

BAKER LAW

design and construction counsel



AIA DOCUMENT A201-2017: UNDERSTANDING THE GENERAL CONDITIONS OF CONSTRUCTION CONTRACT

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CSI Chicago Construction Documents
Technology (CDT) Study Course
April 21, 2021

A201-2017: Why Should You Care?

- Most widely used contract form
- Likely very important until 2027
- 300+ mentions of “Architect”
- 400+ mentions of “Owner”
- 500+ mentions of “Contractor”
- CA = major source of Architect fees
- The Architect’s role in CA Phase is more ‘up for grabs’ than you think



Who Is This Guy Anyway?

Design and Construction Attorney

NOT a Real Estate Lawyer – But I Serve the Same Clients

- Property Owners, Real Estate Developers, Architects, Engineers, Contractors, Design-Builders, Lenders, etc.

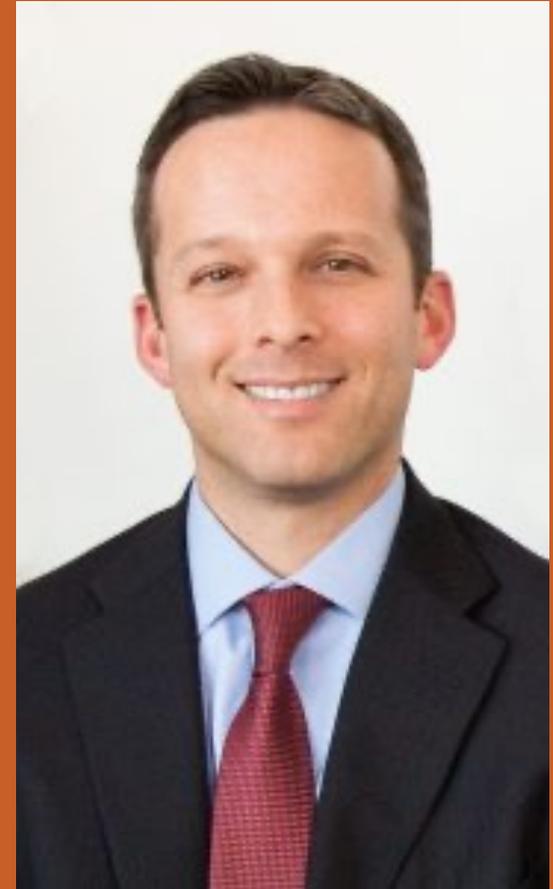
Liaison to AIA Contract Documents Committee

Former JMLS Adjunct Professor, Construction Law

18 Years Big Law Experience

- Schiff Hardin LLP, Construction Law Group (2006-19)
- Cozen O'Connor PC, Subrogation Litigation (2002-06)

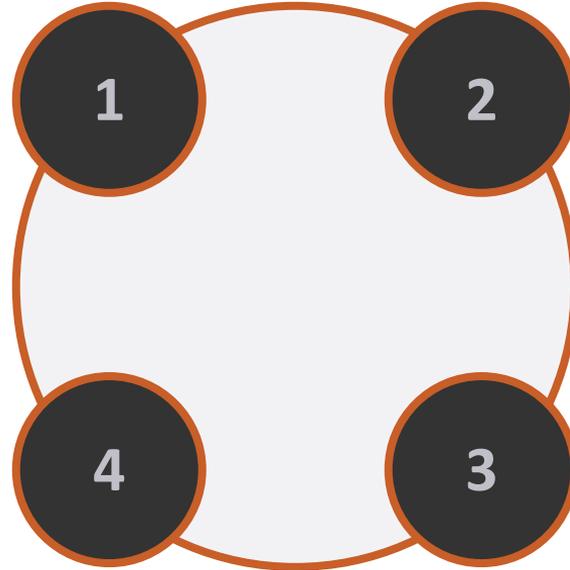
Baker Law Group LLV Since October 2019



Today's Agenda

Big Picture Context:
When the A201
Applies

Question and
Answer Session



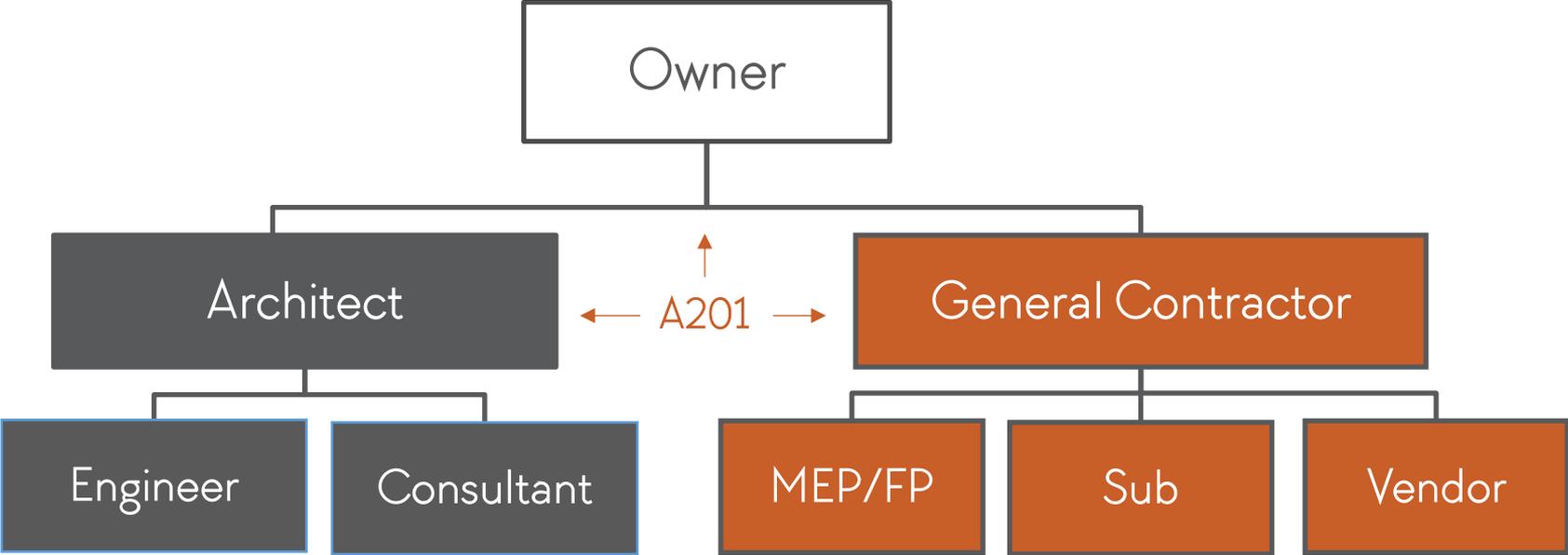
How the A201 Works
with Other AIA
Documents

