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Insights

AIA form documents offer predictability, cost-savings to contractors and subcontractors

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Refreshed about every ten years, the American Institute of Architects ("AIA") recently rolled out revised documents in 2017, including the well-known and heavily-utilized A101 and A201 forms, Standard Form of Agreement Between Owner and Contractor, and General Conditions of the Contract for Construction, respectively. However, it was AIA's brand new documents that caught our attention, specifically form A421-2018 (the "Master Agreement") and form A422-2018 (the "Work Order"), both of which are sure to provide predictability to contractors and subcontractors in the future.

A421-2018: Master Agreement between Contractor and Subcontractor

Whereas contractors and their trusted subs oftentimes execute lengthy documents each time a new project commences, the Master Agreement imagines something far simpler; for contractors that use the same sub for many projects, the parties will execute the Master Agreement, specifying the terms and conditions that generally apply between the parties. For example, terms the parties have previously negotiated such as retainage amounts, insurance types and limits, terms governing dispute resolution, the provision of liquidated damages, prohibition of certain damages, such as consequential damages, and notice requirements in the event of default or potential default do not have to be renegotiated. Instead, these terms, and others, are spelled out in the Master Agreement. By default, the Master Agreement renews on an annual basis.

A422-2018: Contractor/Subcontractor Work Order

When a new project is on the table, parties to the Master Agreement will execute a Work Order. The Work Order spells out the project-specific conditions, including the contract sum, necessary bonds, dates of commencement and substantial completion, and other particulars. The Work Order becomes part of the "subcontract documents," which also includes the Master Agreement, prime contract, and project drawings and specifications.

Priority Between the Documents

One of the ways the Master Agreement and Work Order serve to reduce uncertainty and cost is the priority of each document relative to other project-specific documents. Though the Master Agreement does contain a flow-down provision, if conflict exists between the parties' Master Agreement and the prime contract, the Master Agreement takes precedence. Thus, the terms referenced above, including retainage, insurance, liquidated damages, notice requirements, and others, do not change between the parties, even though the current project is for a new owner. As to conflicts between the Master Agreement and the Work Order, the Work Order's terms control, which makes sense considering the Work Order governs a distinct, individual project.

Conclusion:

As the construction industry aims to increase competitiveness through the use of onsite drones, augmented reality, connected jobsites, and advanced manufacturing, industry participants should be mindful that time and expense related to contract drafting and execution contributes to cost that must either be absorbed by the business or by the customer. By using the freshly-minted Master Agreement and related Work Order, prime contractors and subcontractors alike can streamline their business processes, achieve efficiencies, and forge longstanding relationships that benefit themselves and make their quotations more attractive to potential clients through the resultant cost-savings.