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# Managing Responsibilities and Risks using AIA Subcontract Agreements

ABC Series

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SIGNATURE

**AIA** Contract Documents®  
THE INDUSTRY STANDARD



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The American Institute of Architects



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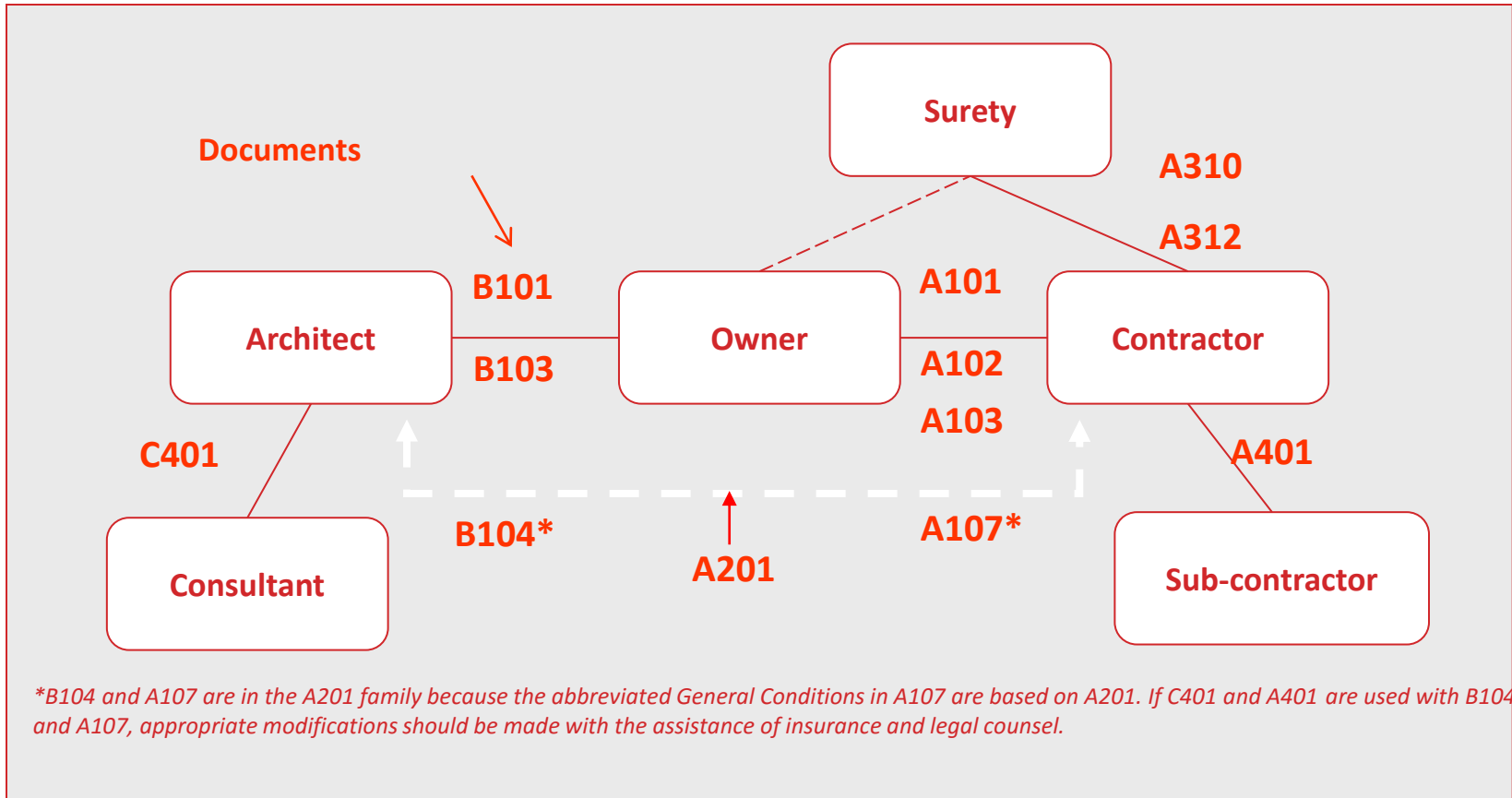
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# Conventional (A201) Family



