

## Further Commentary on AIA Document C401-2007

By Roger Stroud P.E., FACEC and Ronald White, P.E., CASE Contracts Committee

In the August 2009 issue of STRUCTURE® magazine, Arthur Johnson gave a good overview of the new AIA Document C401, an *Agreement between Architect and Consultant* which replaces the old AIA Document C141. Any structural engineer signing C401 should obtain a copy of CASE Document 6-2009, which is a commentary on C401.

Some of the articles in C401 change the way we have been accustomed to doing things. CASE Document 6-2009 highlights these items. For instance, did you know you are agreeing in C401 to the following:

### Article 1.6

*"If applicable, the Architect and Consultant agree to share the costs and expenses incurred in marketing, promotion, display, and procurement of this project as follows:"*

You may be agreeing to share the cost of marketing, promotion, display and procurement of the projects. Did you include this expense in your fee?

### Article 2.4

*The Consultant shall coordinate all aspects of its design of the Work for This Portion of the Project with the Work designed by the Architect and other consultants, as necessary for the proper coordination of the Project.*

Although this language is essentially unchanged from AIA C141-1997, some who have not read either AIA contract recently may be surprised to note that there is no burden of coordination on the Architect in

the Agreement, and there is no lead or overall coordinator. Given today's project delivery and schedule practices, it is rare for the SER to have all the information needed for proper coordination with all other disciplines at the go-to-press date for bid documents.

Article 1.5 does state that *"the Architect shall be the administrator of professional services for the project, and shall facilitate the exchange of information among the Owner, Consultant and other consultants as necessary for the coordination of This Portion of the Project"*, but it stops short of actually placing any duty of coordination on the Architect. Coordination issues should be resolved at the beginning.

### Article 4.2

*The Consultant shall provide \_\_\_\_\_ ( ) site visits....*

The number of site visits can now be established in the Agreement. Site visits in excess of that number are considered Additional Services. This is clearly a favorable change.

### Article 6.2

*"....the Consultant shall prepare and submit to the Architect an estimate of the Cost of the Work for This Portion of the Project."*

This section may be intended for Consultants who typically estimate the cost of their work. It is important to clarify what estimating services you intend to provide. Normally, the Structural Engineer will only provide the structural information needed to make a cost estimate. He sometimes reviews the structural cost estimate if requested.

Article 6.3 also requires that if at any time the cost of the work exceeds the Owner's budget, *"the Consultant shall cooperate with the Architect and the other consultants in redesigning the Work for This Portion of the Project to comply with the budget for the Cost of the Work."*

This can be a very onerous clause if the SER has no input into the decisions that drive the cost of the work in the first place. This clause should be part of the discussion in negotiating your contract.

### Article 7.1

*"...the Consultant grants to the Architect a license to use the Consultant's Instruments of Service in the same manner and to the same extent as the Architect has granted a license to the Owner in the Prime Agreement."*

The Consultant's Instruments of Service, i.e. Plans, may be reproduced by the owner, contractor or subcontractors for use in performing services or construction for the project. This is made clear in Article 7 of AIA Document B101 which C401 makes applicable to the Consultant. The Structural Engineer can no longer refuse to allow his plans to be used in preparing shop drawings.

These are a few of the clauses that you should be aware of when negotiating your contract under the terms of AIA C401. As Art Johnson stated in the August 2009 article, you are encouraged to obtain CASE Document 6-2009 for a more complete commentary. It is also worth reiterating that many of the Terms and Conditions and Scope of Work are included in the Owner/Architect Agreement, AIA B101, rather than in AIA C401, and you should always review that as-executed Owner/Architect Agreement to make sure the terms and changes to that agreement are consistent with your proposal. ■

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