Having the End in Mind: Contracting for Success for Commissioning and Beyond

Course Number: CXENERGY1515

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ConsensusDocs™
BUILDING A BETTER WAY
From P3, lean, integrated project delivery and green construction, the industry is increasingly taking a more holistic life-cycle and consensus approach for project success, and all of these goals are more attainable by properly contracting for commissioning services. Learn how best practice contracts—such as the standard contract document for commissioning services recently developed by ConsensusDocs, a coalition of 40+ organizations—are improving project results by breaking down traditional contractual approaches.
Learning Objectives

At the end of this course, participants will be able to:

1. Understand how trends toward integrated project delivery and green construction affect the commissioning process.
2. Learn about the programs developed by ConsensusDocs, a coalition of 40+ organizations, as they relate to successful building commissioning.
3. Gain insight on how other stakeholders in the industry view CA services.
4. Learn how best practice contracts improve project results by breaking down traditional contractual approaches.
Inefficiency Struggles for Construction
Traditional Contract Method-Silos

Does your contract say something like this?

“The Commissioning Authority shall be executed in accordance with the contract documents.”
Better Contracts = Better Projects

I’m sure glad the hole isn’t in our end...
Contracts Should Memorial

Relationships

Commissioning Authorities have relationships with:

- Owner
- Design Professional
- Constructor/Design-Builder/CM

Are services performed in a linear or collaborative way?
Einstein’s Rule for Construction Contracts

“...the definition of INSANITY is doing the same thing, over and over again, and expecting different results.”
2007 Unprecedented 20 Leading Orgs

ConsensusDOCS™ proudly endorsed by the following:
2014 = 42 Orgs
# Proven Results for St of Iowa

- Iowa DAS’ using AIA vs ConsensusDocs

<table>
<thead>
<tr>
<th>Using AIA</th>
<th>Using CD$s</th>
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</thead>
<tbody>
<tr>
<td>68 project/year</td>
<td>98 projects/year</td>
</tr>
<tr>
<td>$40M/ year</td>
<td>$80M/year</td>
</tr>
<tr>
<td>Claim/s on EVERY PROJECT</td>
<td>NO Formal CLAIMS on over $400 M in construction</td>
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See Constructor Jan/Feb issue 2014.
## Agreement Structure

### ConsensusDOCS

- One integrated document – GCs and Agreement
- Written in a understandable and precise language

### AIA

- A201 is separate general conditions document.
Defining the Parties’ Relationship

**ConsensusDOCS**

- Perform with Integrity, Avoiding Conflicts (*Art. 2.4*)
- Work Together on Basis of Mutual Trust, Good Faith & Fair Dealing
- Take Actions Reasonably Necessary to Enable Each to Perform Timely, Efficiently & Economically
- Promote Harmony & Cooperation (*Art. 2.2*)

**AIA**

- Architect May not Accept Employment, Interest or Contribution That Would Appear to Compromise Architect’s Judgment (*B101 . 2.4*)
Standard of Care

- CA standard of care
  - Should not be responsible for Owners inability to comply with recos. ConsensusDocs 820, §4.1
• Defining Your Scope
• Are RFP/RFQ Contract Documents?
• Basic v Additional Services
• Design, Construction, and Post Substantial completion services.
Commissioning Construction

Services

- Reports
- Inspections
- Meetings
CAs Do Not

- Change contract documents
- Authorize substitutions
- Coordinate construction process/no means & methods
- Stop work
- Issue "completion" certificates
Impact of Project Delivery

- Design-Build
- CM At-Risk
- IPD and IPD’ish
CONSEQUENTIAL DAMAGES

ConsensusDOCS 200

- Exclude LDs.
- Waiver shall not affect losses covered by contractually-required insurance

- Fuller definition of consequent damages.

AIA A201

- Excludes but permits LDs (Sec. 15.1.6)
Dispute Mitigation and Resolution

- Mitigate through mandatory direct Party communications
  - Project Level
  - Management Level

- Optional Project Neutral or Dispute Review Board (DRB)
  - Must visit the site and make finding w/in 5 days

- Mediation is required

- Parties decide - Arbitrate or Litigate
  - Current AAA rules for arbitration
  - Non-Prevailing party pays, including legal fees
# Order of Precedence

<table>
<thead>
<tr>
<th>ConsensusDOCS</th>
<th>AIA</th>
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<tr>
<td>• Provides an order for interpreting conflicting contract documents</td>
<td>• Golden Rule. He who has the gold, makes the rules.</td>
</tr>
<tr>
<td>• Avoids unneeded litigation costs</td>
<td></td>
</tr>
<tr>
<td>• Most recent contract documents govern</td>
<td></td>
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<tr>
<td>• Change Orders = highest precedence.</td>
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</tbody>
</table>
ConsensusDOCS

- Owner may use Instruments for “maintaining, renovating, remodeling, constructing, using, maintaining, expanding” project (10.3.3)
- If Agreement Terminated, Owner may continue to use Instruments upon payment of amounts then due under the Agreement (10.1.2)
- Copyright transfer can be negotiated (10.1.1)

AIA B-101

- Architect owns copyright (7.2)
- Owner gives license for construction, using or altering adding to project (7.3)
- If Agreement Terminated for Owner Default or Convenience, Owner’s license to use Instruments ceases unless additional licensing fee paid (7.3, 11.9)
STANDARD FOR COMMISSIONING
ICC 1000-201x
Public Comment Draft #1

The ICC Commissioning Consensus Committee (IS-COM) has held 5 public meetings to develop the first public comments draft of the ICC 1000-201x Standard for Commissioning. Public comments are requested on this first public comments draft. The public comment deadline is April 13, 2015. Go to http://www.iccsafe.org/cs/standards/ICH1000-201x.
This concludes The American Institute of Architects Continuing Education Systems Course

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