- Subcontractors are fortunate to have two national subcontract documents for securing subcontract terms comparable to the obligations and rights found in equitable owner-contractor agreements . . . . But with its favorable payment terms and adaptability for use in conjunction with practically any general contract document, A401 is perhaps more ideal for subcontractors to utilize in conditioning their bids. Even if some A401 terms are not accepted during negotiations, the remaining terms can provide better subcontractor protections than would the contractor's form.
- Thomas Barfield, **“How Do the AIA Contract Documents and ConsensusDOCS Subcontract Forms Compare?”** available at <http://www.aia.org/contractdocs/aiab081437>.



# A401-2007

## Subcontract Documents - § 1.1

- Defined in Section 1.1 and consist of, the Agreement, Prime Contract between the Owner and Contractor, Modifications to both documents, and any other documents listed in Article 16
- Subcontract Documents form the Subcontract and represent the entire agreement between the Contractor and Subcontractor

# A401-2007

- Incorporates A201-2007 - § 1.2
- Except to the extent of a conflict with the Subcontract Documents, A201-2007 shall be the General Conditions
- Definitions in A201 applicable to A401-2007



# A401-2007

## Flow Down of the Prime Contract – Art. 2

- Subcontractor agrees to assume toward the Contractor all responsibilities the Contractor has to the Owner under the Prime Contract and A201-2007.
- Reciprocal obligation from the Contractor to the Subcontractor.
- If any conflicts, terms of A401 control.

# A401-2007

## Subcontractor's Scope of Work

- The Work of the Subcontract is defined in Article 8.
- Required to execute the identified portion of the Work, including all required labor, materials, equipment, services and other items, except as otherwise indicated in the Subcontract Documents as the responsibility of others.



# A401-2007

## Changes in the Work

- Upon receipt from Contractor of an Owner issued Modification to the Prime Contract affecting the Work of the Subcontract - § 5.1
- Contractor may order changes in the Work within the general scope of the Subcontract- § 5.2
- Subcontractor can submit claim for adjustment to Subcontract Sum and Time

# A401-2007

## Changes in the Work (Cont.)

- Subcontractor Claims that will be part of Claim made by Contractor to Owner- § 5.3
- Subcontractor must make Claim at least two working days before Contractor's Claim is due
- Failure to comply binds the Sub to the same consequences as those the Contract is bound.

# A401-2007

## Subcontractor's Rights and Responsibilities

- Execution and Progress of the Work - § 4.1
- Permits, Fees, Notices, and Compliance with Laws - § 4.2
- Safety Precautions and Procedures - § 4.3
- Cleaning Up - § 4.4
- Warranty - § 4.5
- Indemnification - § 4.6
- Remedies for Non-Payment - § 4.7

# A401-2007

## Execution and Progress of the Work - § 4.1

- Supervise its own work and coordinate its work with that provided by Contractor
- Promptly submit Shop Drawings and other submittals
- Furnish periodic progress reports to Contractor
- Required to pay for all labor, materials, and equipment covered by previous pay app and provide evidence of payment if requested
- Assist in creating coordinated drawings in congested areas and note potential conflicts



# A401-2007

Permits, Fees, Notices, and Compliance with Laws –

## § 4.2

- Subcontractor is obligated to give notices and comply with applicable laws.
- Required to secure and pay for permits, fees, licenses and inspections for the Subcontractor's portion of the Work
- Must comply with applicable tax, social security, unemployment and workers' comp. laws

# A401-2007

## Safety Precautions and Procedures - § 4.3

- Responsible for safety precautions with respect to performance of Subcontract and comply with applicable laws, etc. for safety of person and property in accordance with the terms of the Prime Contract.
- Must report the Contractor any injury to an employee within 3 days

# A401-2007

## Safety Precautions and Procedures - § 4.3 (Cont.)

- Hazardous Materials
  - Must notify Contractor if using hazardous materials
  - Shall immediately stop work if reasonable precautions will not prevent foreseeable injury
  - Contractor agrees to indemnify the Subcontractor for all damages arising out of Work performed in an affected area if the material presents a risk and has not been rendered harmless
  - Subcontractor indemnifies the Contractor for damages incurred for remediation of materials brought to the site and negligently handled by the Subcontractor or where the Subcontractor fails to stop work if reasonable precautions will not prevent foreseeable injury

# A401-2007

## Cleaning Up - § 4.4

- Keep the premises and surrounding area clear of waste materials and rubbish related to the Subcontractor's work
- Contract may charge subcontractor for clean up if Subcontractor fails to clean up as required.