Review Certain
Specific A201
Provisions

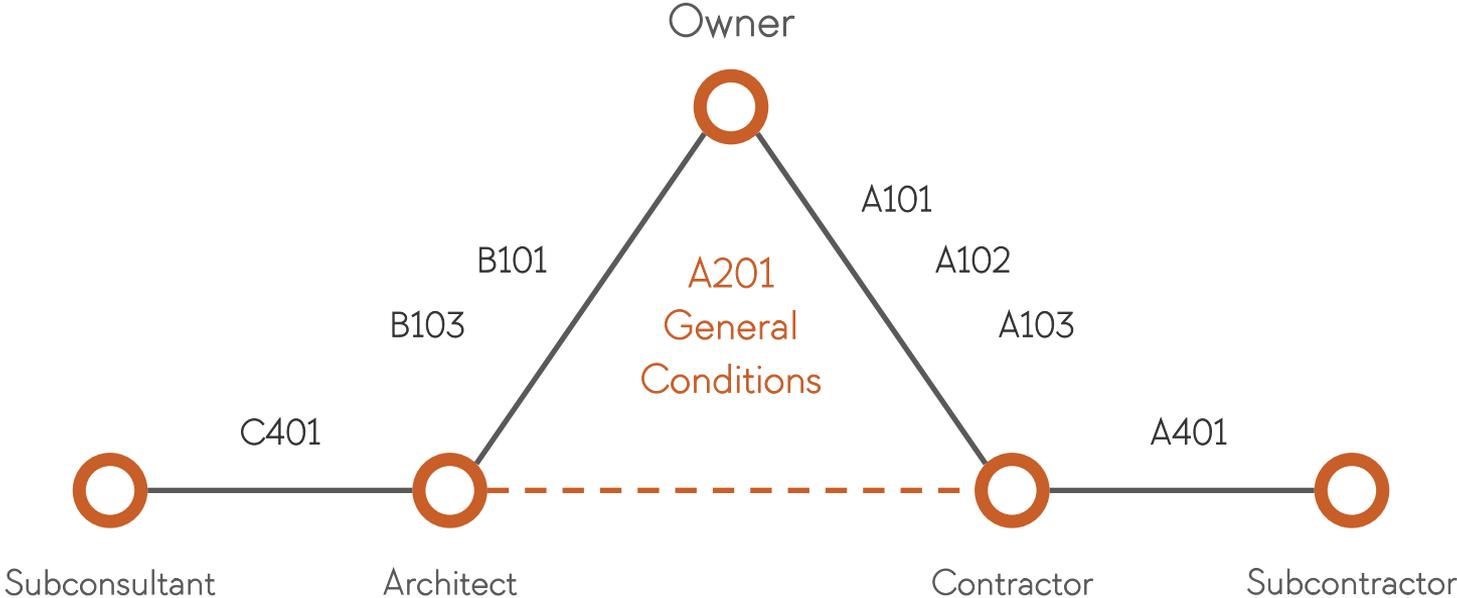
AIA Contract Documents – History

- Standard form documents since 1888
- Evolved to reflect practices in the construction industry
- Substantial volume of interpretive case law
- Major agreements revised on 10-year cycle
- Several hundred agreements and forms
- Other industry groups offer standard forms

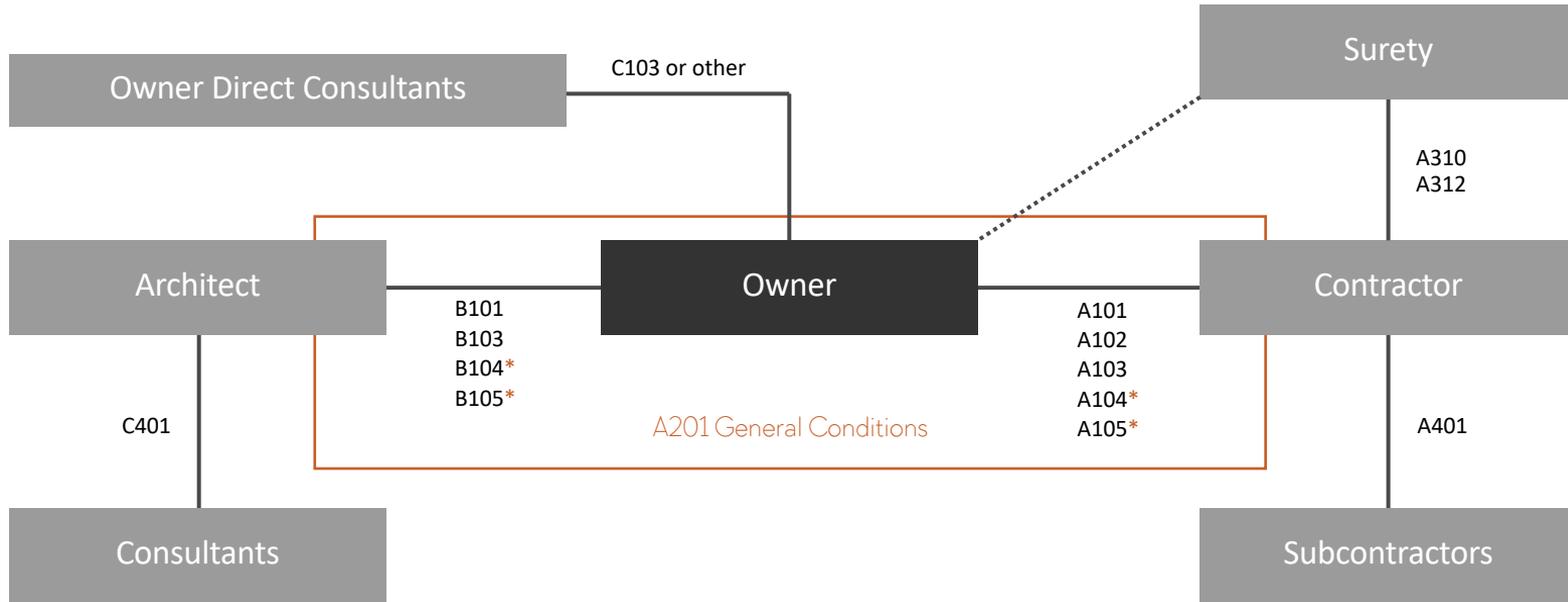
Project Delivery Methods: Traditional Structure



