

Since its inception the Committee has produced a number of recommendations covering important areas of the construction industry. As new ones are added we will send them to you.

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\* See attached Specifiers Implementation Guide



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## retentions

(November 1967)

*The custom of paying the Contractor a maximum of 90% of the earned sum when payments fall due and retaining 10% until completion and final acceptance, imposes an unnecessary and unfair burden on the Contractor and Subcontractors when they have performed throughout the job to the satisfaction of the Owner's agent (Architect or Engineer).*

Both the United States government and the American Institute of Architects have approved a procedure recognizing that after 50% completion has been accomplished a retainage of 10% on the first half of the work, representing 5% of the contract sum, is adequate to assure completion and protection against claims, and that no further retainage is needed thereafter, provided that the reduction will be made only if, in the judgment of the Owner's agent (Architect or Engineer) proper performance and satisfactory progress is being made in the work. The American Institute of Architects' current issue of "Architects' Handbook of Professional Practice" endorses the above procedure in Chapter 17 under the headings "Progress Payments" and "Contract Modifications" and the Housing and Urban Development "General Conditions" form HUD 4238-L (9-66) Article 25 entitled "Payment to Contractors" establishes this procedure for all contracts.

In addition to our formal endorsement of the above procedures which rewards the Contractor for good performance, the Construction Industry Affairs Committee presents a total recommendation on retention that extends the same consideration to Subcontractors.

- 1 . A Contractor shall be paid 90% of the earned sum when payments fall due, retaining 10% to assure faithful performance of the contract; and that after 50% completion has been accomplished; no further retainage be withheld; provided, however, that this reduction in retainage be made only if, in the judgment of the Owner's agent (Architect or Engineer), satisfactory progress is being made in the work.
- 2 . A Subcontractor shall be paid 90% of the earned sum when payments fall due, retaining 10% to assure faithful performance of the contract; and that after 50% completion has been accomplished, no further retainage be withheld, provided, however, that this reduction in retainage be made only if, in the judgment of the Contractor and the Owner's agent (Architect or Engineer) satisfactory progress is being made in the work.
- 3 . The Owner's agent (Architect or Engineer) shall give Subcontractors, upon request, information on all payments approved and paid to the Contractor relating to the Subcontractor's work.
- 4 . Thirty (30) days after completion and final written acceptance by the Owner's agent (Architect or Engineer) of a Subcontractor's work, or a Contractor's work, as the case might be, all retentions are to be paid.



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## *guarantees and warranties*

(February 1968)

*It is recognized that varying and indefinite requirements pertaining to guarantees and warranties have existed for many years in the construction industry. The Construction Industry Affairs Committee of Chicago unanimously adopts the following statement as official policy to provide equitable and uniform standards.*

1 . A period of one year shall be established for both the guarantees and warranties required by the contract specifications. The installation and also each item of equipment and material shall be guaranteed by the Contractor and the equipment and material shall be warranted by the Supplier and Manufacturer.

2 . The guarantee and warranty period for all items other than heating, piping, electrical, ventilating, refrigeration, plumbing, temperature control, pneumatic systems, elevators or any other mechanical contrivance shall commence on the date certified by the Architect or Engineer at the time the prime contract(s) have been satisfactorily completed in accordance with plans and specifications.

3 . The guarantee and warranty period for heating, piping, electrical, ventilating, refrigeration, plumbing, temperature control, pneumatic systems, elevators or any other mechanical contrivance shall be the same as in Article 2 above, unless a whole or partial system or any separate piece of equipment or component is put into use for the benefit of any other party than the installing Contractor with the prior authorization of the Owner or the Owner's agent (Architect or Engineer). In this instance, the guarantee and warranty period will commence when any of the foregoing items is placed in operation. As a condition to formal acceptance by the Owner, the beneficial user at their expense must place same in first class operating condition as if it had not been used.

4 . The extent of a guarantee and warranty shall be the requirement to repair or replace, without cost to the Owner, all equipment or workmanship which shall be found to be defective during the guaranteed period, exclusive of repairs due to improper maintenance or operation, or to normal wear, tear and usage, and to pay for all damage resulting from defects.

5 . The guarantee requirements shall be objective and determinable and shall not include ambiguous clauses subject to personal interpretation.



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## *management and control of construction operations*

(May 1968)

*Regardless of how contracts are awarded for a construction project, there should be one party placed in the position of responsibility for the management and control of construction operations in order to maintain established work schedules, promote safe working conditions and avoid unnecessary disputes and conflicts that result in unjustified claims for extra compensation. Such responsibility should be placed in the hands of the Contractor. The cost of said management and control of construction operations, including the services of a separate person to act as a mechanical work coordinator for major projects, would become a part of the Contractor's bid sum. In general, the project should include the services of a separate mechanical work coordinator, but some projects might not require one because the project is too small, or the mechanical and electrical systems are uncomplicated. The specifying Architect and/or Engineer must make its own determination, taking into consideration the percentage of the total work contributed by the mechanical and electrical trades as well as the complexity of the design. In all instances, but particularly when separate contracts or assigned contracts occur, the mechanical and electrical specifications should contain provisions requiring full and complete cooperation with the Contractor and their mechanical work coordinator.*

### **THE RESPONSIBILITY OF THE CONTRACTOR SHOULD BE:**

To have direct control and management of all construction operations and to be responsible for the satisfactory overall performance of all Suppliers and Subcontractors in order that the entire work be coordinated and supervised. It is imperative that the Contractor arrange for periodic coordinating meetings to be held with the Architects and/or Engineers and Contractors' representatives at the job site.

The mechanical work coordinator shall be responsible for planning and expediting of the proper sequence of delivery of mechanical and electrical equipment to the project site as well as scheduling the labor operations in such a way as to meet with the approved progress schedule of the building. The coordinator shall work with all construction superintendents and the Architects and/or Engineers' field representatives.

To furnish the services of a mechanical work coordinator acceptable to the Architect and/or Engineer in addition to the job superintendent. This person must be knowledgeable in the operation of mechanical and electrical systems to the extent that the coordinator is capable of reading, interpreting and coordinating plans, specifications and shop drawings pertaining to such systems as will be incorporated into the construction project.



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## *operation and maintenance of dynamic systems*

(August 1968)

*Considering the large expenditure of Engineering talent, manufacturing skills and installation effort going into complex mechanical and electrical systems of buildings, it is obvious that this investment should be protected with the best possible care and be operated for maximum performance. Nevertheless, the Owner frequently does not have, or does not follow, a good maintenance and operation program nor does the Owner always employ qualified personnel. The result is that sometimes the Architect and/or Engineer or Contractor is wrongfully accused of responsibility for an unfortunate occurrence.*

We recommend that the Owner should insist on establishment of a good maintenance and operation program and assign competent personnel to learn proper procedures and become familiar with the various systems and equipment as the installation is being made. The Owner should make sure that the selected personnel have gained a thorough knowledge and understanding of their task and of the data turned over to them before entrusting such valuable property to their care. It is the Owner's responsibility to ask for advice and information from the design Engineer, the Manufacturers of equipment, and the installing Contractor.

The design Engineer should answer any questions the Owner may ask. The Engineer should also specify that Manufacturers of equipment furnish operating and maintenance data and send a trained representative to the job to assure that the particular piece of equipment receives all necessary adjustments for proper operation. The specifications should also provide that the installing Contractors assemble all of the Manufacturers' data required by specifications and participate in the job site meetings with the Architect and/or Engineer, equipment Manufacturer representatives and the Owner.

If the Owner should feel the need, the Owner may request the Architect and/or Engineer to provide services in addition to the scope of normal professional services included in the base fee, such additional services to consist of preparing written operation and service procedures, referring to Manufacturers manuals or data sheets required by specifications, and including an explanation of the basic Engineering scheme demonstrating how each of the equipment components functions in the various systems.



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## *assignment of responsibility for providing temporary job utilities and services*

(August 1968)

*It has been the custom for the Architect and/or Engineer to state in the General Conditions of the Specifications that the Contractor include the cost of providing temporary job services such as temporary water, heating, ventilation, light, and power. There is a wide variation in the amounts included by bidders for these general conditions costs. This problem is aggravated when separate contracts are awarded for mechanical and electrical work.*

We recommend a more logical assignment of responsibility in order to prepare an accurate cost of these services. The temporary facilities work that must be done by the mechanical and electrical trades union labor should be specified in the separate sections of the specifications for each of the trades. A more detailed explanation of this recommendation follows, with each aspect of temporary service being defined for the purpose of uniformity, and then jurisdictionally assigned under the heading of responsibility.

### **TEMPORARY WATER AND ELECTRICAL SERVICE**

#### *Definition*

The furnishing and installing of those utilities which are of a temporary nature, and which are employed to expedite the project and are intended to be disconnected and removed prior to final acceptance of the project.

#### *Responsibility*

These temporary job utilities, when required, shall be specified by the Architect/Engineer as being furnished and installed by those trades having jurisdiction.

### **WEATHER PROTECTION AND CONSTRUCTION HEAT**

#### *Definition*

The furnishing and installing of all weatherproofing and heating devices as required to protect work in place and permit continuation of construction during periods of cold and inclement weather.

#### *Responsibility*

The Contractor shall provide all temporary enclosures as a means of weather protection during construction. The Contractor shall also provide temporary heating devices as a means of cold weather protection for work in place and in progress. These protective measures shall be provided until such time as the building is enclosed by permanent construction and the permanent heating system, in the opinion of the Architect/Engineer, is sufficiently completed to allow safe operation.

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## **TEMPORARY HEATING AND VENTILATION**

### *Definition*

The operation of the permanent heating and/or ventilation system, in whole or in part, to protect the work in place, to permit continuation of construction during cold weather, to aid in controlling relative humidity, or to allow for beneficial occupancy prior to final completion of the project and its acceptance.

### *Responsibility*

Temporary heat or temporary ventilation shall be furnished by the Heating and/or Ventilation Subcontractor after the responsibility for weather protection has been fulfilled by the Contractor.

The cost of all fuel, water, electricity and other consummable products shall be paid for by the Owner.

The Specifications are to be prepared in such manner that the Heating and/or Ventilation Subcontractor will be required to furnish the following:

1. Temporary connection to the permanent heating or ventilation system and the removal of same. This shall also include placing the system back in first class condition before turning system over to the Owner. This includes replacing, repairing and cleaning all components of the permanent heating or ventilation system which were used on a temporary basis.
2. In addition to the above, and in order that an allowance can be established in the contract price, the Architect/Engineer shall incorporate in the specifications a lump sum dollar amount or a total number of hours that the Heating Contractor and/or Ventilating Subcontractor shall include in their bid for the cost of temporary heat and/or temporary ventilating labor. The Heating Contractor and/or Ventilating Subcontractor shall also state the hourly rates for the furnishing of temporary heat labor, in order that a cost adjustment can be made against the stated allowance.