## Warranty - § 4.5

- Warranty made to Owner, Contract and Architect
- Materials and equipment of good quality and new
- Work conforms to Subcontract Docs and is free from defects
- Excludes damages caused by abuse, alterations to the Work not executed by the Subcontractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage

# A401-2007

## Indemnification - § 4.6

- Indemnifies Owner, Contract and Architect from claims and damages arising from the performance of the Subcontractors work provided the damages relate to bodily injury or destruction of property (other than to the Work) that is caused by the Subcontractor's negligent acts or omissions.

# A401-2007

## Remedies for Nonpayment - § 4.7

- Subcontractor may suspend Work upon proper notice
- Subcontract Sum will be adjusted to compensate the Subcontractor for any costs associated with the suspension



# A401-2007

## Payment Process

- Coordinated with Contractor's Payment Process
- Subcontractor must submit its pay app to the Contractor by a specified date for inclusion in the Contractor's next pay app.
- Contractor makes payments based on certificates of payment issued by the Owner's Architect
- Contractor is required to make payment no later than 7 working days after the Contractor receives payment from the Owner
- Subcontract may request information directly from the Architect regarding amounts certified on account of Subcontractor's work





## Claims

- Mediation is a condition precedent to binding dispute resolution
- Parties choose method of binding dispute resolution (Arbitration, litigation or other)
- If choose arbitration, the specific terms relating to the arbitration are set forth in the agreement

# AIA Bond Forms

AIA bond forms last updated  
over 25 years ago

- Bid Bond, A310™–2010
  - Last issued in 1970
- Payment and Performance Bonds, A312™–2010
  - Last issued in 1984



# A310–2010 BID BOND

- Oft-used standardized bid bond form
- A310–2010 provides that, if Contractor refuses to honor its bid and enter into an awarded contract, the Surety will pay Owner for the difference between Contractor's bid amount and such larger amount incurred by the Owner in contracting with another contractor, subject to the bond amount.
- 2010 edition added language allowing subcontractors to use the A310–2010 when a bid bond is required by the Contractor

# A310–2010 PAYMENT BOND

- The Payment bond is an assurance by the Contractor and the Contractor's Surety that labor and materials bills incurred in connection with the Construction Contract will be paid. A subcontractor, sub-sub or material supplier may make a claim against the bond if it has not been paid. The surety is obligated to pay any amounts rightfully owed, subject to the bond amount
- 2010 edition added language allowing subcontractors to use the A312–2010 when a Payment bond is required by the Contractor

# A310–2010 PERFORMANCE BOND

- The Performance Bond is an assurance by the Contractor and the Contractor's Surety that the work will be performed and completed in accordance with the terms of the Construction Contract.
- 2010 edition added language allowing subcontractors to use the A312–2010 when a Performance bond is required by the Contractor



# A310–2010 PERFORMANCE BOND<sup>30</sup>

The Surety's obligation under the bond expressly limited to the amount of the bond in the event the Surety elects to:

- Perform or complete construction with the Contractor
- Obtain a replacement contractor, or
- Make payment to the Owner or deny liability

Made clear that the limit of the Surety's obligation does not apply if the Surety elects to take over and complete the contract itself.

# QUESTIONS?

If you do not have the opportunity to have your question addressed during the Seminar, you may contact the presenters directly:

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*Additional information from AIA:*

Documents content questions:

E-mail: [docinfo@aia.org](mailto:docinfo@aia.org); Tel. 202-626-7526

Documents content reference materials:

[www.aia.org/contractdocs/reference](http://www.aia.org/contractdocs/reference)

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