A201 "Family" of Documents



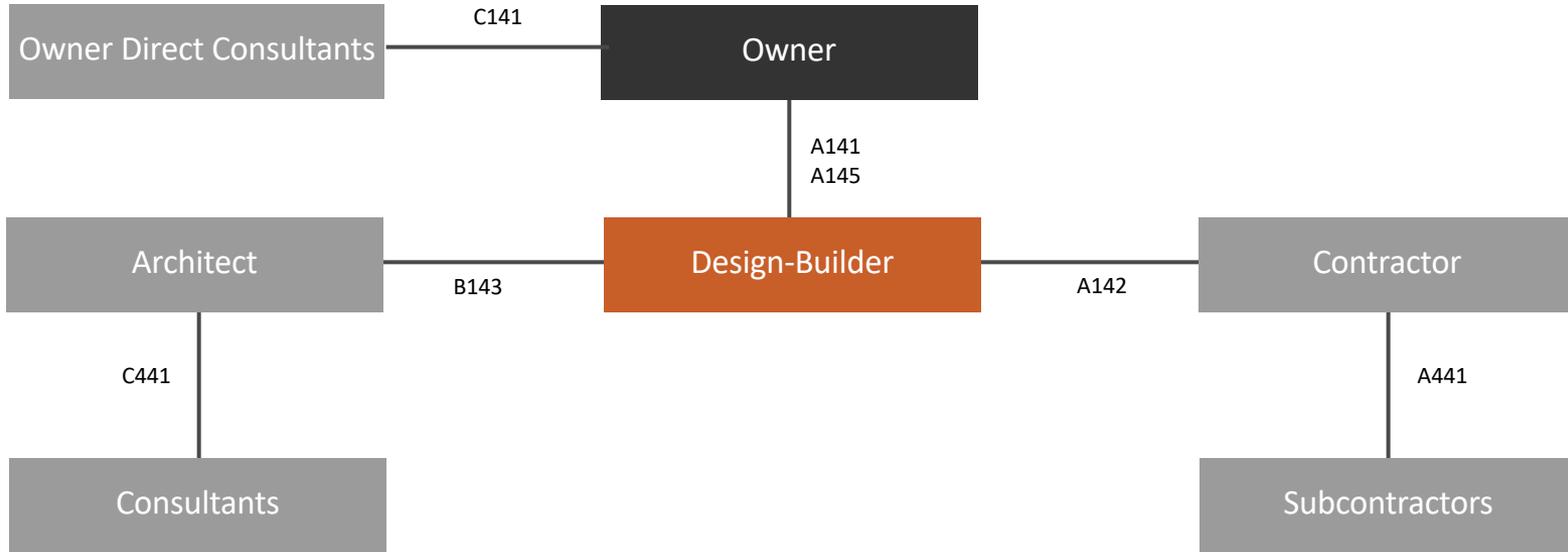
Traditional Design-Bid-Build



AIA Contract Documents: A101® Owner/Contractor Agreement—Stipulated Sum; A102™ O/C Agreement—Cost of the Work Plus a Fee, with GMP; A103™ O/C Agreement—Cost of the Work Plus a Fee, No GMP; A104™, Abbreviated O/C Agreement; A201® General Conditions of the Contract for Construction; A310™, Bid Bond; A312™, Performance Bond/ Payment Bond; A401™, Contractor/Subcontractor Agreement; A105™, Standard Short Form of Agreement Between Owner and Contractor; B101™, Owner/Architect Agreement; B103™, O/A Agreement—Complex Project; B104™, Abbreviated O/A Agreement; B105™, Standard Short Form of Agreement Between Owner and Architect; C103™, Owner/Consultant Agreement; and C401™, Architect/Consultant Agreement.

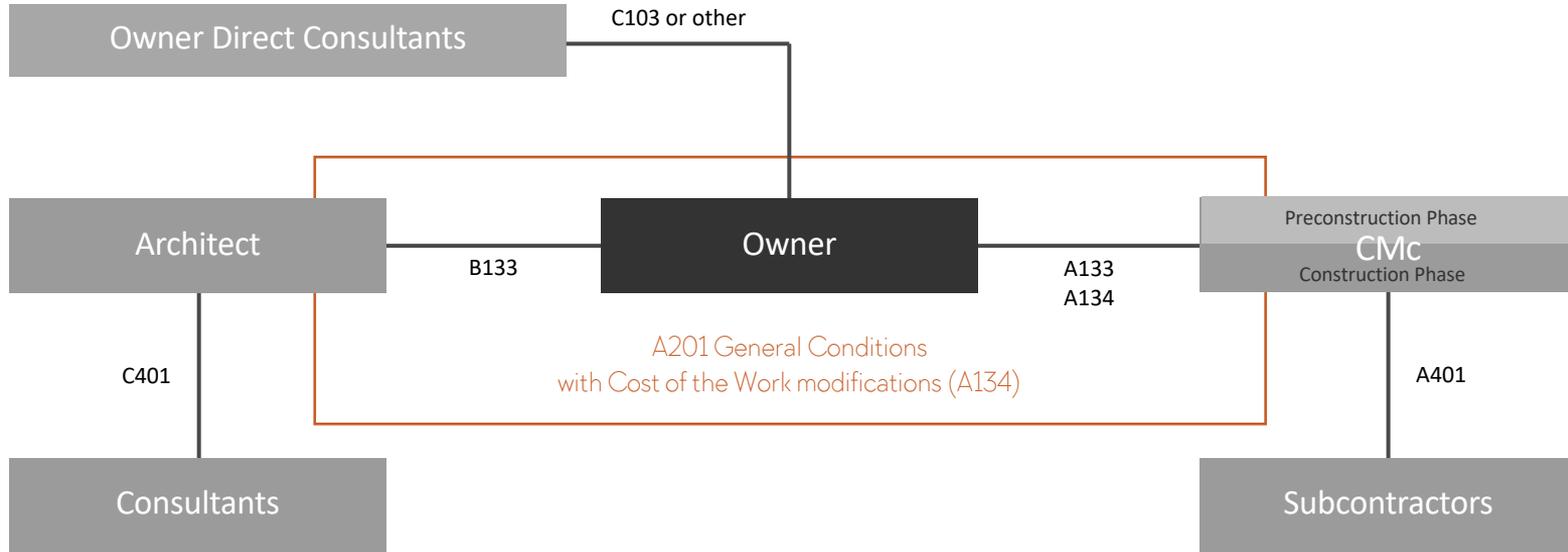
*A104/A105 and B104/B105 are intended to be used for smaller projects or projects of limited scope. * A104 and A105 combine the Owner-Contractor agreement with abbreviated General Conditions. B104 and A104 are in the A201 family because the abbreviated general conditions in A104 are based on document A201. If C401 and A401 are used with B104 and A104, appropriate modifications should be made with the assistance of insurance and legal counsel.