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## equipment purchasing procedure

(October 1968)

*The Contractor who installs equipment in accordance with union jurisdiction in a building designed by an Architect and/or Engineer should also purchase it. It is recommended that the furnishing of the equipment be included in the specifications of the trade having union jurisdiction. Purchasing of equipment by the Owner is not justified except in rare instances such as the need to meet a construction schedule. In such circumstances, the Architect and/or Engineer should stipulate in the specifications that the purchase order will be assigned to the successful bidder who must include the cost of the equipment in the proposal and become responsible for the handling, installation, performance and guarantee in exactly the same manner as if the bidder had been the original purchaser. By following the recommended procedure, the Owner will not be subjected to the following hazards and hidden costs:*

- 1 . Dispute as to who is responsible for the warranty, guarantee, and performance of the equipment; and when the guarantee period commenced.
- 2 . No definite way to determine whether deficiencies and improper performance are the results of equipment defects or incorrect installation. Where the installing Contractor furnishes the equipment, overall responsibility is the Contractor's.
- 3 . Manufacturers usually ship F.O.B. their plant, occasionally with freight charges allowed. If the equipment is purchased by the Owner, and is damaged enroute, the Manufacturer can disclaim responsibility and require the Owner to seek redress from the shipper; but responsibility to pay the Supplier still rests with the Owner, since title has passed when the equipment left the Manufacturer's plant.
- 4 . Manufacturers invariably and historically have refused to furnish labor as a part of their warranty; but will only agree to replace defective parts if they are returned, freight prepaid, to their plant. Where the installing Contractor furnishes the equipment, no such problem arises inasmuch as, by specifications, complete responsibility rests with the Contractor.
- 5 . Where the installing Contractor furnishes the equipment, he is solely responsible for job scheduling, delays and penalties. Where separate purchases are made, the Contractor's obligations are qualified and often voided.
- 6 . In many instances, union agreements also require that the trade in whose jurisdiction the installing of the equipment rests must also furnish the equipment, and penalties occur where this condition is not met.



## construction contract change orders

(January 1969, Revised June 1986)

*Change orders provide a suitable method of handling necessary modifications to a construction contract, but their use imposes requirements on involved parties. One of their most aggravating aspects is the length of time that elapses between the time a proposed contract modification is first announced until the matter is finally rejected or approved as a contract change order. This recommendation outlines a procedure for all involved parties so that construction contract changes will be processed expeditiously.*

It is recommended that:

- (1) minor deviations from the requirements of the contract documents, when submitted as part of shop drawings, product data, samples or other submittals, be identified on the submittal by the Contractor and authorized by the Owner.
- (2) the conditions requiring contract modification be fully disclosed to all involved parties at the earliest possible time.
- (3) explicit instructions be issued by the Architect/Engineer as to the scope of a proposed contract modification.
- (4) each modification be identified by the Architect/Engineer with appropriate nomenclature to be used on document revisions, files and correspondence,
- (5) the same nomenclature also be used by the Contractor and Subcontractors for each modification, even if they maintain their own numbering systems.
- (6) the Contractor not proceed with work involving changes unless a change order or other written authorization has been received.
- (7) authorization for work to proceed be issued by the Owner pending agreement with the Contractor on a proposed contract modification.

The Architect/Engineer's request for a cost proposal should include, at the least, the following information for the Contractor's guidance: description and location of the work to be added, deleted or modified, additional or revised drawings and specifications, degree of detail required in a cost breakdown, and authorization of overtime, if appropriate.

The Contractor's cost proposal should be in one of three forms: lump sum, time and material, or unit price. In each case, the cost proposal should include direct costs, overhead and profit and should respond directly to the detailed requirements of the request. It should also state the effect on the completion time for the contract, if any, and time limitation on acceptance of the proposal. The Contractor should review each Subcontractor proposal to ascertain that it is complete and reasonable.

A basis for overhead and profit, in the form of stipulated percentages on additions to or deductions from the contract sum, should be established in the contract. In some instances, the contract provisions might not logically apply because the scope of the project has been drastically changed. The Owner and Contractor should agree to negotiate in such cases.

Changes frequently have an impact on the performance of other work under the contract. The term "impact" refers to the indirect delay or interference that a change on one aspect of the work may create on another aspect of the work. The costs of such delay or interference should be included by the Contractor as a part of the direct costs, unless the Contractor includes a statement that such costs are indeterminable at the time.

When work is to be omitted, the credit to the Owner should include only the direct costs and may be referred to as ALLOWED CREDIT. Work to be added should be charged at direct cost plus overhead and profit and may be referred to as ALLOWED EXTRA. If both omitted work and added work are involved in the same modification, then the amount of the approved contract change order should be equal to the difference between the ALLOWED CREDIT and the ALLOWED EXTRA, which will be either a net increase or a net decrease in the original contract amount.

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After receiving a properly prepared cost proposal on a proposed contract modification, the Architect/Engineer should promptly review and recommend acceptance or rejection of the modification to the Owner. The Architect/Engineer should check to determine that the percentage of direct cost to be added for overhead and profit is in accordance with the construction contract agreement governing ALLOWED EXTRA change orders.

The Owner should promptly review the recommendation of the Architect/Engineer on the cost proposal and within a reasonable time either reject the proposed contract modification or authorize the Architect/Engineer to prepare a contract change order. The Architect/Engineer may choose to predetermine a proper period for this purpose and the Owner should be governed by this determination unless it has otherwise been established by mutual agreement between the Owner and the Contractor.

If agreement on the proposed contract modification is reached, the Owner should issue a written authorization prior to the issuance of a formal change order, stating the basis for adjustment in the contract sum and time, authorizing the Contractor to proceed with the work, and allowing the Contractor to include same in the payment request to the extent of the work performed.

If agreement on the proposed contract modification is not reached in a reasonable time, the Owner should issue a written authorization which states a basis for adjustment in the contract sum or contract time, or both, and authorizes the Contractor to proceed with the work. The authorization should allow the Contractor to apply for payment for the work performed.



## *"punch list"*

(April 1969, Revised August 1992)

*No phase in the construction of any project is fraught with more time-consuming delays and attendant exasperations than the period involving corrective work prior to final acceptance. As a theoretical principle, it can be said that if each and every trade performed its work to comply with the contract requirements and the most exacting standards of craftsmanship, what we have learned to know as a "Punch List " would be non-existent.*

*It is, therefore incumbent upon everyone to adopt this principle as the primary motivation. To that end, we submit the following individual responsibilities of all parties to the construction contract.*

### **CONTRACTOR & SUBCONTRACTORS**

This group must assume the greatest responsibility for the existence of work that must be corrected. More critical, exacting and progressive supervision is required of the Contractor so that all trades perform their work in accordance with the highest standards of quality workmanship.

*The following procedures are recommended:*

- 1 . The Contractor should carefully check their own work and that of Subcontractors as the work is being performed;
- 2 . From the very beginning of the project, it is suggested that the Contractor's superintendent prepare and maintain a written record of deficiencies observed as the job progresses so as to preclude their being overlooked or forgotten;
- 3 . Unsatisfactory work should be corrected immediately, and not be permitted to remain and become a part of the Punch List;
- 4 . Corrections should be made before any particular sub-trade leaves the project. Unless this is done, the door is left open for subsequent evasion and disavowal of responsibility, and protracted delays.
- 5 . During the finishing stages of the project, the Contractor should make frequent and periodic inspections with Subcontractors and the Architect/Engineer representative so as to check for and correct faulty work.

6 . When the Contractor has decided that the project has been completed satisfactorily in accordance with the terms of the contract, the Contractor should notify the Architect/Engineer to obtain their concurrence.

### **ARCHITECT/ENGINEER**

- 1 . During the progress of the work, point out a deficiency as it is observed rather than waiting and placing it on the Punch List.
- 2 . Upon representation by the Contractor that in the Contractor's opinion the project has been completed satisfactorily in accordance with the contract, the Architect/Engineer shall promptly make a thorough investigation and prepare a Punch List setting forth in accurate detail any items that are not found to be acceptable.
- 3 . When the Punch List has been completed the Architect/Engineer representative shall meet with the Contractor and Subcontractors to tour the project to identify and explain all items and answer any questions that may arise so there will be no misunderstanding of what the Architect/Engineer requires to be done before the project can be accepted as complete.
- 4 . If the Contractor gives notice that a major Subcontractor has completed their Punch List items, the Architect/Engineer should inspect that portion of the work and if the items are found to be satisfactorily completed, advise the Contractor and Subcontractor accordingly.

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5 . When advised by Contractor that all Punch List items have been completed, inspect the project with all Contractors involved and, if said Punch List items are satisfactorily completed, issue final certificate.

6 . If the Owner or installer of Owner's equipment and furnishings damages finished and previously accepted work, advise the Owner of their obligations to repair damaged work.

7 . Do not include items of maintenance or work damaged by the Owner after the Owner has taken occupancy. Should the Owner want the Contractor to repair or replace damaged work, the Contractor should be reimbursed for these costs on a change order basis.

**CONCLUSION:**

If these procedures are followed, it is reasonable to assume that the initial Punch List will be minimal, and that there would be no more than one additional Punch List between the period of initial occupancy and final acceptance. The issuance of multiple Punch Lists in series is considered improper and unnecessary.



# substitutions

(July 1969)

*The construction industry needs to be generally aware that substitutions proposed by bidders and Contractors unduly disrupt the normal bidding and construction processes. Too often the valuable time and effort of key personnel are wasted in the consideration of such requests which are originated by the proposer solely for its financial benefit. Two factors should be kept in mind before proposing a substitution. First, there may be several perfectly valid but undisclosed reasons why the selection or specification was established as it was in the first place. Second, and in any case, time and effort will be required for the Architect/Engineer's and Owner's investigation of the proposed substitution, for which the personnel must be paid, and during which the work and other necessary activities may be delayed.*

*The claim is often made that all attempts to limit the consideration of substitutions result in a stifling of competition and loss of economy to the Owner. Perhaps this argument would be valid if the efforts of everyone concerned with the problem were without cost, and if economics were the only interest of each Owner. Everyone knows the situation is not this simple, and yet reasonable competition leading to economy is an important consideration for almost every Owner. The principles following are suggested in order to limit substitutions and yet maintain competition and economy.*

### *In the specifications:*

State precisely what is to be provided by the Contractor; preferably by use of trade names only. In any case clarity is essential — a vague specification serves to encourage, not limit, substitution requests.

Required for compliance with final interpretation of code requirements or insurance regulations;

Unavailability of specified products, through no fault of the Contractor;

### *During bidding:*

Where products or Manufacturers are named, it is recommended that one or more of the following procedures be used to permit the consideration of other products during the bidding period and/or during the period prior to award.

Subsequent information discloses inability of specified products to perform properly or to fit in designated space;

Manufacturer/fabricator refusal to certify or guarantee performance of specified product as required;

Consider any requests received from *prime bidders*, up to 10 days before the bid opening. Issue addenda to all bidders, not less than 7 days prior to bid opening, adding any new acceptable names.

When it is clearly seen, in the judgment of the Architect/Engineer, that a substitution would be substantially to the Owner's best interests, in terms of cost, time, or other considerations.

Require that base bids comply strictly with specifications, with an alternate proposal form submitted at the same time to indicate any proposed substitutions (not considered in selecting low bidder, but before award).

### *Submission of substitutions:*

A substitution request should be timely and be accompanied by adequate technical and cost data. The Architect/Engineer should be under no obligation to consider untimely or inadequately documented or exploratory submission.

### *Prior to award:*

When the successful bidder has been selected, allow a limited period of time to submit any requests for substitutions.

*It is recommended that the preparation and enforcement of contract documents incorporate the above principles, which are believed to be in the best interest of the construction industry.*

### *After award:*

The Architect/Engineer should *not* consider substitutions except under one or more of the following conditions:

## *project record documents*

(July 1969)

*It is recommended that an Owner acquire a complete record set of the latest data showing how the building or project was constructed including all changes made in the field. A comprehensive collection of project record documents would include the following:*

- |   |  |
|---|--|
| <p><b>A .</b> Architect/Engineer furnished documents consisting of drawings and specifications including all contract change order revisions;</p> | <p>drawings, operating and maintenance instructions and field coordination drawings;</p> |
| <p><b>B .</b> Approved Manufacturers' drawings and brochures, approved fabricators' shop drawings, installing Contractors' approved</p>           | <p><b>C .</b> Field record drawings, as explained below.</p>                             |

*If the above recommendation is followed, the Owner will have a project record to suit his purpose not only for correct and economical operation and maintenance of the project, but also as an invaluable aid in planning for alterations or additions in the future.*

### **FIELD RECORD DRAWINGS:**

In order to assure that changes in the field are incorporated into the project record documents, the Architect/Engineer must consult with the Owner and include the specific instructions in the construction contract bidding documents. The field record should include significant departures from the installing Contractor's drawings or the Architect/Engineer drawings and show exact locations of underground piping and wiring as well as permanently concealed work as designated. It is not adequate for the Architect/Engineer to briefly state that "As-Built," drawings are required and it is recommended that this term is obsolete and should be discontinued because of its ambiguity.

