

AABC Commissioning Group

AIA Provider Number: 50111116

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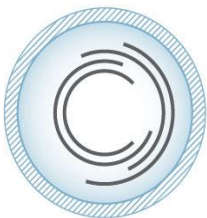
## Having the End in Mind: Contracting for Success for Commissioning and Beyond

Course Number: CXENERGY1515

*Melissa Beutler, Esq., Big-D Construction*

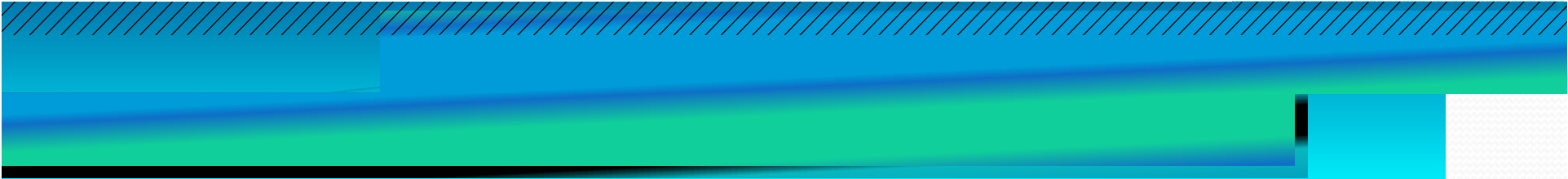
*Brian Perlberg, Esq., Association of General  
Contractors*

April 29, 2015



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BUILDING A BETTER WAY



Credit(s) earned on completion of this course will be reported to **AIA CES** for AIA members. Certificates of Completion for both AIA members and non-AIA members are available upon request.

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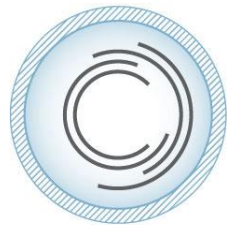
Questions related to specific materials, methods, and services will be addressed at the conclusion of this presentation.

This course is registered with **AIA**



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## Course

# Description

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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

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At the end of the 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





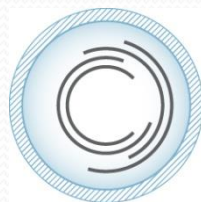
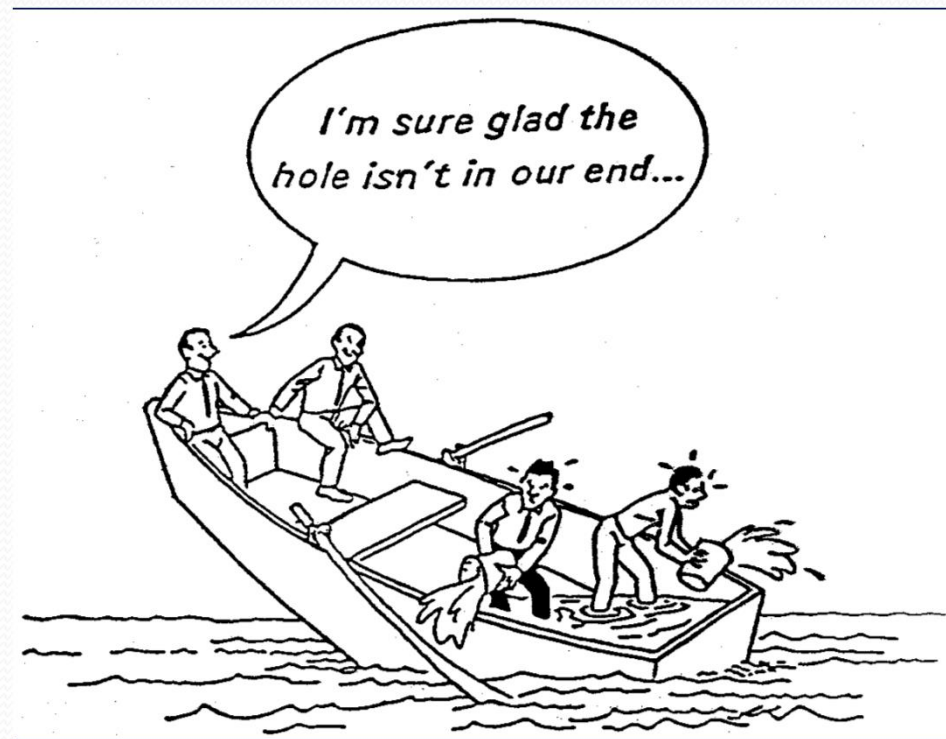
# Traditional Contract Method-Silos

Does your contract say something like this?