Design-Build



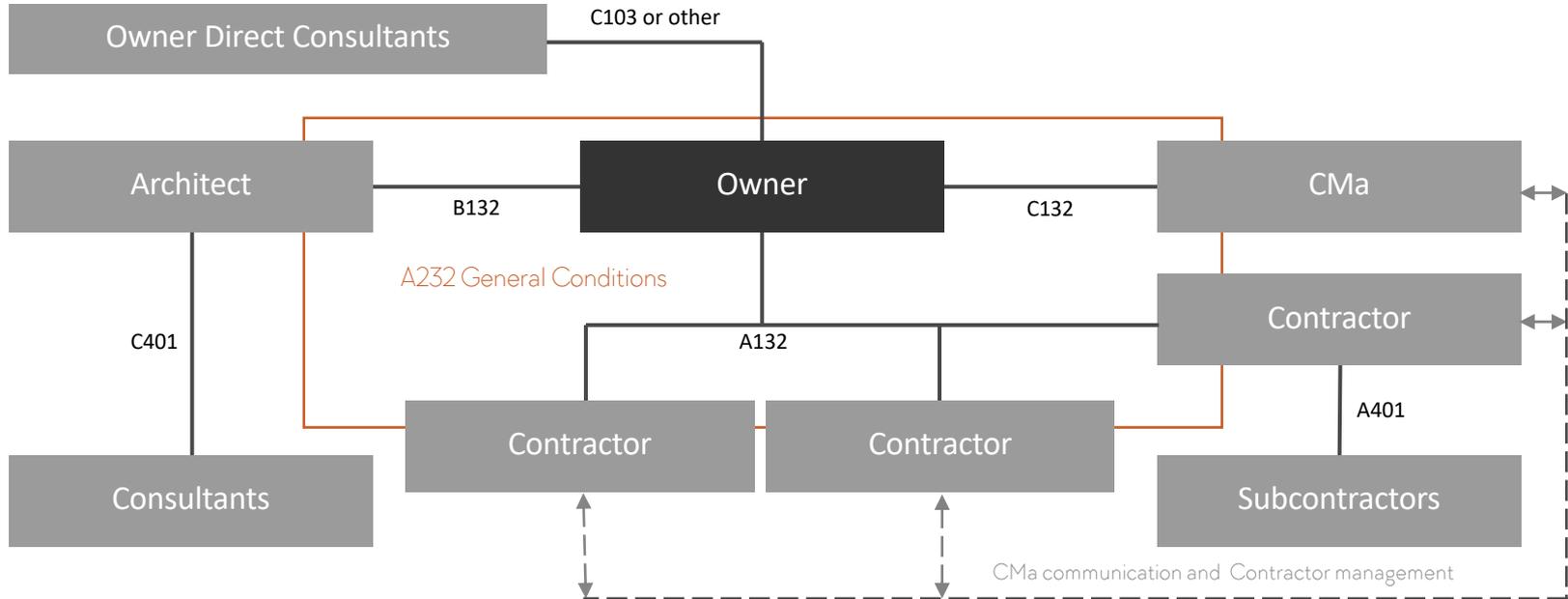
AIA Contract Documents: A141™, Owner/Design-Builder Agreement; A145™, Owner/Design-Builder Agreement for a One or Two Family Residential Project; A142™, Design-Builder/Contractor Agreement; A441™, Contractor/Subcontractor Agreement for a Design-Build Project; B143™, Design-Builder/Architect Agreement; C141™, Owner/Consultant Agreement for a Design-Build Project; and C441™, Architect/Consultant Agreement for a Design-Build Project.

Construction Manager as Constructor (CMc)



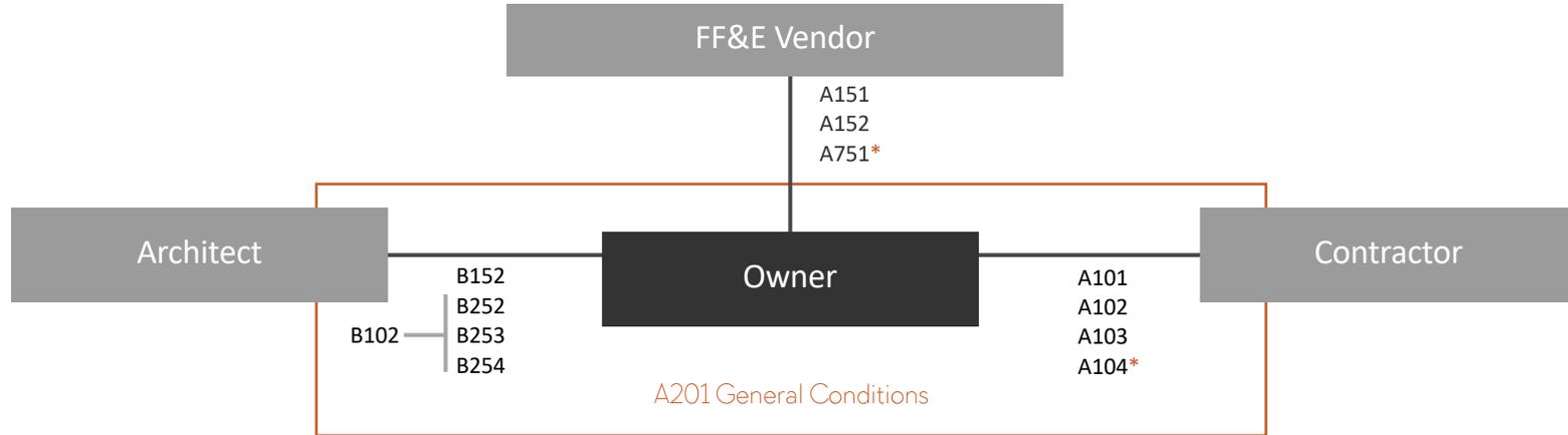
AIA Contract Documents: A133™, Owner/Construction Manager as Constructor Agreement, where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price; A134™, Owner/Construction Manager as Constructor Agreement, where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price; A201®, General Conditions of the Contract for Construction; A401™, Contractor/Subcontractor Agreement; B133™, Owner/Architect Agreement, Construction Manager as Constructor Edition; and C401™, Architect/Consultant Agreement.