If the installing Contractor does not prepare their own drawings, but follows the Architect/Engineer drawings, then the Architect/Engineer should furnish a set of drawings to the Contractor for use in the field for the purpose of recording deviations from the Architect/Engineer drawings as well as recording the exact location of permanently concealed work. In this case, the installing Contractor would return the Architect/Engineer drawings at the completion of the job with complete record notes, in colored pencil, and the Owner can decide whether it wants to engage the services of the Architect/Engineer to revise the drawings accordingly.

There are two ways to incorporate field changes into the project record documents. In the event the Architect/Engineer has required the installing Contractor to prepare their own drawings, the logical method is to require the installing Contractor to submit revised drawings at the close of the job incorporating all of the deviations from its originally approved drawings and in addition, recording the exact location of permanently concealed work.



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## *application for payment and sworn statement*

(March 1970)

*A Contractor makes application to the Owner for payment due either on a Contractor-prepared form or one prepared by the Architect/Engineer or Owner. In states that have lien laws, the Contractor must also submit to the Owner a sworn statement that gives the names of all those who are furnishing materials and/or labor for the project and the cost of same together with the amount due and to become due to each of them. Since the data supplied on these separate papers is largely repetitive, it has been quite common for the Architect/Engineer or Owner to require that only a sworn statement form be prepared.*

As a result many Contractors, Architects, Engineers and Owners have developed their own forms, which serve as both application for payment and sworn statement; but none of those studied by the committee was considered wholly satisfactory. A most important shortcoming is that most forms now in use do not take into account a method that will implement the Recommendation on Retention, which was the first one issued by the Construction Industry Affairs Committee.

The Construction Industry Affairs Committee has prepared the enclosed form entitled, "APPLICATION FOR PAYMENT AND SWORN STATEMENT OF CONTRACTOR AND SUBCONTRACTOR TO OWNER," which is recommended to the construction industry. You will find the form has been carefully prepared to give complete and accurate information necessary for rapid processing and payment by Owner. Copies of the form are available from the office of the Construction Industry Affairs Committee.

## construction completion schedules related to building costs

May 1970

*The practice of establishing construction completion schedules that are impossible to meet on a normal, straight time, hourly rate basis should be discouraged. Such practices have been found to disrupt the economy and the availability of labor in the local area, and ultimately be detrimental to the entire construction industry and the national economy. There are two situations where these practices have been found:*

- 1 . in unrealistic completion scheduling for contracts let by competitive bidding, and
- 2 . in negotiated contracts of the type where construction costs are disregarded in lieu of an Owner's personal or corporate motivations.

### CONTRACTS BY COMPETITION:

Unrealistic completion dates, coupled with exorbitant per diem charges against the Contractor for failure to comply, impose severe financial burdens and undeterminable risks on the Contractor, and further, the Owner pays more than the building is worth with no guarantee that the job will be completed by the stipulated deadline. Some of the reasons are:

- 1 . To cope with an unrealistic completion schedule, the Contractor must do everything they can to attract adequate labor from the current short supply of workers, and they must add to their proposal the per diem costs for the days they will overrun the completion date. Obviously, they must calculate, too, the premiums resulting from overtime work rates, which run from one and a half to two times the normal rate.
- 2 . A disparity in bids will also result, since no two bidders will evaluate in the same manner the unknown and uncontrollable factors. The essence of proper bidding is an accurate estimate of determinable costs within the power and judgment of the bidder. Unrealistic completion schedules and per diem charges also force the bidder to guess as to the availability of materials and equipment, over which the Contractor has no control. Thus, another premium cost must be calculated.
- 3 . Disputes and endless paper work result from claims for extensions due to causes outside the scope of the penalty contract.

### NEGOTIATED CONTRACTS:

The principal offenders are the large industrial entities who decide, in order to meet production schedules, that they must have a project completed by a certain date regardless of cost. To accomplish their goal they willingly pay higher than normal market prices for equipment, materials and labor.

#### *General Comments:*

In both the contracts by competition and those negotiated, the following are examples of what is happening:

- 1 . Due to the necessity of working overtime, the labor productivity for all hours worked is reduced as much as 28%. Statistics show the reduction in productivity as the amount of overtime is increased.
- 2 . Labor markets in the immediate area are seriously disrupted because overtime projects syphon labor from those on straight time. Transient, and usually less efficient, labor is drawn to the area by the high wage labor.
- 3 . Labor becomes accustomed to lower efficiency and premium overtime rates and uses it as a cudgel to demand higher wages. This can only accelerate the inflationary wage spiral. Moreover and to the detriment of the national economy, these inflationary wage spirals in turn spill over to all other industries.

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*continued*

*Recommendation:*

On construction contracts to be let under the principles of competitive bidding, the C.I.A.C. recommends that the Owner's representative consult with the Architect/Engineer and qualified prospective contract bidders to establish a realistic completion schedule. The Construction Industry Affairs Committee further calls on the entire construction industry to condemn contracts where the objective is to complete a project as soon as possible, regardless of price, and where it is thus detrimental to local, regional, and national economies.



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## *waiver of lien procedure*

August 1970

*The practice of requiring partial waivers of lien from the Contractor and each of the Subcontractors and Suppliers based on current payment requests imposes harsh penalties upon these parties by (1) requiring the Contractor to pay Subcontractors and Suppliers prior to the Contractor having been paid by the Owner, or (2) requiring the Subcontractors and Suppliers to waive their lien rights before being paid by the Contractor in order for the Contractor to obtain payment from the Owner. The capital required by the Contractor to pay the Subcontractors and Suppliers before obtaining waivers is very substantial and burdensome. As a result the Subcontractors and Suppliers are frequently pressured into releasing their waivers of lien to the Contractor without receiving payment for this release and without assurance that they will be paid when the Contractor receives payment.*

Therefore, it is the recommendation of the Construction Industry Affairs Committee that an already widely accepted and equitable procedure be used which is as follows:

The first payment request shall be accompanied by the Contractor's partial waiver of lien only. Each subsequent monthly payment request shall be accompanied by the Contractor's partial waiver and the partial waivers of Subcontractors and Suppliers who were included in the immediate preceding payment request, to the extent of that payment. In other words, the Contractor must submit partial waivers on a current basis, but the Subcontractors and Suppliers may not be more than one payment late with their partial waivers. Request for final payment shall be accompanied by final waivers of lien from the Contractor, Subcontractors and Suppliers of material who have not previously furnished such final waivers.

By this procedure the Owner will have adequate protection and will not be asked to make final payment until necessary waivers are received; the Contractor will not be obliged to make advance payments to secure waivers and the Subcontractors and Suppliers will not be placed in a position of surrendering their legal rights without proper consideration.

## shop drawings

September 1997

*Shop drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures, and other data which are prepared by the Contractor, or any Subcontractor, Manufacturer, Supplier or Distributor, and which illustrate some portion of the work. A cooperative effort by the Contractor and Subcontractors must be made to improve and expedite approval of shop drawings by the Architect/Engineer. The following is our recommendation for proper processing:*

### **CONTRACTOR:**

#### *A. Schedule of Submissions:*

Within thirty (30) days after the award of the contract, the Contractor shall prepare a schedule of specific target dates for the submission and return of Architect/Engineer reviewed shop drawings required by contract documents. The schedule should be divided into construction categories. Unless items are otherwise particularly listed, it will be understood that all shop drawings for interrelated items will be submitted at approximately the same time. A progressing item, such as reinforcing steel, may be listed separately in stages of submission. Not less than two weeks shall be allocated to each submittal for processing by the Architect/Engineer. The shop drawing schedule together with a correlated construction progress schedule and a proposed list of Manufacturers and Suppliers will be submitted to the Architect/Engineer for approval.

#### *B. Channel of Submission:*

Shop drawings must be processed to the Architect/Engineer through the Contractor.

#### *C. Review and Approval:*

The Contractor must see that the shop drawings for construction and equipment comply with the requirements of the contract documents. Shop drawings, which are incomplete or are not in compliance with the contract documents, shall not be submitted to the Architect/Engineer for review. The Contractor shall place a stamp of approval on all shop drawings submitted to the Architect/Engineer to indicate compliance with the above.

### **ARCHITECT/ENGINEER'S REVIEW AND APPROVAL:**

The Architect/Engineer shall make sure the specifications clearly define the items requiring submission of shop drawings. Where specifications call for approval, the Architect/Engineer shall review shop drawings to determine conformance with the design concept of the project and return them to the Contractor within the period established in the shop drawing schedule, marked, "Approved," "Approved as Corrected," "Revise and Resubmit," or "Not Approved."

Where corrections or revisions are requested or shop drawings are "Not Approved," the Architect/Engineer shall indicate the reasons for such action.

The Architect/Engineer may hold shop drawings in cases where partial submissions cannot be reviewed until the complete submission has been received or where shop drawings cannot be reviewed until correlated items affected by them have been received. When such shop drawings are held up by the Architect/Engineer, the Contractor shall be so advised in writing that the drawings submitted will not be reviewed until all related items have been received.

The specifications shall contain a reference that no portion of the work requiring a shop drawing will be permitted to start until the submission has been approved by the Architect/Engineer. Changes or modifications to the contract documents should not be initiated by corrections to the shop drawings.

### **SUBSTITUTIONS AND MODIFICATIONS:**

In the instance of a substitution item, the Contractor's check should verify that it will fit into the space allocated to the originally required item. Where modifications to the contract documents are proposed, the Contractor must indicate such deviation in writing in the submittal. If the modifications and/or substitutions are approved by the Architect/Engineer, the contract documents shall be appropriately modified to incorporate said approval.

## *submittal data and equipment quality control*

November 1970

*Progress and growth in the construction industry has resulted in changes of equipment models and design by the established Manufacturers and attracted new Manufacturers into the industry. It has thus become increasingly difficult for Architects, Engineers and Contractors to assure themselves that all equipment and systems furnished will perform as required.*

*It must be made certain that the equipment submitted for approval meets the specification criteria. This means that correct and complete submittal data be furnished. The Manufacturers must assume their share of the responsibility for furnishing accurate submittal data and proper equipment that meets the design specifications.*

To this end two actions are recommended:

1. That the Architect/Engineer include in the specifications the following:

A. That the Manufacturer's submittal data should include the following, as the individual needs occur:

- (1) Dimensions and weights.
- (2) Performance data consisting of capabilities, RPM, BHP, pressure drops, design and operating pressures, temperatures, performance curves, noise level curves, power characteristics and consumption. The data shall conform as closely as possible to the design criteria incorporated in the plans and specifications.
- (3) Where necessary, certified shop drawings and certification of performance as described in (2). This certification should apply to major equipment such as: boilers, refrigeration compressors, chillers, large motors, service switchgear, pumps, fans, airhandling units, and fan coil and induction units. This certification shall be signed by an officer of the corporation manufacturing the equipment.

B. When so specified, the Manufacturer shall conduct an equipment test in the manufacturing plant, or it shall be performed by an independent testing laboratory. This test may be witnessed by the Architect or Engineer or certified by the testing laboratory.

