed by clients, contractors, and the legal community by giving two options to stakeholders: 1) the replacement of the architect as the first step in resolving a dispute, and 2) the default to litigation rather than arbitration, unless the parties specifically determine that arbitration is preferred. Responding to concerns that arbitrations should be both final and conclusive, the AIA has also changed its long-standing but commercially untenable position against the consolidation of arbitration procedures and the joinder of other parties involved in the dispute.

## Providing for a Truly Independent Initial Decision Maker

Traditionally under the AIA documents, an architect would attempt to settle disputes between the client and the contractor regarding interpretation of the plans and specifications, work delays, or the costs involved in making changes in the work.

To facilitate an arrangement in which both the project client and the client would rather have a truly neutral party involved in the dispute resolution process, the AIA documents now allow the parties to formally name a separate initial decision maker.

Engineering projects often employ an independent “standing neutral” or a dispute resolution board as the initial decision maker during a construction dispute. The new AIA documents default to having the architect remain as the

initial decision maker if no other arrangements are negotiated. Project costs may increase if the parties have to enlist the services of an outside party each time a problem arises that an architect could have settled without the intervention of an outside party.

While the architect has routinely been asked to step between the client and the contractor and act as a mediator or arbitrator, in some situations, this role of the architect as a “neutral” is an awkward one. Even though the architect has agreed to act impartially, the client handles payment and has the right to terminate the architect’s services on seven days’ notice without cause. Though clients often expect a certain degree of loyalty in a dispute with the contractor, many know that it is often more likely that an architect and contractor will work together on multiple projects than that a client and architect will work together repeatedly.

## Changing the Default from Arbitration

In recent years support for mandatory and binding arbitration of disputes has lessened. In some situations, arbitration does best serve the parties in a dispute. In others, litigation may make more sense. Recognition of this has led the AIA to provide a choice among binding dispute resolution methods. Now the forms will allow parties to select arbitration or another method of binding dispute resolution, with litigation as the default method.

If arbitration is selected, the new AIA documents require that the arbitration be conducted through the rules of the American Arbitration

Association (AAA) unless other rules are specified by the parties. In the past, parties used the rules in effect at the time of the dispute even if they differed from those in effect at the time of negotiation.

Acknowledging that the parties to the contract may have selected the use of AAA arbitration procedures because of their known attributes, arbitration will follow the rules fixed at the time of original agreement. This removes the possibility that one party may consider rule changes after the agreement to arbitration as being counter to its interests.

Until now, consolidation of separate arbitration proceedings such as a client-architect proceeding with a client-contractor proceeding was prohibited. The goal was to keep the standard of care for professional services—the measure by which arbitration between client and architect would be decided—from being confused with the standard applicable to a contractor. Consolidation is now no longer prohibited. With the approval of the arbitrator, any party to arbitration may include, by joinder, parties substantially involved in a common question of fact or law if their presence is deemed to be required and the party agrees to the joinder.

Although the removal of the consolidation and joinder prohibitions are reasonable to make arbitration an effective dispute resolution mechanism, many defense counsel argue that doing so will still lead to unfair awards. They suggest that if parties are to be joined in one proceeding, it should be in court, with all the evidentiary and procedural protections litigation offers. ♦

# Construction Costs Inflation in 2008 Predicted to Soar

The most recent “Construction Inflation Alert” issued by the Associated General Contractors of America (AGC) warned that material and labor cost increases should be anticipated in setting budgets for 2008. AGC predicts the acceleration in costs and labor rates in 2008 will exceed those experienced this year.

According to Kenneth Simonson, chief economist for the AGC, material prices will again rise significantly in 2008. Simonson acknowledged that the surging costs slowed dramatically in 2007 because of reduced residential construction and, in most areas, available labor. But he warned that material costs have started rising and labor costs have started to accelerate.

The AGC reported that after years of minimal cost increase, the prices of many construction materials soared from 2004 to mid-2006. Although there has been some moderation in the increases of construction inputs over the last 18 months, Simonson reports that in the next several months the producer price index (PPI) for construction inputs is expected to accelerate to a three to five percent annual rate of increase. While material shortages and worldwide demand may be a significant driver of costs, the unpredictable price of diesel fuel may disrupt any planned accommodation of rising prices.

According to the AGC, the cumulative increase in the PPI for construction inputs between

December of 2003 and August of 2007 has been more than 28 percent. This is more than double the cumulative rate of increase for the Consumer Price Index (CPI), used to measure cost inflation in urban areas. The difference is significant because many government agencies and private companies create capital spending budgets assuming that construction costs will track with the CPI. Since construction costs have increased so significantly compared to the CPI, many projects have been canceled, delayed, or redesigned.

AGC’s “Construction Inflation Alert” can be accessed on their website at:

[www.AGC.org/Oct2007CIA](http://www.AGC.org/Oct2007CIA). ♦

**Constructive Comments**  
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