Construction Manager as Adviser (CMa)



AIA Contract Documents: A132™, Owner/Contractor Agreement, CMa Edition; A232™, General Conditions of the Contract for Construction, CMa Edition; A401™, Contractor/Subcontractor Agreement; B132™, Owner/Architect Agreement, CMa Edition; C132™, Owner/Construction Manager as Adviser Agreement; and C401™, Architect/Consultant Agreement. While less likely, agreements with Contractors also could be GMP, pure cost of the work, limited design/build, or any other delivery option.

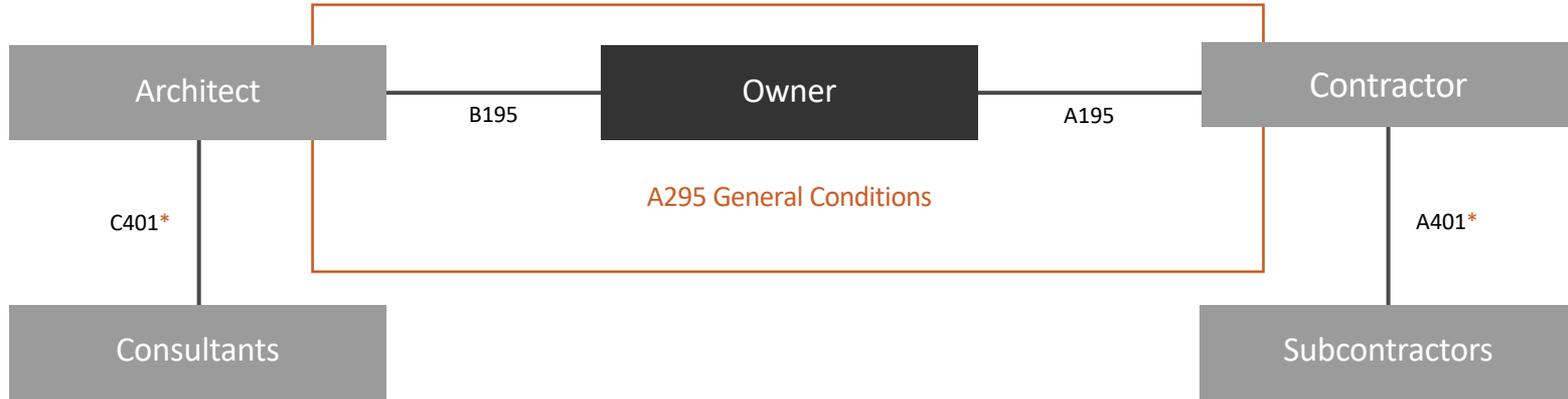
Interior Design + FF&E



AIA Contract Documents: B152™, Owner/Architect Agreement for Architectural Interior Design Services; B252™, Standard Form of Architect's Services – Architectural Interior Design; B253™, Standard Form of Architect's Services for Furniture, Furnishings and Equipment Design; B254™, Standard Form of Architect's Services for Purchasing Agent Services for Furniture, Furnishings, and Equipment (FF&E) B252, B253, B253 provide scope of services only. Must be combined with B102™. Owner/Architect Agreement without a Predefined Scope of Architect's Services or other owner/architect agreement.

* A751™, Invitation and Instructions for Quotation for Furniture, Furnishings and Equipment can be used to solicit quotes from potential vendors. * A104™, Standard Abbreviated Form of Agreement Between Owner and Contractor, is a stand-alone agreement that does not require the use of a separate general conditions document.

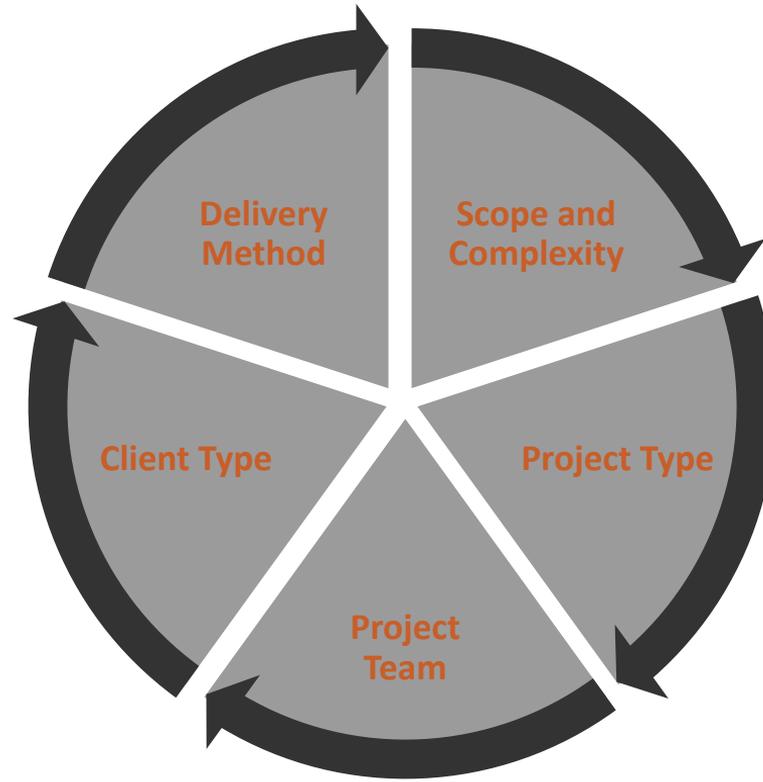
Integrated Project Delivery (IPD): Transitional Documents



AIA Contract Documents: A401™, Contractor/Subcontractor Agreement; A295™, General Conditions of the Contract for Integrated Project Delivery; and C401™, Architect/Consultant Agreement.