2. That the mechanical or electrical Contractor include in their purchase agreement with the Manufacturer provisions which will have the following effect:

- A. That all materials and equipment covered by the purchase agreement be subject to the approval of the Architect, Engineer, or any other party mentioned; and that the Manufacturer furnish the required number of submittal data or samples for approval.
- B. That, in the event approval is not obtained, there is no liability on the part of either the Contractor or Manufacturer unless the order is placed with the understanding that the material is to be supplied of the type and in such a manner as to meet the requirements of the plans and specifications. In which case the Manufacturer shall comply without further cost to the Contractor.
- C. That all material, equipment, and its performance shall be in strict accordance with plans, specifications, and general conditions, and in the event the equipment does not meet the foregoing requirements, Manufacturer shall immediately, on notice, pay all costs to replace same or remedy any deficiency and shall further assume responsibility for consequential loss or damage resulting there from.

## *bonds*

December 1971

*Although Surety Bonds are occasionally used in the construction industry, their purpose and benefit for the Owner is frequently not well understood. It is pointed out, however, that if Recommendation No. 17 of the Construction Industry Affairs Committee, which relates to proper qualification of bidding Contractors, is followed, the securing of Surety Bonds is usually not necessary. The purpose of this Recommendation is to describe the types, and functions, of the security bonds most commonly used.*

### **BID BONDS**

When an Owner decides there must be some security to protect against disadvantages that may occur because of a Contractor refusing or not being able to sign a contract after submitting the bid proposal, there are several methods available. In any case, the bid security should represent at least 5% of the Contractor's bid proposal. Bid bonds, certified checks, cashier's checks and sometimes negotiable securities are accepted as bid security. We recommend the bid bond because the cash security frequently imposes a financial burden on the bidding Contractor. Bid bonds should be in the amount of 10% of the Contractor's bid proposal.

Surety makes only a nominal charge to a Contractor for a bid bond, and although writing one does not commit them to write a performance and payment bond, it is a good indication that they are willing to do so. Bid bonds should be the "forfeiture type" which gives the Owner a direct right of action under the bond.

### **PERFORMANCE BONDS AND PAYMENT BONDS**

In the performance bond the surety has an obligation to the Owner for any additional costs to complete the contract due to the Contractor's failure to comply with contract requirements. The most common reason for a Contractor not completing a contract is insolvency. Therefore, sureties should be interested in the financial conditions as well as other qualifications of a Contractor before writing a performance bond.

In the payment bond the surety guarantees payment of all legitimate labor and material bills that result from performance of the contract. The surety has an obligation to the Owner for the additional costs that are the result of the failure of a Contractor to pay the labor and material bills due to performance of work on the contract.

Combination performance and payment bonds, including in one instrument the obligation for both the performance of the contract and for the payment of laborers and material suppliers, has resulted in difficulties and delays in handling claims. We recommend separate bonds issued by surety as a "package" for which no additional charge is made. Under the two-bond system, surety is enabled to make payment without awaiting a determination as to Owner's priority. We also recommend that each bond be in the amount of 100% of the contract price.

When Contractors require a surety bond from their Subcontractors, the Contractor's position is similar to that of an Owner. Contractors should be careful to obtain bonds from their Subcontractors that are of the same form and not less than the guarantee the Contractor is giving the Owner under the Contractor's own bond.

### **SUMMARY**

We recommend that, wherever possible, the requirement for Surety Bonds be eliminated by limiting bidders to properly qualified Contractors who, by the financial stability and record of satisfactory performance, make the additional cost of bonds unnecessary. Performance and Payment Bonds are not guarantees of a trouble-free job, but do protect the Owner from additional costs due to the Contractor's failure to complete a contract.



## *bidder qualifications*

(February 1972)

*A Contractor cannot be expected to perform properly when they are not able to do so. Therefore, if an Owner or their Architect or Engineer is to expect an efficiently run construction project, performed in a minimum time and in a competent and sound manner, the Owner must select Contractors and Subcontractors who are capable of performing properly.*

It is unfair to both bidder and Owner to wait until after the bids have been received before determining whether or not the low bidder should be awarded the contract. Either the bidder suffers the expense of preparing the proposal and the embarrassment of disqualification or the Owner will have to give the contract to someone who is not capable of performing the work properly. It is, therefore, imperative that the current status of prospective bidders be made available to the construction user in ample time for a proper evaluation of their qualifications before the bidding documents are issued. If this is done, the following benefits will be obtained:

- 1 . Assurance that the low prime bidder and their Subcontractors will be competent, responsible, experienced and will have adequate resources to handle the job without becoming overburdened.
- 2 . Contractors who have limited financial resources, inadequate or inexperienced organizations, or commitments that already involve them to the limit of their capacity will be eliminated even though they may be able to obtain a performance bond.
- 3 . The number of bidders will be under reasonable control, so the qualified bidders will not refrain from bidding or will withdraw.
- 4 . A prime bidder will not be offered the temptation to base their proposal on an unusually low bid from a Subcontractor of unknown qualifications to guard against the likelihood that a competitor might use the doubtful proposal to produce a lower prime bid.

A bidder candidate should be examined on the basis of information supplied not only by themselves, but also by others. A confidential bidder qualification form for this purpose should include data on the following:

- Financial status
- Organization
- Experience
- Availability
- References

It is particularly important that the data be current. Experience and organization may not be as subject to change as other factors to be considered, but it is pointless to submit data that is outdated and not relevant to the recent performance of the Contractor which is the best indicator of what can be expected. Financial status should be based on a certified public accountant statement not more than one year old. Availability to do the job will depend on how much work is in progress or under contract, and it is very important to know if the applicant is the low bidder on a job not yet awarded. Finally, not the least important is the nature of the comments received from references such as Owners, bankers, Architects or Engineers the bidder has worked with, bonding companies, Subcontractors, and those who sell the bidder material and equipment.

A Confidential Qualification Form, as developed by the Construction Industry Affairs Committee of Chicago, is made a part of this Recommendation. It was designed to secure information about prospective bidding Contractors which would allow the Architect/Engineer or Owner to select bidders who would have the competency and integrity to perform in a proper and economical fashion.

Specifically, it is the recommendation of this Committee, that these procedures be followed in qualifying prospective Contractors:

- A. One month before release of bidding documents the Architect/Engineer should prepare a list of five (5) to eight (8) prospective Contractor bidders. A longer list may discourage many competent and desirable candidates from entering the competition. Prospective Contractor bidders should receive a copy of CIAC Confidential Qualification Form with a request that it be used to supply the required data within two (2) weeks if they wish to be considered. A Contractor who is not on the prospective list may request the opportunity to submit a Confidential Qualification Form, but it must be done at least two (2) weeks prior to release of the bidding documents.



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*continued*

- B. In instances where a single contract will be awarded for the entire project, prospective Contractors should submit with this Confidential Qualification Form the names of five (5) to eight (8) recommended Contractors in each category of major subcontract work on the proposed project.
  
- C. The Architect/Engineer should properly review the recommended list of Subcontractors, and if any of them are unknown or unacceptable, the qualified Contractor must be informed. A Contractor bidder may not base their bid on any proposal received from an unqualified Subcontractor .

It is recommended that the Construction Industry Affairs Committee Confidential Qualification Form be used by Architects/Engineers to review the qualifications of unknown Subcontractors.

**CONSTRUCTION INDUSTRY AFFAIRS COMMITTEE OF CHICAGO  
CONFIDENTIAL BIDDER QUALIFICATION FORM**

Submitted to: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Submitted by: \_\_\_\_\_  
(Firm Name)

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

**TYPE OF WORK (File separate form for each Classification of Work):**

- |   |   |
|---|---|
| <input type="checkbox"/> General Construction                                   | <input type="checkbox"/> Heating, Piping, Refrigeration & Temperature Control Systems |
| <input type="checkbox"/> Plumbing & Sewerage                                    | <input type="checkbox"/> Electrical System  |
| <input type="checkbox"/> Ventilating & Distribution Systems for Conditioned Air |   |
| <input type="checkbox"/> Other (Please Specify) _____                           |   |

**CLASSIFICATION OF WORK WITH OWN FORCES (List trades)** \_\_\_\_\_

**TYPE OF FIRM:**

- Corporation                       Partnership                       Sole Proprietorship

Years in Business: \_\_\_\_\_

**OFFICERS, PARTNERS OR OWNERS & CONSTRUCTION EXPERIENCE**

Name	Title	Years Experience in Classification of work listed

**4. NUMBER OF PERSONNEL IN ORGANIZATION:**

Administrative \_\_\_\_\_ Engineering \_\_\_\_\_ Office \_\_\_\_\_  
Shop \_\_\_\_\_ Field \_\_\_\_\_

**5. REFERENCES:**

Bank (s) Maintaining Accounts (s) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Surety/Underwriter: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Suppliers: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Other References: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**6. TYPICAL CONTRACTS COMPLETED DURING LAST FIVE YEARS**

Year	Name of Project	Architect/Engineer	Contract Amount
			\$ _____

**7. AVERAGE ANNUAL BILLING FOR LAST FIVE YEARS** \$ \_\_\_\_\_

**8. TOTAL WORK IN PROGRESS AND UNDER CONTRACT** \$ \_\_\_\_\_

**LIST MAJOR WORK UNDER CONTRACT**

Per Cent Completed	Name of Project	Architect/Engineer	Contract Amount
			\$ _____

**1. LIST CURRENT PROJECTS ON WHICH YOUR FIRM IS THE CANDIDATE FOR CONTRACT AWARD:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**2. HAVE YOU AT ANY TIME FAILED TO COMPLETE A CONTRACT?  YES  NO**

**ARE THERE ANY JUDGMENTS, CLAIMS OR SUITS PENDING OR OUTSTANDING AGAINST YOU?  YES  NO**

**IF THE ANSWER TO EITHER QUESTION IS YES, SUBMIT DETAILS ON SEPARATE SHEET.**

**LIST ALL LAWSUITS YOUR FIRM HAS FILED DUE TO CONSTRUCTION CONTRACTS IN THE LAST FIVE YEARS: \_\_\_\_\_**

\_\_\_\_\_

\_\_\_\_\_

**3. FINANCIAL STATEMENT**

**Current Assets** \$ \_\_\_\_\_

**Fixed Assets (Depreciated)** \$ \_\_\_\_\_

**Other Assets** \$ \_\_\_\_\_

**TOTAL ASSETS** ..... \$ \_\_\_\_\_

Current Liabilities \$ \_\_\_\_\_  
 Long Term Liabilities \$ \_\_\_\_\_  
 TOTAL LIABILITIES..... \$ \_\_\_\_\_  
 NET WORTH ..... \$ \_\_\_\_\_

Date of latest Balance Sheet \_\_\_\_\_, prepared by \_\_\_\_\_  
 \_\_\_\_\_, a Certified Public Accountant, and available on request.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

Pursuant to information for prospective bidders for above mentioned proposed project, the undersigned is submitting the information as required with the understanding that it is for your confidential use only to assist in determining the qualifications of this organization to perform the type and magnitude of work included; and further, guarantee the truth and accuracy of all statements herein made. We will accept your determination of qualifications without prejudice. The surety herein named, any other bonding company, bank, sub-contractor, supplier, or any other persons, firms or corporations with whom we have done business, or who have extended any credit to us are hereby authorized to furnish you with any information you may request concerning our organization including, but not limited to, information concerning performance on previous work or credit standing with any of them. We hereby release any and all such parties from any legal responsibility whatsoever of having furnished such information to you.

