

## Commentary on AIA Document C401-2007

Standard Form of Agreement between Architect and Consultant

By Arthur Johnson, S.E., CASE Contracts Committee

Every ten years, the American Institute of Architects issues a set of contracts or agreements, the latest issued in late 2007. Of primary interest to structural engineers are AIA Document C401, an Agreement between Architect and Consultant, and AIA Document B101, an Agreement between Owner and Architect. The agreements replace similarly titled agreements numbered AIA C141 and AIA B141.

AIA C401 differs substantially from AIA C141, the agreement familiar to most engineers involved in building design. It is half the length of the previous agreement and does not directly address many issues regarding Scope of Work or Terms and Conditions. Instead it states *"To the extent that the provisions of the Prime Agreement apply to This Portion of the Project, the Architect shall assume toward the Consultant all obligations and responsibilities that the Owner assumes toward the Architect, and the Consultant shall assume toward the Architect all obligations and responsibilities that the Architect assumes toward the Owner. Insofar as applicable to this Agreement, the Architect shall have the benefits of all rights, remedies and redress against the Consultant that the Owner, under the Prime Agreement, has against the Architect, and the Consultant shall have the benefit of all rights, remedies and redress against the Architect that the Architect, under the Prime Agreement, has against the Owner..."*. This is advantageous in that it helps prevent discrepancies between the Prime Agreement and sub Agreements, but it requires that the Consultant, when submitting their proposal, clearly define their Scope of Work and include any Terms and Conditions that need to be revised, added to, or deleted from the standard Owner/Architect Agreement as well as the Architect/Consultant Agreement.

As with previous AIA Agreements there are sections which allow the parties to insert *"...any variations to, or limitations on, the professional services described in the Prime Agreement affecting the Consultant's services..."* and to include *"Special terms and conditions that modify this Agreement..."*. These are items the SER should address when submitting a proposal or preparing an agreement for their services.

**CASE Document 6-2009**, a commentary on AIA Document C401-2007, delineates several sections of the Agreement that may adversely affect the SER while providing services. The commentary also includes two separate *Exhibits to the Agreement* which include matrices with which the SER can define their Scope of Services, an Exhibit to the Agreement that allows modifications to the Terms and Conditions of

the Agreement, and a sample cover letter. The matrices are an efficient way to help the SER and Architect reach a mutual understanding of exactly what services will be provided and which services are excluded from the proposal. They also can be helpful in negotiating and scheduling fee arrangements.

Because AIA Document C401 relies so heavily on AIA Document B101, it is prudent for engineers using C401 as their agreement to become familiar with both agreements before preparing their proposal. The AIA documents are typically available from the AIA or any of their State Organizations. CASE Document 6-2009 will soon be available through CASE's website for a nominal fee (free to members of CASE). ■



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