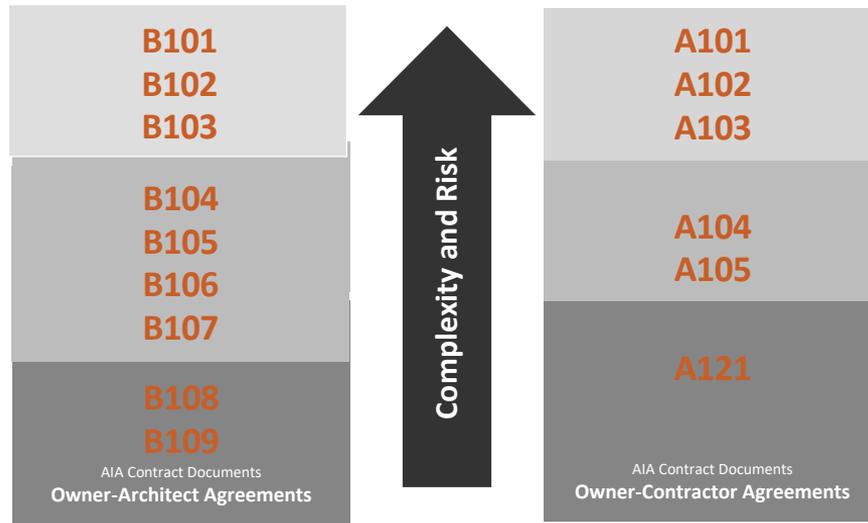
*If A401 or C401 is to be used on a project with the Transitional Forms, appropriate modifications should be made with the assistance of insurance and legal counsel

Selecting the Correct Agreement



Project Risk Tolerance and Complexity

Balance Project Complexity and Need
for Contractual Protection



A201 Family Owner–Architect Agreements

B101: Standard Form + A201

B102: Without a Predefined Scope Services (n/a)

B103: Complex Project + A201

B104: Abbreviated Form (A201-like content embedded)

B105: Short Form (n/a)

B106: Pro Bono Services + A201

B107: Developer–Builder for Prototype(s) for Single Family Residential (n/a)

B108: Federally Funded or Federally Insured Project + A201

B109: Multi–Family Residential or Mixed–Use Residential Project + A201

B121: Master Agreement (n/a)

B132: Construction Manager as Adviser (n/a)

B133: Construction Manager as Constructor + A201

B143: Design–Builder and Architect (n/a)

B152: Interior Design Services + A201

Cross Provision Language – Examples

B101 Section 3.6.1.2

Construction Phase Services:

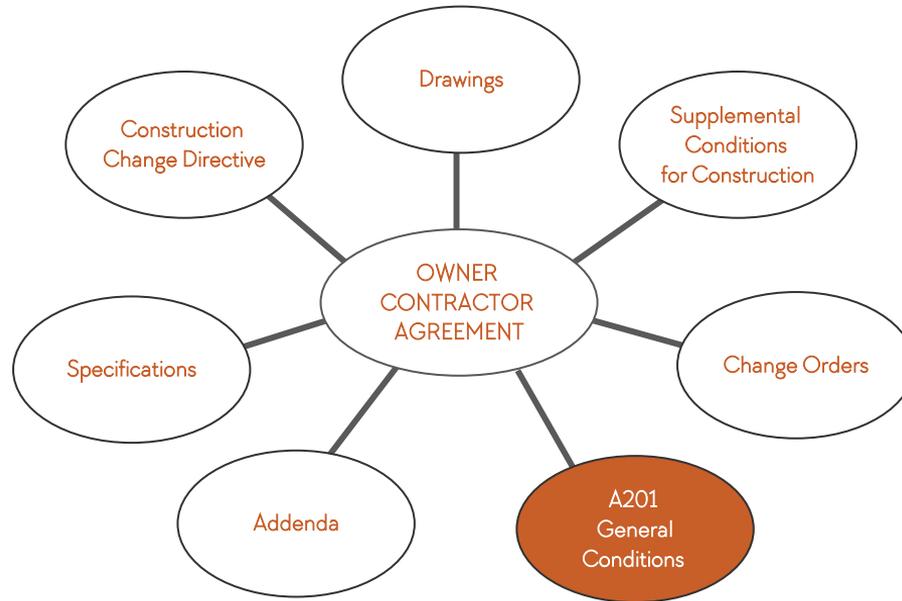
“The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, for safety precautions and programs in connection with the Work...”

A201 Section 4.2.2

Administration of the Contract:

“...The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work...”

Contract Documents: Traditional Project



Cross Provision Language – Examples

B101 Section 3.6

Construction Phase Services:

B101 § 3.6.1.1: “The Architect shall provide administration of the Contract... as set forth below and in AIA Document A201-2017...”

A201 Section 4.2.1

Administration of the Contract:

“The Architect will provide administration of the Contract as described in the Contract Documents...”

What if the Owner and Contractor modify A201?

If the Owner and Contractor modify the A201?

“...those modifications shall not affect the Architect’s services unless the Owner and the Architect amend this Agreement [B101].”

B101-2017 § 3.6.1.1.



B101-2017

Owner-Architect Agreement

Architect's Basic Services in B101-2017

Basic Services:

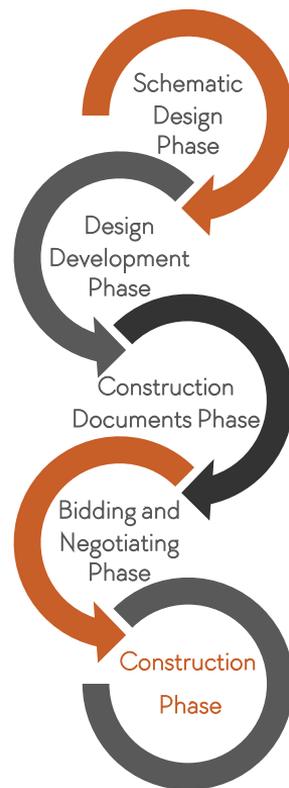
- Clear definition of Architect's traditional services
- What any architect could be expected to do on any design project
- Includes normal structural, mechanical electrical engineering

Architect's Basic Services

Traditional 5 phases of services:

1. Schematic Design Phase
2. Design Development Phase
3. Construction Documents Phase
4. Bidding and Negotiating Phase
5. Construction Phase

**** our focus today = CA*



Assumes Architect will Provide CA Services

B101 Section 3.6

Construction Phase Services:

B101 § 3.6.1.1: “The Architect shall provide administration of the Contract...as set forth below and in AIA Document A201–2017...”