Name of Organization \_\_\_\_\_

By \_\_\_\_\_

Date: \_\_\_\_\_ Title \_\_\_\_\_

Attested to By: \_\_\_\_\_

Title: \_\_\_\_\_

## substantial completion

(October 1972)

*The meaning of "Substantial Completion" as it applies to a construction project has been found to be ambiguous. Although the A.I.A. General Condition paragraphs given immediately below have a good definition and are quite acceptable as far as they go, they do not determine the responsibilities of the Owner and Contractor, nor do they recommend how certain matters should be resolved. This recommendation, therefore, undertakes to fill in the missing data.*

- 8.1.3. The Date of Substantial Completion of the Work or designated portion thereof is the Date certified by the Architect when construction is sufficiently complete, in accordance with the Contract Documents, so the Owner may occupy the Work or designated portion thereof for the use for which it is intended.
- 8.2.3. If a date or time of completion is included in the Contract, it shall be the Date of Substantial Completion as defined in Sub-paragraph 8.1.3., including authorized extensions thereto, unless otherwise provided.
- 9.7.1. When the Contractor determines that the Work or a designated portion thereof acceptable to the Owner is substantially complete, the Contractor shall prepare for submission to the Architect a list of items to be completed or corrected. The failure to include any items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. When the Architect on the basis of an inspection determines that the Work is substantially complete, they will then prepare a Certificate of Substantial Completion which shall establish the Date of Substantial Completion, shall state the responsibilities of the Owner and the Contractor for maintenance, heat, utilities, and insurance, and shall fix the time within which the Contractor shall complete the items listed therein. The Certificate of Substantial Completion shall be submitted to the Owner and the Contractor for their written acceptance of the responsibilities assigned to them in such Certificate.

Rather than deciding on terms for acceptance in a Certificate of Substantial Completion at the close of a project, we believe

that the Owner/Contractor agreement for the construction work should establish the proper course to follow once a project has been certified by the Architect as "Substantially Complete" and the responsibilities of both parties with respect to maintenance, heat, utilities and insurance should also be included in the agreement, as well as decisions concerning warranties and guarantees and the formula for determining the amount of retention to be withheld until final completion. If any of these decisions are delayed until the Certificate of Substantial Completion, they could be unacceptable to either or both parties. Actually, the only matters that cannot be incorporated in the agreement are the actual dates of Substantial and Final Completion, the punch list items and the time and cost to finally complete the remaining work satisfactorily.

The date of Substantial Completion shall establish the beginning of the specified period on guarantees, unless a prior date has been established or acceptance of a portion of the total project or certain dynamic systems, as defined in Recommendation No. 2, "Guarantees & Warranties," in which case the prior dates will be effective for previously accepted work only.

Immediately following Substantial Completion, the Owner shall assume complete responsibility for the maintenance and operation of all fuel and service utilities. The Owner shall also become responsible for all maintenance and damage and/or wear and, with the exception of items under guarantee, the cost of repairs or restoration during the period between Substantial and Final Completion. The Owner shall have the responsibility to have in effect all necessary insurance for protection against any losses not directly attributable to Contractor negligence.

The Contractor must arrange a schedule so that punch items are completed in the designated time by working during regular

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working hours. If the Architect determines that the work interferes with the beneficial use of the project, and the Owner is unable to adjust their operations to permit the Contractor to perform punch list work during regular working hours, the Architect shall certify to the Owner that this work must be performed on an overtime basis, and the Owner shall compensate the Contractor for the additional expense.

The purpose of retention is to guarantee that the Owner will have at all times, sufficient funds remaining to pay another party to complete the work or correct unsatisfactory items, if the Contractor refuses or delays doing so for an unreasonable length of time. When the project reaches Substantial Completion, the amount normally retained will have been reduced from the maximum, to approximately 5 percent of the total adjusted contract sum. After the Architect-Engineer determines that the "punch list" of items to be completed or corrected is acceptable, the retention should be adjusted so that the sum has a direct relation to the value of the work included on the punch list. It is recommended that the proper amount of retention be approximately twice the value of the punch list items as determined by the Architect-Engineer. The reader is referred to CIAC Recommendation No. 8 entitled, "Punch List."

## *waiver of lien forms*

(April 1973)

*Confusion and uncertainty often occur as to whether a certain waiver of lien may be acceptable, particularly when waivers are received from another state or are one of several forms offered for sale. This condition need not exist because the elements necessary to an effective waiver can be combined and simplified. One form of waiver should be sufficient for both Prime and Subcontractors.*

The lien laws throughout the country are by no means uniform. Lien rights, however, are based on contract and generally provide for a lien on the property improved. They may also provide for a lien on funds payable by virtue of the improvement. A lien is only an additional remedy for securing payment for labor or material furnished. Essentially, a waiver of lien is a receipt for an exact sum of money paid as of a certain date for certain services, labor and/or material supplied under a specific contract or order for a specific improvement built on a piece of property accurately described so that it can be distinguished from any other property.

If (1) acknowledgment or receipt is made of the funds received in payment, (2) any claim of lien to the extent of payment on the specific property is waived, and (3) any claim to the extent of payment against the monies payable is waived, this should be effective for all purposes in the state where the improvement is located. The state where the waiver was signed is unimportant. The primary area of concern, however, is that in preparing a waiver, whether partial or final, the party doing so should be as accurate as possible and not waive more than intended.

This committee has prepared 2 forms, one a partial, the other a final waiver of lien, each of which will serve both Contractor and Subcontractor . These forms can be easily and correctly prepared by following the instructions printed on each form. They are designed to assure an Owner or their disbursing agent that any rights of the Contractor or Subcontractor have been waived to the extent of the payment received.

It is not the purpose of this recommendation to give advice on when or how to protect your lien rights since this will vary from state to state. Legal advice from an attorney is strongly recommended in any event, especially for protection against local peculiarities in the lien laws (for example, "no-lien" contracts). The committee recommends that the accurate identity of the holder of title to the property be determined; this can be learned from the mortgage disbursing agent or a real estate title search.

Information concerning additional copies of these forms may be obtained from the Construction Industry Affairs Committee.

# PARTIAL WAIVER OF LIEN

To All Whom It May Concern:

WHEREAS, the undersigned has been employed by (A) \_\_\_\_\_

\_\_\_\_\_ to furnish labor and materials for (B) \_\_\_\_\_

\_\_\_\_\_ work,

under a contract (C) \_\_\_\_\_

for the improvement of the premises described as (D) \_\_\_\_\_

in the \_\_\_\_\_ (City-Village) of \_\_\_\_\_, County of

\_\_\_\_\_, State of \_\_\_\_\_

of which \_\_\_\_\_

\_\_\_\_\_ is the Owner.

NOW, THEREFORE, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

for and in consideration of the sum of (E) \_\_\_\_\_

Dollars paid simultaneously herewith, the receipt whereof is hereby acknowledged by the undersigned, the undersigned does hereby waive and release to the extent only of the aforesaid amount, any lien rights to, or claim of lien with respect to and on said above-described premises, and the improvements thereon, and on the monies or other considerations due or to become due from the Owner, by virtue of said contract, on account of labor, services, materials, fixtures, apparatus or machinery furnished by the undersigned to or for the above-described premises, but only to the extent of the payment aforesaid.

(F) \_\_\_\_\_ (SEAL)  
(Name of sole ownership, corporation or partnership)

(Affix corporate seal here)

\_\_\_\_\_ (SEAL)  
(Signature)

TITLE: \_\_\_\_\_

## INSTRUCTIONS FOR PARTIAL WAIVER

- (A) Name person or firm with whom you agreed to furnish either labor, or services, or materials, or both.
- (B) Fill in nature and extent of work; strike the word labor or the word materials if not in your contract.
- (C) If you have more than one contract on the same premises, describe the contract by number if available, date and extent of work.
- (D) Furnish an accurate enough description of the improvement and location of the premises so that it can be distinguished from any other property.
- (E) Amount shown should be the amount actually received on that date
- (F) If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself or herself as partner.

Designed By The  
Construction Industry Affairs Committee (CIAC)

# FINAL WAIVER OF LIEN

To All Whom It May Concern:

WHEREAS, the undersigned has been employed by (A) \_\_\_\_\_

\_\_\_\_\_

to furnish labor and materials for (B) \_\_\_\_\_

\_\_\_\_\_ work,

under a contract (C) \_\_\_\_\_

for the improvement of the premises described as (D) \_\_\_\_\_

\_\_\_\_\_

in the \_\_\_\_\_ (City-Village) of \_\_\_\_\_, County of

\_\_\_\_\_, State of \_\_\_\_\_

of which \_\_\_\_\_

\_\_\_\_\_ is the Owner.

NOW, THEREFORE, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

for and in consideration of the sum of (E) \_\_\_\_\_ Dollars paid simultaneously herewith, the receipt whereof is hereby acknowledged by the undersigned, the undersigned does hereby waive and release any lien rights to, or claim of lien with respect to and on said above-described premises, and the improvements thereon, and on the monies or other considerations due or to become due from the owner, on account of labor, services, material, fixtures, apparatus or machinery heretofore or which may hereafter be furnished by the undersigned to or for the above-described premises by virtue of said contract.

(F) \_\_\_\_\_ (SEAL)  
(Name of sole ownership, corporation or partnership)

(Affix corporate seal here)

\_\_\_\_\_ (SEAL)  
(Signature)

TITLE: \_\_\_\_\_

## INSTRUCTIONS FOR FINAL WAIVER

- (A) Person or firm with whom you agreed to furnish either labor, or services, or materials, or both.
- (B) Fill in nature and extent of work; strike the word labor or the word materials if not in your contract.
- (C) If you have more than one contract on the same premises, describe the contract by number if available, date and extent of work.
- (D) Furnish an accurate enough description of the improvement and location of the premises so that it can be distinguished from any other property.
- (E) Amount shown should be the amount actually received and equal to total amount of contract as adjusted.
- (F) If waiver is for a corporation, corporate name should be used, corporate seal affixed and title of officer signing waiver should be set forth; if waiver is for a partnership, the partnership name should be used, partner should sign and designate himself or herself as partner.

Designed By The  
Construction Industry Affairs Committee (CIAC)

TOPS 3459

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## *unit prices*

(May 1973)

*Unit pricing is a method which seeks to arrive at the average cost for a specific unit of work and then establishes it as a fixed cost for all such units to be used on the job. The method is frequently used where it should not be and, in other cases, ill defined scope of work and wide variations in working conditions compel the cost estimator for building construction to engage in a guessing game for an average cost, which too often damages either the Contractor or the Owner. Occasional demands for all bidders to submit a schedule of unit prices as a part of the bid proposal places additional hardships on the bidders and confusion to those evaluating bids.*

*This Recommendation will give the best procedures for determining when and how unit pricing should be used.*

In certain types of construction work such as highways, heavy construction and underground activities, unit prices are essential at the time of bidding; but this is not the case in building construction where unit price work generally comprises a very small part of the total and is usually limited to the following categories:

- 1) Future tenant work;
- 2) Extension of Owner's facilities for work, and to equipment, contemplated but not specifically defined at the time of bidding;
- 3) Deviations from bidding conditions which might be encountered due to unanticipated characteristics and/or quantities of excavation and changes in foundation requirements.

### **RECOMMENDATIONS**

1) Unit prices should not be requested unless the scope (quantity or depth) and character of work, working conditions, stage of job completion, time limit, and all other critical items of information are established to enable the preparation of an accurate and equitable quotation. If any of these standards are changed to create a hardship on the Owner or the Contractor, the applicable unit prices should be equitably adjusted to prevent such hardship.

2) Unit prices should not be part of the bidding documents, but instructions to bidders should provide that a statement on scheduled unit prices will be required within seventy-two (72) hours after a request is made for same to the selected bidder.

3) Request for unit prices should be limited to the low bidder only and negotiations should be conducted only with them. In the event satisfactory unit prices cannot be negotiated with the low bidder, to form the basis of a contract, the next low bidders in order of succession may then be invited to submit their unit prices for consideration.