“The Commissioning Authority shall be executed in accordance with the contract documents.”



# Better Contracts = Better Projects



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# Contracts Should Memorial

## Relationships

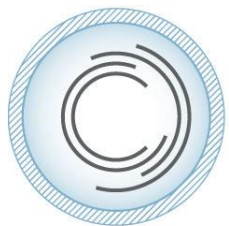
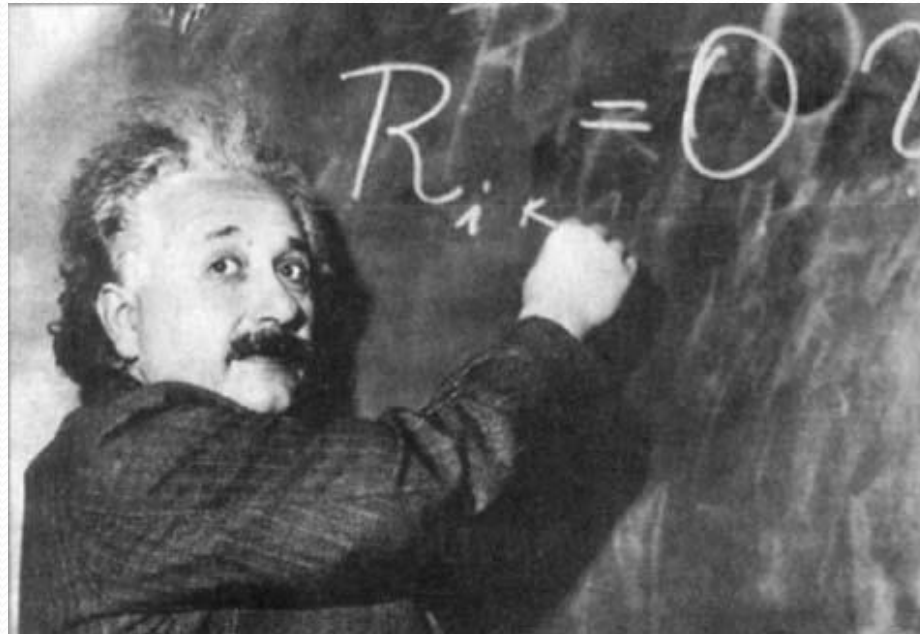
Commissioning Authorities have relationships with:

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

Are services performed in a linear or collaborative way?

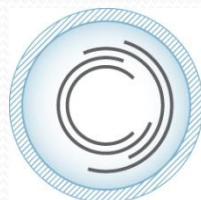
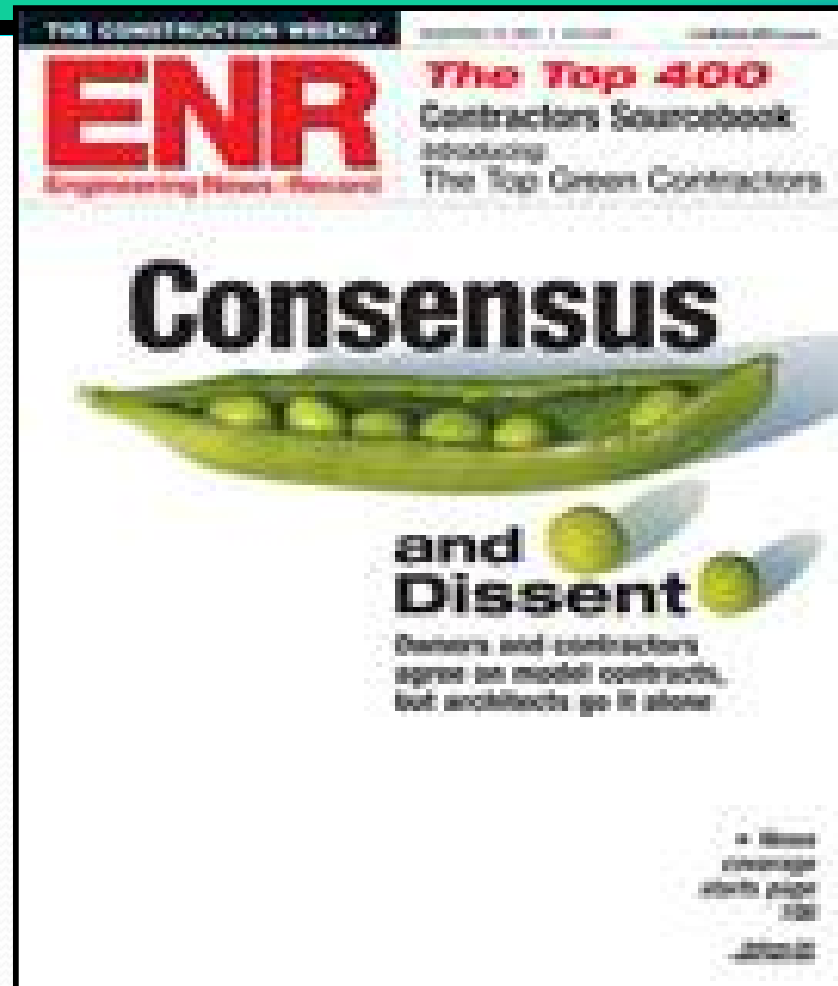
# Einstein's Rule for Construction Contracts