A201-2017

General Conditions of the Contract for Construction

A201-2017 Review

- Article 1 – General Provisions
- Article 2 – Owner
- Article 3 – Contractor
- Article 4 – Architect
- Article 5 – Subcontractors
- Article 6 – Construction by Owner or by Separate Contractors
- Article 7 – Changes in the Work
- Article 8 – Time
- Article 9 – Payments and Completion
- Article 10 – Protection of Persons and Property
- Article 11 – Insurance and Bonds
- Article 12 – Uncovering and Correction of Work
- Article 13 – Miscellaneous Provisions
- Article 14 – Termination or Suspension of the Contract
- Article 15 – Claims and Disputes

Architect Responsibilities in A201

- Architect is not the Owner's general agent
- Architect may act on behalf of the Owner only to the extent provided in Contract Documents
- Architect's duties and authority may not be changed without written consent of the Owner, Contractor, and Architect
- AIA ethical code requires that architects act impartially

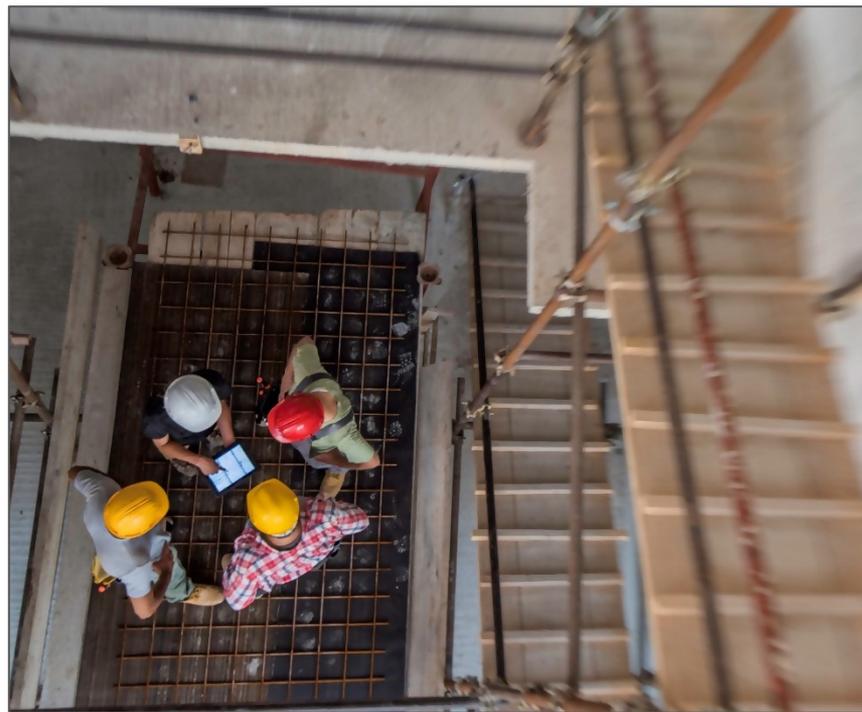
Site Visits

A201-2017 § 4.2.2:

- Performed at intervals appropriate for stage of construction unless otherwise agreed with Owner

B101-2017 § 3.6.2.1, 4.2.3:

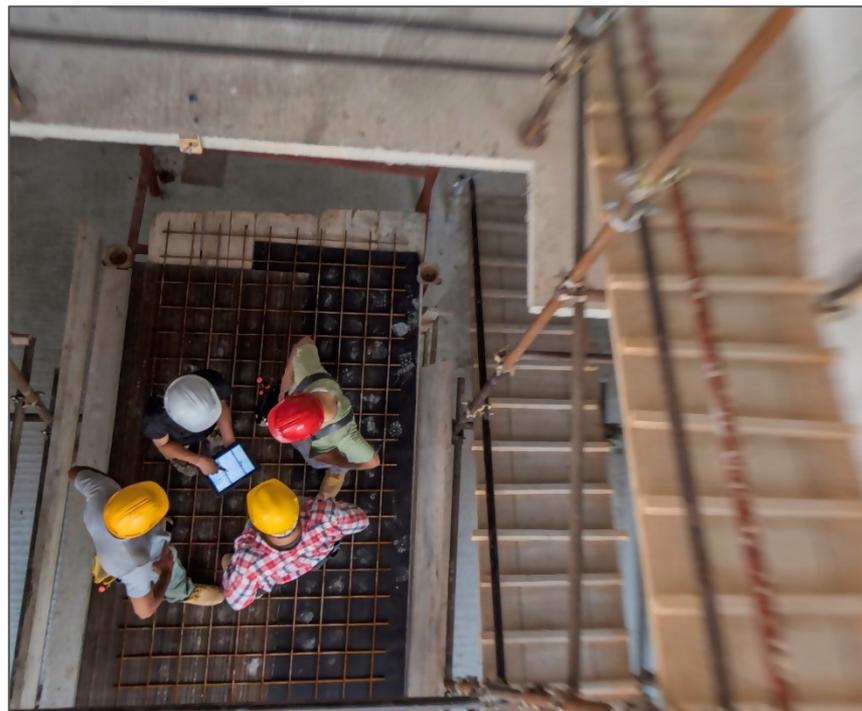
- Identical language re: site visit intervals, but the number of site visits included in basic services may be capped.



Site Visits (*Continued*)

A201-2017 § 4.2.2:

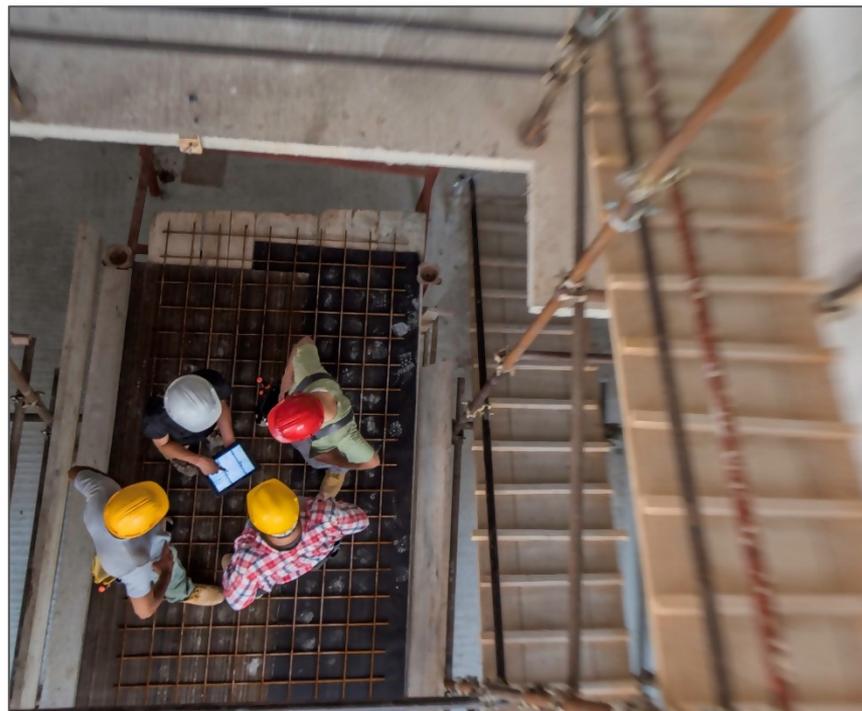
- Become generally familiar with and keep Owner informed about progress and quality of Work
- Determine, in general, if Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract Documents
- No charge over safety, unless you assume it



Site Visits (*Continued*)

A201-2017 § 4.2.3:

- In addition to keeping the Owner “reasonably informed” about the progress and quality of the Work, the Architect must report to the Owner:
 1. Known deviations from the Contract Documents and from the most recent construction schedule
 2. Defects and deficiencies observed in the Work.