4) Unit prices should be established for both additions and/or deductions.

5) Accepted unit prices should prevail only for a fixed time period. Changes in basic costs upon which the unit prices are based should justify unit price adjustment after the fixed time period expires.

## allowances

July 1979

*A. The "Allowance" is a stipulated sum as determined by the Architect-Engineer and stated in the contract documents. Allowances should be avoided, if possible. Allowances can cause disputes, unanticipated extra expenses, and disappointments. They extend the design process into the construction period and often cause delay and hardships to both Contractor and Owner.*

*B. Use of an allowance in lieu of a full specification of a product withholds from the Contractor some control of the work and places that control with the Architect-Engineer or Owner. For this reason, provisions of specifications which govern any aspect of work specified by allowance must anticipate all variables implied by that control to avoid claims for extras during construction.*

*C. The two basic forms of cash allowances have different characteristics which must be covered by distinctly different provisions in the specifications.*

1. **CASH ALLOWANCES** usually for products, require the Contractor to include in the bid the costs stipulated for purchase of products plus the cost for installation and other costs to complete the work specified.

Usually cash allowances apply to purchase of products only. Certain types of subcontract work or art work may include installation as part of the allowance. Preferably, on-site installation should not be part of a cash allowance. If it is decided to include installation, this factor should be included in the description to assist in allocating Contractor's responsibilities and overhead costs.

2. Allowances for products may be lump sum or unit cost (or cost per unit; not to be confused with unit prices).

3. The allowance usually covers the net cost of purchase of the specified product, with taxes paid and delivery to site. Unloading may or may not be included. The Contractor is required to add costs for handling, unloading if applicable, protection and storage costs, installation costs including finishing, testing, adjusting and balancing, as applicable, and overhead and profit.

4. It is recommended that the technical description and the dollar amount of the allowances be specified in the applicable technical sections.

5. Division 1, Section "Allowances", with suitable cross-reference to technical sections should designate responsibilities for selection and delivery of products, and state the method of adjustment of the contract sum when actual purchase and delivery cost is more or less than stipulated allowance. Estimated quantities should be listed in Division 1, Section "Payment Procedures" or quoted in the appropriate place on the bid form.

6. **CONTINGENCY ALLOWANCES** provide a readily available cash reserve for the Owner to cover unanticipated costs. They may be included to provide future funds to satisfy the Owner's administrative or financial organization. It is entered only in Division 1, Section "Allowances" in the exact amount specified, with no provision for Contractor's installation or other costs. The reserve in the contingency allowance is used only on issuance of a change order, with the work to be performed negotiated by the Contractor. The Contractor's costs for labor, products, transportation, equipment rental, overhead, and profit are incorporated in the negotiated cost. At completion of project any monies remaining in the contingency allowance are credited to the Owner by change order.

# subcontractor assignments

February 1983

*In contracting for a construction project, the Owner sometimes reserves the right to select not only the Contractor, but various Subcontractor trades as well. In these cases, the Subcontractor trades bid to and negotiate a price directly with the Owner or their agent. The successful bidders are then assigned to the Contractor who is expected to assume full responsibility for the completion of the entire project and handle the direction, scheduling, processing of payments and overall performance of these Assigned Subcontractors. The Assigned Subcontractors in turn are expected to accept the authority of the Contractor including the same duties and obligations that the Contractor imposes upon their other Subcontractors. The purpose of this recommendation is to propose procedures to assure that the construction process may be efficiently performed.*

## 1 . Assigned Subcontractor

An Assigned Subcontractor is a prime Subcontractor trade bidding directly and separately to the Owner, and assigned to the Contractor as though initially solicited as a Subcontractor by the Contractor. The Contractor should then enter into a Subcontract Agreement with the Assigned Subcontractors in the same manner as though directly solicited as a Subcontractor by the Contractor.

coordinating and expediting the entire project including the work of Assigned Subcontractors. The Assigned Subcontractor's duties are the same as any other Subcontractor chosen by the Contractor including the responsibility for scheduling work in accordance with the Contractor's construction schedule. The Contractor should inspect the Assigned Subcontractor's work and recommend substantial and/or final completion of the work as they would for all Subcontractor work.

## 2 . Contractual Relationship

The Bid documents should contain the form of contract to be entered into between the Contractor and the Owner. The assigned contracts between the Assigned Subcontractors and the Contractor should include the same terms and conditions as those contained in the contract between the Contractor and the Owner, and without more stringent requirements than those imposed in same. Should the Contractor require additional protections and remedies not found in the contract between the Contractor and the Owner, the Contractor should consider any additional costs attributable to those items in their assignment fee. The assigned contract should require the Subcontractors to be bound to the Contractor by the terms of the contract between the Contractor and the Owner, and similarly should afford the Subcontractors all the rights, remedies and redresses against the Contractor that the Contractor has against the Owner.

## 4 . Mutual Acceptance of Contractor and Assigned Subcontractors

At the time of bidding the Architect/Engineer, or Owner, should make available a list of Contractors and prime Subcontractor trades being invited to present bids. These bidders should advise the Architect/Engineer, or Owner, in writing if they have objections to the assignment process with any particular Contractor or prime Subcontractor. In the absence of such notification it should be assumed that each Contractor and each Prime Subcontractor is agreeable to working on an assignment basis with any of the bidders in the respective trades.

## 3. Performance

The Contractor should be responsible for supervising,

## 5 . Assignment Clause

Actual language of assignment should be included in the bid documents for both the Contractor and the prime Subcontractors.

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continued

*Recommendation:*

## 6 . Assignment Fee

The bid documents for the Contractors should contain information as to the approximate value of the work of the various prime Subcontractors, and also a provision in the Contractor's proposal for an assignment fee. This should be a "blank" percentage of the contract dollar value of the assigned Contractors, which is to be filled in at the time of bidding. This fee should include all the Contractor's costs for administering the assigned contracts.

## 7 . Bonding

The following procedures are recommended:

- A. Bid documents for the prime Subcontractors who are to be assigned should require that the prime Subcontractors include in their proposals the cost of payment and performance bonds covering their work. Prime Subcontractors assigned to the Contractor should furnish to the Owner for delivery to the Contractor performance and payment bonds naming the Owner and Contractor as dual obligees with joint and several rights. Such bonds should contain provisions protecting the Assigned Subcontractors against performance completion in the event of nonpayment to the Assigned Subcontractors.
- B. Bid documents for the Contractor should include the requirement that the Contractor provide a performance and payment bond for the entire project including the value of all Assigned Subcontractors. The bid documents should also include information as to the approximate value of the work of the various prime Subcontractors. The Contractor's bid may then be prepared in either of the following manners:
  - (1) Provide a lump sum amount to be added to the base bid for general work to cover the costs of the bond premiums for the prime Subcontractors to be assigned.
  - (2) Bid a "blank" percentage as a fee to be applied to

the value of all assigned contracts to cover the cost of the bond premiums for the contracts to be assigned.

**Note:** The above provisions for bonds results in "double bonding" is the assigned portions of the work. This is justified, however, because the Contractor has the protection needed from the separate assigned subcontract bonds and the Owner need only to look to one surety (the Contractor's) for the full performance of all the work.

Bonding requirements may be waived by mutual agreement of all involved parties.

## 8 . Payments

The Contractor should be responsible for processing the periodic progress and final payment requests of all Assigned Subcontractors assuming that the Contractor has approved same and that the Architect/Engineer has issued a certificate for completion of the work. All payments becoming due by the Owner for any work performed by an Assigned Subcontractor should be promptly made either directly by the Owner, jointly paying the Contractor and the Assigned Subcontractor, or by the Contractor who pays the Assigned Subcontractor directly.

## 9 . Change Orders

The Contractor should review and process all Assigned Subcontractor's proposals for changes in the work (such proposals should include overhead and profit for the Assigned Subcontractor who is performing the work). The Contractor should be allowed a fee for this service equal to that which it receives for processing proposals of their other Subcontractors.

## *project payment information*

March 1984

*Contractors, Subcontractors, and design professionals have legitimate interest in knowing that they will be paid in accordance with the contract terms, that such payment will be timely and in the amount due, and that sufficient funds are available to complete the project.*

*Construction Owners and users can expect better prices from more competent Contractors and Subcontractors if they freely provide enough project funding information to assure bidders of adequate security.*

*Project funding information should be made available in writing to the design professional and Contractor. Contractors should make the same information available to Subcontractors.*

*CIAC recommends that Owners provide the following information prior to signing the contracts:*

- 1 . The Owner of the land on which the project is to be constructed.
- 2 . The legal description of the property on which the project is to be built.
- 3 . The name and address of the title company (if any) that insures the property and the numbers of the title policy, and escrow account. If the property is registered, e.g., Torrens, the certificate number should be supplied.
- 4 . Financing sources such as construction loans and mortgages and the full amounts of same.
- 5 . Information as to additional sources of funds to cover the balance, if the financing does not cover the entire contract cost.
- 6 . Notice if the project is to be a no-lien contract. All parties should be so advised in the bidding documents, and alternate methods of satisfaction of financial claims should be identified.
- 7 . A notice if the project is to carry a payment and performance bond. The amount of the bond and the name of the bonding company should be supplied to Subcontractors upon request.

*CIAC recommends that Owners provide the following project funding information during the progress of the work when requested by a Subcontractor :*

- 1 . The amount for which the Subcontractor is listed on the Contractor's statement.
- 2 . The dates when payments are made to the Contractor. The amount of such payments may be confidential, but the Subcontractor should be informed of the amount for them within the total payment.

*As the project progresses, project funding information should be updated to include change orders, extras, and other unforeseen costs.*

## *hazardous substances at the project site*

June 1987

*Parties directly engaged in the construction process, and many third parties with possible exposure, are becoming increasingly aware of, and knowledgeable about, the possible latent presence of hazardous substances, such as asbestos and PCB, at the construction site. To properly address the potentially major impact such substances may have on construction operations and safety, the following procedures are recommended:*

- 1 . The Owner must recognize the possible latent existence of hazardous substances at the project site and be responsible for the elimination, abatement or control of such hazards.
- 2 . Prior to initial site inspection by the Architect/Engineer, preparation of contract documents and construction bidding, the Owner should make provisions to have the project site investigated by experts technically qualified for such work. Such experts should locate, identify and quantify any hazardous substance at the site and recommend means for the elimination, abatement or control of all existing hazards.
- 3 . The Owner should furnish to all parties of the construction process complete information relating to hazardous substances existing at the project site. If the elimination, abatement or control of the hazardous substances affects the construction process, then the manner and extent of this impact should also be made known.
- 4 . The Owner should contract directly with firms specializing in and legally qualified for the elimination, abatement or control of hazardous substances. The Owner should have such work monitored by a technically and legally qualified firm and certify that all hazardous substances have been eliminated, abated or controlled and the site is ready for construction.
- 5 . Other parties to the construction contract should not be involved in any manner with the elimination, abatement or control of hazardous substances including, but not limited to, any assignment of a firm contracted by the Owner to perform such work. The Owner should hold harmless all parties to the construction contract from liability directly or indirectly related to the existence of hazardous substances at the project site.

