AIA North Carolina
A Chapter of The American Institute of Architects

CarolinasAGC
Building Your Business

JCR-58

Owner-Contractor Agreements
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Recommendations:

The two most prevalent Owner-Contractor Agreements being utilized today are AIA Document A101 and AIA Document 111.

AIA Document A101 is the Standard Form of Agreement Between Owner and Contractor where the basis of payment is a stipulated sum. Under this contract format, the drawings and specifications are completed and the contractor either bids or negotiates a lump sum agreement with the owner based on the information contained in those documents. In this contract format, the contractor takes the risk of completing all the work documented for the lump sum amount.

AIA Document A111 is the Standard Form of Agreement Between Owner and Contractor where the basis for payment is the cost of the work plus a fee with a negotiated guaranteed maximum price. This contract format allows the owner and contractor to reach an agreement prior to the completion of drawings and specifications.

There can be confusion with this contract methodology when a Guaranteed Maximum price is set on the project. The wording in the Guaranteed Maximum Price contract is that the sum of the cost of the work and the contractor's fee is guaranteed by the contractor not to exceed a certain amount. This is subject to additions and deductions by Change Orders as provided in the contract documents; however, further wording is confusing owners and architects alike. That further wording is "such maximum sum if referred to in the contract documents as the Guaranteed Maximum price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the contractor without reimbursement by the owner." With the additional wording, we are now seeing many owners looking to the contractor and, in some cases, the architect, to make payment on any cost overruns due to field changes, unforeseen work, incomplete work, permit revisions, etc.

Comments:

We would, therefore, provide the following guidelines for the project team wishing to utilize the A111 document.

1. Understand the term "Guaranteed Maximum Price." Expectations of what will and will not be included in the price should be reviewed in detail.

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2. Establish the "Guaranteed Maximum Price" at the latest date possible. The reliability of the price is directly related to the amount of information available at the time it is established.

   When the owner wants to establish the "Guaranteed Maximum Price" early, it should be recommended that:

   a. Proportional contingencies be included in the price to account for drawing development and unknown situations. The contingencies should be higher if the "Guaranteed Maximum Price" is established in the schematic or design development phases of design;

   b. Narratives, outline specifications and/or written information be utilized to help establish the "Guaranteed Maximum Price" when drawings and details have not progressed to the point where they can clearly define the scope;

   c. The contractor provide detail lists of clarifications, assumptions and qualifications used to establish the "Guaranteed Maximum Price." Items on this list should be reviewed jointly by the owner and architect; and

   d. The contractor and architect meet regularly to review the drawings as they are being developed. The intent is to exchange information on issues that will affect the "Guaranteed Maximum Price."

3. Understand the articles and provisions of the "Guaranteed Maximum Price" contract that relate to overhead and profit, costs to be reimbursed, costs not to be reimbursed, savings and payment.

End of JCR-58

This recommendation is the result of considerable discussion and deliberation by the Architect and General Contractor members of the Joint Cooperative Committee of AIA North Carolina and the Carolinas AGC. While its provisions are not binding on individual Architects or General Contractors, the committee believes that adherence to the recommendations will benefit the Owner and the Construction Industry in general.