Reviews and Inspections

- Reject non-conforming Work and order tests (A201 § 4.2.6)
- Conduct inspections to determine substantial completion and final completion dates (A201 § 4.2.9)

Interpretations

- § 4.2.11: on written request, the Architect shall interpret and decide matters concerning performance under and requirements of Contract Documents
- § 4.2.12: when making interpretations or decisions, Architect must endeavor to secure faithful performance by both Owner and Contractor; will not show partiality to either

Architects are not liable for results of interpretations or decisions rendered in **good faith** (unless they breach their contract or standard of care)

Requests for Information (RFIs)

A201 § 4.2.14

- Architect shall review and respond to RFIs about the Contract Documents. Responses will be provided in writing and within the time limits agreed upon or otherwise with reasonable promptness

B101 § 4.2.2.2

- If the Architect responds to an RFI not prepared in accordance with the requirements of the Contract Documents or to an RFI where such information is available from careful review of the Contract Documents, the Architect is entitled to additional compensation.

Changes in the Work

- Prepare
 - Change Orders (A201 § 4.2.8 & 7.2)
 - Construction Change Directives (A201 § 4.2.8 & 7.3)
- Order
 - minor changes in the Work (A201 § 4.2.8 & § 7.4)



Payments

- A201 § 4.2.5:
 - Review and certify amounts due Contractor and issue certificates for payment
- A201 § 9.4.2:
 - Architect's certificate of payment (G702-1992) is a representation to the Owner that to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, and that the quality of the Work is in accordance with the Contract Documents

Payments *(Continued)*

- The Architect's issuance of a Certificate for Payment triggers the Owner's obligation to pay the Contractor (A201 § 9.6.1)
- The Owner is required to notify the Architect when payment is made to the Contractor (A201 § 9.6.1)



Payments *(Continued)*

A201 § 9.7

- If the Architect fails to issue a Certificate for Payment within 7 days of receiving the Contractor's Application, the Contractor may provide written notice to the Architect. If the Contractor does not receive payment of amounts owed within 7 days of written notice, Contractor may stop the Work until it is paid.
- If this happens, the Contract Time shall be adjusted and the Contract Sum shall be adjusted for costs the Contractor reasonably incurred during Work Stoppage.

Payments *(Continued)*

A201 § 9.5.1 – Withhold or Nullify Certifications

- Architect may withhold certification to the extent reasonably necessary to protect the Owner
- Architect may nullify in whole or in part a Certificate for Payment previously issued to protect the Owner from loss for which the Contractor is responsible
- When reasons for withholding/nullifying are removed a new certification will be issued for the withheld amounts

Payments *(Continued)*

A201 § 9.5.1 – Withhold or Nullify Certifications

1. Un-remedied Defective Work;
2. Third party claims filed or reasonable evidence of probable claims unless security acceptable to the Owner is provided by the Contractor;
3. Contractor's failure to make payments properly to Subcontractors or for labor, materials or equipment;
4. Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
5. Any damage to the Owner or a separate contractor;
6. Reasonable evidence that the work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
7. Repeated failure to carry out the Work in accordance with the Contract Documents.

Concealed or Unknown Conditions

A201 § 3.7.4

- If the Contractor encounters subsurface or concealed conditions that differ materially from those indicated in the Contract Documents, the Contractor must notify the Owner and Architect.
- Architect must conduct a “prompt investigation” upon receipt of Contractor’s notice and report in writing on the results.

Concealed or Unknown Conditions

The Architect's investigation...

- If the Architect determines conditions
 - DO differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, the Work, will recommend an equitable adjustment in the Contract Sum and/or Contract Time.
 - DO NOT differ materially and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons.

Initial Decision Maker (IDM)

A201 § 15.2.1

- Unless Owner and Contract otherwise agree, Architect serves as IDM
- Initial decision by IDM is a condition precedent to mediation of disputes between Owner and Contractor

B101 § 3.6.2.5

- Unless Owner and Contractor designate another, Architect is the IDM
- The Architect's role as IDM is included as a Basic Service
- Assisting IDM (if other than Architect) is an Additional Service

Initial Decision

- The IDM is required to review Claims and render a decision or take other action within 10 days (A201 § 15.2)
- IDM is required to approve or reject Claims by written decision



Submittal Reviews

A201 § 4.2.7

- Architect reviews submittals in accordance with approved submittal schedule for limited purpose of checking for conformance with information given and design concept expressed in the Contract Documents
- If no submittal schedule:
 - Architect reviews with reasonable promptness allowing sufficient time for adequate review in Architect's professional judgement

Submittal Reviews *(Continued)*

A201 § 4.2.7

- Review of submittals is not to determine accuracy and completeness or substantiating installation instructions for performance of equipment or systems.
- Review shall not constitute approval of safety precautions, or any constructions means, methods, techniques, sequences, or procedures.
- The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

Submittal Reviews *(Continued)*

- Contractor shall review required submittals for compliance with Contract Documents and submit to Architect. (A201 § 3.12.5)
- Submittal by Contractor represents that it has
 - Reviewed and approved them,
 - Determined and verified materials, field measurements, and field construction data (or will do so), and
 - Checked and coordinated information contained in submittal with the requirements of the Work and Contract Documents. (A201 § 3.12.6)

Architect not responsible for:

- Contractor's failure to perform the Work in accordance with the Contract Documents (B101 § 3.6.1.2)
- Construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the work (B101 § 3.6.1.2)



Responsibility for Safety

A201 § 3.3.1

- If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures
- Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures

Responsibility for Safety *(Continued)*

A201 § 3.3.1 (cont'd)

- If Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect and shall propose alternate options.
- The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction.

Responsibility for Safety *(Continued)*

A201 § 3.3.1 (cont'd)

- Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.



Quality of Contract Documents

A201-2017 Section 1.2.1

- “The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.”

Who is the only construction project participant with the ability to provide the Owner the information that will permit the Owner to meet their commitments to the Contractor?

(Please get this right!)

YOU GUESSED IT ...

THE ARCHITECT!



AIA Contract Documents

For more about AIA Contract Documents:

<https://www.aiacontracts.org/>

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- [NEGOTIATING DISPUTE RESOLUTION CLAUSES IN CONSTRUCTION CONTRACTS](#)
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Attorney Responsible for Content: Jeremy S. Baker

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