## *payment for material and equipment stored off-site*

November 1987

*For years, many Owners and Architects/Engineers have thought it against the Owner's interest to pay for materials and equipment suitably stored off-site. The last few editions of AIA Document A201 have reflected this hesitancy. For certain projects, however, suitable off-site storage may not only be equal to on-site storage, but much more advantageous. Heated and guarded inside storage may be desirable for certain material and equipment. Off-site storage may also be advantageous when construction sites have restricted storage space or when theft and vandalism are a problem. Material and equipment may be purchased and fabricated before storage space is available at the project site, thereby requiring off-site storage in order to assure that the material and equipment are available when required to meet the construction schedule.*

*The differences between (1) project-specific material and equipment and (2) commodity material and equipment should be recognized by the Contractor and Owner, however. Project-specific material and equipment are fabricated to a special design for a specific project. Commodity items, on the other hand, are available through normal distribution channels as stock items and should not be subject to payment unless suitably stored and protected at the project site and accepted for payment by the Owner.*

If the Owner will benefit by off-site storage of project-specific material and equipment, CIAC recommends that the Owner should pay for that material and equipment. In addition to providing for payment for both project-specific and commodity material and equipment stored on the project site, contract documents should make similar provisions for payment for project-specific material and equipment stored off-site. Contract clauses that provide for payment for such material and equipment only if stored on-site could cause serious delays in the project schedule.

Further safeguards should be taken by the Contractor to assure that the Owner's interests in material and equipment stored off-site are protected. Some recommended safeguards are:

- 1 . Stored items should be protected from diversion, destruction, theft, and damage.
- 2 . Stored items should be specifically marked or otherwise identified for use on the project.
- 3 . Stored items should be available for inspection and should be inspected by the Architect/Engineer and Owner.
- 4 . Copies of bill of sale or other proof of purchase for stored items should be submitted to the Architect/Engineer and Owner.
- 5 . Certificates of installation floater insurance for the stored items, protecting against damage and theft while in storage, certifying said coverage, and indicating the nature, quantity, and exact location of the stored items, should be submitted to the Architect/Engineer and Owner.
- 6 . A waiver of lien from the Contractor and the Supplier of stored items should be provided in accordance with the contract documents.

## *indemnification*

March 1988

*An indemnification or hold-harmless agreement (the terms are used interchangeably) is a contractual device to shift liability from one person (the indemnitee) to another person (the indemnitor).*

*It is generally the intention of both the indemnitee and indemnitor that the indemnification clause be insured. It is frequently not recognized that some indemnification clauses are wholly or partially uninsurable, or they may be contrary to public policy, and therefore void. (See Chapter 29 paragraph 61 of the Illinois Revised Statutes.) An uninsurable hold harmless clause is a potential disaster for the indemnitor, while at the same time it is of little value to the indemnitee because the expected protection will not be realized.*

*The proliferation of poorly-drafted and overly-broad manuscript and ad hoc hold harmless agreements introduce uncertainty, foster litigation, and cause major insurance problems.*

*Therefore CIAC recommends as follows:*

1. In contract documents, insurable and uninsurable hold-harmless provisions should be separated and clearly labeled so that the parties know what is to be insured and what is to be the uninsurable personal undertaking of the indemnitor.
2. Attorneys who have a good knowledge of insurance law and practice and who can recognize an uninsurable indemnification provision should draft and review hold-harmless agreements.
3. Confronted with an indemnification clause, the indemnitor should consult an insurance advisor and an attorney to be sure that the clause is reasonable and that it can be insured under the indemnitor's general liability policy.
4. Adding indemnification clauses as an endorsement to a comprehensive general liability policy is advisable but may not solve the problem caused by an overly broad indemnification clause. The comprehensive general liability policy only provides protection for bodily injury and property damage caused by an occurrence, and nothing else.

*CIAC offers the following specific guidelines on hold-harmless clauses:*

1. Indemnification for violation of patents is not insurable.
2. The indemnitor's own work is not covered by liability insurance and, if covered by indemnification, may not be insurable.
3. A comprehensive general liability policy in and of itself gives inadequate protection for construction hold-harmless agreements. The indemnitor must also purchase contractual coverage or a blanket contractual endorsement.
4. Examples of typical indemnification clauses which may be too broad to insure are:
  - A. "The indemnitor shall indemnify and hold harmless... for *all* injuries, damage, and *every other loss*..."The italicized part is not insurable because only bodily injury and property damage losses caused by accident or occurrence are covered by a comprehensive general liability policy. The property damage that is covered is damage to third party property, not the indemnitor's property.

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B. "The indemnitor assumes the entire responsibility and liability for all losses..."

Such assumed liability may be uninsurable and may expand the indemnitor's liability to injured third parties.

C. "The indemnitor shall be responsible for any and all accidents, losses..."

This is a variation of the assumed liability of the preceding paragraph. Assumed liability is different than indemnification. Such clauses may also be uninsurable in part.

5. Agreements to "defend" or to "protect" in an indemnification clause may not be honored by an insurer. The contractual liability coverage agrees to indemnify for damages for liability, not to assume defense of others than the indemnitor.

6. Most contracts today separate the insurance and the indemnification sections. The indemnification obligation remains the responsibility of the indemnitor even if the insurance company fails or refuses to provide expected protection.

## dispute resolution

March 1988

*The costs and frustrations of construction litigation have reached epidemic proportions. It is the purpose of this Recommendation to urge initial resolution of disputes and other matters in question in accordance with procedures stated in the contract documents and to do so expeditiously. It also points out other effective subsequent means of resolution prior to litigation.*

*The process recommended by the CIAC is intended to produce a resolution in accordance with the contract documents (i.e., general conditions and supplementary conditions), which should outline the procedure for resolution of matters that arise. The current AIA Document A201 "General Conditions of the Contract for Construction" and EJCDC Document 1910-8 "Standard General Conditions of the Construction Contract" have standard language which designates the design professional as initial interpreter of contract matters and initial resolver of matters in question, disputes and claims. The parties, Owner and Contractor, however, may agree to alternate resolution procedures. Resolution procedures outlined in the contract documents should be strictly adhered to in practice so that all such matters receive prompt attention.*

### **PART "A"--INITIAL DISPUTE RESOLUTION**

The recommended initial dispute resolution procedure is:

1. All parties should be notified orally and in writing by the initiating party, stating all particulars that are necessary to resolve the matter in question.
2. The matter in question should be resolved promptly in accordance with the agreed upon resolution procedures and all parties should be informed orally and in writing of the resolution.
3. Matters not resolvable by this procedure should be pursued through one or more alternate dispute resolution methods, some of which are described in Part "B".

### **PART "B"--VOLUNTARY NON-BINDING DISPUTE RESOLUTION**

These alternate dispute resolution methods strive for the settlement of disputes between contracting parties prior to arbitration and without going to court, thereby saving cost and time. Negotiation, mediation and mini-trial are three of several methods currently being used which may be incorporated into the contract documents or which may be established subsequently upon the mutual consent of the parties to the contract. Although the processes of dispute resolution described in Part "B" are normally non-binding, resolution can be made binding by written agreement of participating parties at any time during the process.

**Negotiation**--This method is usually structured as follows:

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1. The opposing party should be notified orally and in writing by the initiating party that serious negotiation regarding the dispute is desired.
2. The facts concerning any matter in dispute should be brought to light promptly in good faith by both parties and openly discussed.
3. Each party should select a competent negotiator, having established relevant experience, to present its case. Such persons may be respective firm members, outside negotiators, or attorneys.
4. The negotiators should be given ample time to review all of the information. A date should be set for the negotiation with the understanding that the involved parties will not cancel this date except for the most compelling reasons.
5. The negotiators should agree on an agenda before the negotiation begins.
6. After a thorough presentation and exchange of information during the negotiation, each party should caucus with its respective negotiator and reconvene for further discussion. One side should make an offer of settlement. If agreement is reached, the agreement should be documented and copies distributed to all participants prior to leaving the negotiation session.
7. If agreement is not reached, a subsequent negotiation session should be scheduled, especially if there has been good progress toward a genuine understanding of the issues or if a compromise settlement seems possible.



**CONSTRUCTION INDUSTRY AFFAIRS COMMITTEE of Chicago**  
**1049 MERCHANDISE MART/CHICAGO 60654**

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**Mediation** is being used successfully by the American Arbitration Association, which encourages its use prior to arbitration. The AAA has set up definite rules for mediation. The disputing parties should select a mediator from a list of qualified persons provided by the AAA, who should clearly establish the initial position of each party and recommend changes to those positions until agreement is reached by the parties. A contract provision may be incorporated specifying that the parties shall mediate their dispute within a stated period of time and, if unsuccessful, any of the parties may make a demand for arbitration.

**Mini-Trial** is a method used to resolve a dispute before or even during litigation. A judge or other qualified individual is selected and retained by mutual agreement of the parties and hears an abbreviated version of the case from attorneys representing all parties. Principals from all parties should be included in a panel which is constituted for the purpose of also hearing the arguments. Once the judge has made a determination of responsibility, these principals should deliberate in good faith to resolve the dispute.

#### **PART "C"--ARBITRATION**

The American Arbitration Association issues "Construction Industry Arbitration and Mediation Rules" to maintain a uniform arbitration procedure applicable to all facets of the

construction industry. These rules are incorporated in AIA Document A201 and EJCDC Document 1910-8.

The arbitration process is binding, well defined, and effective. "Consolidation," however, is one area of arbitration which has not received national acceptance and is not permitted in the arbitration clauses in AIA Document A210. It should be considered more seriously, thereby further enhancing effectiveness and the expediency of the arbitration process.

Consolidation would be used in the event the dispute involves one or more third parties who have a contract relating to the project, i.e., with the Contractor, Owner, Architect or other Subcontractors. Consolidation would allow all of the involved parties to participate in a single all-encompassing arbitration process. The agreement to participate in such a multi-party arbitration process should be specifically enforceable in the same manner as set forth for a two-party arbitration process.

If one of the parties initiates a consolidation procedure, a notice of demand for arbitration should be served upon all of the involved parties. The arbitrators should quickly determine at a prehearing if the demands are related to the work and, if such is confirmed, the normal binding arbitration procedures established by the AAA should be initiated.

## *precompletion occupancy*

January 1989

*In many instances the Owner desires to occupy certain areas of a project as soon as they are substantially complete, even though other portions of the project are still under construction. Since the Owner benefits as a result of the Contractor's willingness to allow early occupancy, the Owner should give adequate assurances that such occupancy will not jeopardize the construction schedule for the remaining portions of the project or increase the Contractor's risk or liability for property damage or personal injuries.*

CIAC recommends that, before the Owner occupies or permits occupancy of any portion of the project, the Owner provide the Contractor with the following:

- 1 . A certificate of substantial completion, as defined in the contract documents, for the areas for which occupancy is desired. The certificate should include provisions regarding costs for energy consumption, operation and maintenance of mechanical and electrical systems, and start of warranties. A detailed list of uncompleted items or work should be attached to the certificate.
- 2 . Evidence of general public liability insurance against bodily injury and property damage occurring in, on or about the project, with limits which are mutually agreed upon by the Owner and Contractor. The policy should contain an endorsement adding the Contractor as an additional named insured and also provide cross liability coverage.
- 3 . Evidence meeting the Contractor's requirements that occupancy will not affect or impair the amount and conditions of insurance coverage and potential for recovery under fire, casualty, boiler and other Owner's insurance for the project.

After occupancy of a portion of the project, the Owner should maintain and keep elevators serving occupied portions of the project in good operating order at all times during the completion of construction, provided that the Contractor is responsible for all costs and expenses incurred by reason of any negligence in the use or operation of such elevators by the Contractor. The Owner and Contractor should mutually define the Contractor's access to any elevators during normal business hours or other times to the extent necessary to move workers and materials during the continuance of construction operations. In case of multiple elevators, one

should be reserved for the Contractor's exclusive use. If precompletion occupancy is anticipated prior to bidding, the Owner should include instructions in the bidding documents advising the Contractor of alternate means of vertical transportation if existing elevators cannot accommodate the project requirements (e.g. outside hoists, performing work after regular working hours, etc.).