“...the definition of INSANITY is doing the same thing, over and over again, and expecting different results.”



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# 2007 Unprecedented 20 Leading Orgs



## ConsensusDOCS™

ConsensusDOCS™ proudly endorsed by the following:

**NASFA**



**COAA**  
Construction Owners  
Association of America



  
Construction Industry  
Round Table



**ABC**  
Associated Builders  
and Contractors, Inc.



**FINISHING  
CONTRACTORS  
ASSOCIATION**

Mechanical Contractors Association  
**MCAA**  
of America

**NECA**  
NATIONAL ELECTRICAL CONTRACTORS ASSOCIATION

**NIA**  
National Insulation  
Association  
[www.insulation.org](http://www.insulation.org)

**NATIONAL  
ROOFING  
CONTRACTORS  
ASSOCIATION**



**PHCC**  
PLUMBING-HEATING-COOLING  
CONTRACTORS ASSOCIATION

**NSA** Building  
America's  
Future  
National Subcontractors Alliance



ALL

# 2014 = 42 Orgs





# Proven Results for St of Iowa

- Iowa DAS' using AIA vs ConsensusDocs

Using AIA	Using CDs
68 project/year	98 projects/year
\$40M/ year	\$80M/year
Claim/s on EVERY PROJECT	NO Formal CLAIMS on over \$400 M in construction

See *Constructor* Jan/Feb issue 2014.

payment resolution compensation  
applicable Services any Project  
arising Constructor  
extent damages Additional  
other Owner including costs  
otherwise either anyone  
Parties Exhibit claims time  
professional terms binding  
agree use prior law Authority  
upon make nor final directly cause above reports accordance  
provided Owner's others against acts data liable  
during under mediation only fees indirectly basis TITLE  
required property discussions notice perform  
Party necessary information manner entitled made  
except work following documents each all  
reasonable site termination written expenses  
worksite payments construction claim Authority's  
identified provide dispute insurance arbitration  
retained specifications requirements omissions

# 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

# Services in ConsensusDocs 820

- 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

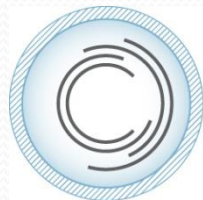
- Exclude LDs.
- Waiver shall not affect losses covered by contractually-required insurance
- Fuller definition of conseq. damages.

## 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**



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# Order of Precedence

## ConsensusDOCS

- Provides an order for interpreting conflicting contract documents
- Avoids unneeded litigation costs
- Most recent contract documents govern
- Change Orders = highest precedence.

## AIA

- Golden Rule. He who has the gold, makes the rules.



## INSTRUMENTS OF SERVICE / COPYRIGHT OWNERSHIP

### ConsensusDOCS

#### 240

- 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)



**International Code Council**

**STANDARD FOR  
COMMISSIONING  
ICC 1000-201x  
Public Comment Draft #1**

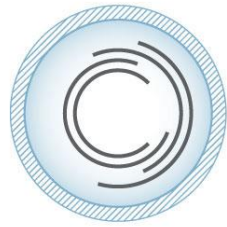
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The ICC Commissioning Consensus Committee (IS-COM) has held 5 public meetings to develop the first public comments draft of the ICC 1000-201\* Standard for Commissioning. Public comments are requested on this first public comments draft. The public comment deadline is April 13, 2015. Go to <http://www.iccsafe.org/cs/standards/IS->

ICC 1000-200\* - Public Comment Draft #1, January 29, 2015; Copyright ©2015 International Code Council, Inc.

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This concludes The American Institute of Architects Continuing Education  
Systems Course



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