The Owner should post notices in conspicuous locations to clearly warn occupants and visitors of the occupied portions of the project that construction is in progress and that unauthorized access to the areas under construction is prohibited. The Owner also should make reasonable efforts to secure the occupied areas and keep unauthorized persons out of the unoccupied or uncompleted portions of the project. The Owner should direct its property managers and leasing agents to comply with these terms. The Contractor should prevent construction personnel from entering the Owner's occupied areas without the Owner's permission.

The Owner should defend and indemnify the Contractor, its Subcontractors, Suppliers and their employees from all claims, costs and expenses consequent to any accident, injury or damage on, in or about the project to any person or property arising out of the acts or omissions of the Owner and occupants of the project, their employees, agents, guests, invitees and trespassers at the project. Excluded from such indemnification should be claims arising out of the Contractor's negligence.

Before the Owner occupies or permits occupancy of any area of the project, the Contractor should give written permission for the Owner to occupy the defined area and the Contractor should provide secure access thereto.

## re-bid procedures

(January 1989)

*Substantial costs are incurred by Architects, Engineers, Consultants, Contractors and Owners in the preparation of drawings and specifications, re-bid documents, re-bid preparation, re-bid opening and analysis. Consequently, clear and expeditious procedures will help to minimize these costs whenever the Owner requests re-bids.*

*The re-bidding process can often be avoided if, during the planning stages of the project, greater time and effort are devoted to careful budgeting based upon current market conditions, in-depth studies of the Owner's needs, and consultation with construction cost consultants, specialty Contractors and Suppliers as to practical design and cost considerations.*

*Re-bidding does occur, however, because the original bids do not provide a basis for a contract acceptable to the Owner. The reasons may include exceeding the Owner's budget, changes in project requirements or scope, or other special circumstances.*

The Owner may select specific Contractors either general or in various specialties, and work with them directly, receiving their input and analysis concerning changes and related costs. This process should be undertaken only in accordance with the proposed contracting procedures specified in the bidding documents. If simultaneous invitations are made to more than one Contractor in a specialty or trade, and if the Contractors are asked to submit cost data based on their modifications, the information received from each should

remain confidential and not be made known to any other bidders.

New bids, rather than re-bids, may be taken in cases where the scope of the project has been substantially changed or where a significant lapse of time from the original bid taking has occurred. Taking new bids may justify extending invitations to Contractors who had not previously submitted proposals.

## recommended re-bid procedures

*Notice of re-bidding a project should be sent to all firms who originally submitted proposals. Alternates or suggestions for price modifications should be solicited from those Contractors, as they would be most familiar with the bidding documents.*

The Architect/Engineer should revise the bidding documents prior to issuing them for re-bidding and the revisions may be in any or all of the following forms:

- 1 . A written addendum, with as much relevant information and detailed description of the desired revisions as is practical, with the original drawings unaltered.

- 2 . Clarification sketches accompanied by specifications, with the original drawings unaltered.

- 3 . Revised original drawings clearly indicating the extent of the revisions, accompanied by specifications modifications.

Re-bidding documents should include a new bid form to ensure that the revised bids are consistent with one another, and submitted in the same format. A specific time and place should be named for the re-bid submittal and the review and selection process should be similar to the original bid.



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## CADD data

(September 1997)

*With the increased utilization of CADD systems in the execution of the Drawing portion of the Contract Documents by design professionals and the development of shop drawings by Contractors and Subcontractors, there exists an opportunity for the sharing of machine-readable data to facilitate and enhance the submittal of shop drawings and the coordination of the work of the Subcontractors during the construction process.*

*The CIAC supports the sharing of such data for the overall benefit of the Owner through increased efficiency in the project delivery, subject to the following recommendations:*

The time and effort required to edit and translate the Architect's /Engineer's (A/E's) software version of the CADD Data to the Owner's or the Contractor's software version of CADD Data should be recognized and compensated by the Owner as an Additional Service. The Owner should note that the exchange of the A/E's CADD Data is not a sale and not subject to any warranties. CADD Data should be provided by the A/E and accepted by the Contractor and Subcontractor(s) on an "as is" basis, recognizing that all of the A/E's CADD Data may not translate to another computer/plotter or that the Contract Documents issued may not have been 100% CADD-generated. It should also be understood that the organizational logic (layering, line weight, symbols, text, etc.) used to construct the Data may not be available to the Contractor and Subcontractor(s).

Copies of the Documents prepared by the A/E or the A/E's Consultant that may be relied upon by the Contractor and Subcontractor(s) are limited to the printed copies (also known as hard copies) that are dated and signed by the A/E or the A/E's Consultant. Files of text, data, graphics or other types of electronic media that are furnished by the A/E to the Contractor or Subcontractor(s) are only for the convenience of the Contractor or Subcontractor(s). Any conclusions or information obtained or derived from such electronic files will be at the user's sole risk. It is further understood that the Data developed by the A/E or the A/E's Consultant represents original work-product protected by copyright and may not be used by others for any purpose beyond the limited scope of the current project without the expressed written consent of the A/E.

errors, but not software incompatibility, detected within the sixty (60) day acceptance period should be corrected by the party furnishing the data.

Parties who create files on electronic media should make no representation as to the long-term performance of the data thus transferred resulting from the use of software application packages, operating systems or computer hardware differing from those used by the creator. Neither party should be responsible for the consequences of errors found to exist in standard software products that are sold to the public.

The Contractor should consult with all Subcontractors and submit a single coordinated request for receiving specific data in the particular software versions of machine readable form at the beginning of the shop drawing preparation process. The receipt of machine readable data from the design professional should be viewed as informational and in no way should relieve

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Because data stored on electronic media can deteriorate or be modified inadvertently or otherwise without the authorization of the data's creator, the party receiving data in an electronic format should agree that it will perform acceptance tests or procedures within sixty (60) days, after which the receiving party shall be understood to have accepted that data thus transferred. Any



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the Contractor or Subcontractor(s) of the responsibility to confirm existing conditions in the field to the proper coordination of the work as required by the Contract Documents.

The Owner should be able to benefit from shortened construction time and savings in construction lending. The Owner should also benefit from the ultimate availability of shop drawings in machine-readable form which would be useful for facility management and maintenance purposes. The Owner should be willing to reimburse the A/E for this Additional Service.

It is the recommendation of the Construction Industry Affairs Committee that the cooperative sharing of CADD Data amongst members of the design and construction team will improve communication and scheduling to the ultimate benefit of all parties to the construction process.



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## *fair payment initiative*

(April 2000)

*Withholding payment because of dispute and in a manner which is in violation of the construction contract is a problem within the industry. Such a policy de-stabilizes the industry by involving the capital of others who are not involved in the dispute and creates an atmosphere where feelings of fairness are lost. Such strongly adversarial actions make reasonable negotiation and resolution unlikely and litigation probable. This recommendation addresses these issues and seeks to establish a format for processing the problem.*

"Each payment which is not made in accordance with the contract documents should be subject to a surcharge. Such surcharge should be added to the next application for payment."

"Should the owner or the owner's agent decide to withhold from an application for payment in whole or in part, they should provide a written explanation of the reasoning used in withholding payment. If such reasoning involves the calculation of the cost for remedial work or the cost of work in place, they should base the calculations on a statement of quantity and unit cost in a manner consistent with the custom and practice of the divisions of the industry involved and the unit costs should be reasonable and customary."

"Failure to provide such written explanation should be treated as a failure to make payment. Further, the sum not in dispute should be paid in accordance with the date established for such payment."

"If the contractor does not agree the quantities or unit costs stated in the written explanation, the contractor may submit alternative quantity surveys or unit costs. Either party may support their quantities or unit costs with independent surveys, reference material or written expert opinion."

"Resolution of disputed payment withholdings shall be in accordance with procedures set forth in the General Conditions and Supplementary Conditions of the Contract."

## *retentions*

(August 1988)

*This guide augments CIAC Recommendation No. 1 "Retentions". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for retention in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Subparagraph 5.3.2.

"5.3.2 The Contractor shall pay each Subcontractor 90% of the Subcontractor's earned sum when payment is due, 10% being retained to assure faithful performance of the Contract. After 50% completion of the Subcontractor's portion of the Work has been accomplished, no further retainage shall be withheld, provided, however, that the Contractor and the Architect determine that satisfactory progress is being made in the

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Subcontractor's portion of the Work. Thirty days after receipt of payment from the Owner on account of 100% completion of the Subcontractor's portion of the Work, final payment shall be made by the Contractor to the Subcontractor."

Insert new Subparagraph 5.3.3.

"5.3.3 The Architect will furnish to a Subcontractor, upon request, information on the Certificates for Payment relating to the Subcontractor's portion of the Work."

*Also see CIAC Recommendation No. 23 "Project Payment Information" for specific types of information.*

Insert new Paragraph 9.11 RETAINAGE.

Insert new Subparagraph 9.1 1.1.

"9.1 1.1 The Contractor shall be paid 90% of the earned sum when payment is due, 10% being retained to assure faithful performance of the Contract. After 50% completion of the Work has been accomplished, no further retainage shall be withheld, provided, however, that the Architect determines that satisfactory progress is being made in the Work."

*Also see CIAC Recommendation No. 11 "Application for Payment and Sworn Statement" for recommended method of reporting retained sums.*

Insert new Subpagraph 9.11.2.

"9.11.2 After the Work is substantially complete and the Architect has determined that the list of items to be completed and corrected is acceptable, the retainage shall be adjusted so that the sum has a direct relation to the value of the Work Included on the list."

*Also see CIAC Recommendation No. 18 "Substantial Completion" for adjustment of retention with regard to punch list items.*

*After "included on the list", add the words "plus any unsettled claims" if deemed advisable.*

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Insert new Subparagraph 9.11.3.

"9.11.3 Thirty days after issuance of the final Certificate for Payment by the Architect, the entire unpaid balance of the Contract Sum shall be paid."

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

Before the last sentence in Paragraph 11.2, insert "The amount of retainage with respect to progress payments shall be as specified in Paragraphs 14.17, 14.18, and 14.19".

Insert new Sub-subparagraph 11.4.3.1.

"11.4.3.1 CONTRACTOR shall pay each Subcontractor 90% of the Subcontractor's earned sum when payment is due, 100% being retained to assure faithful performance of the Contract. After 50% completion of the Subcontractor's portion of the Work has been accomplished, no further retainage shall be withheld, provided, however, that CONTRACTOR and ENGINEER determine that satisfactory progress is being made in the Subcontractor's portion of the Work. Thirty days after receipt of payment from OWNER on account of 100% completion of the Subcontractor's portion of the Work, final payment shall be made by CONTRACTOR to the Subcontractor."

Insert new Sub-subparagraph 11.4.3.2.

"11.4.3.2 ENGINEER will furnish to a Subcontractor, upon request, information on recommended payments relating to the Subcontractor's portion of the Work."

*Also see CIAC Recommendation No. 23 "Project Payment Information" for specific types of information.*

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Insert new subtitle "Retainage" after Subparagraph 14.16.2.

Insert new Paragraph 14.17.

"14.17 CONTRACTOR shall be paid 90% of the earned sum when payment is due, 10% being retained to assure faithful performance of the Contract. After 50% completion of the Work has been accomplished, no further retainage shall be withheld, provided, however, that ENGINEER determines that satisfactory progress is being made in the Work."

*Also see CIAC Recommendation No. 11 "Application for Payment and Sworn Statement" for recommended method of reporting retained sums.*

Insert new Paragraph 14.18.

"14.18 After the Work is substantially complete and ENGINEER has determined that the list of items to be completed and corrected is acceptable, the retainage shall be adjusted so that the sum has a direct relation to the value of the Work included on the list."

*Also see CIAC Recommendation No. 18 "Substantial Completion" for adjustment of retention with regard to punch list items.*

*After "included on the list", add the phrase "plus any unsettled claims" if deemed advisable.*

Insert new Paragraph 14.19.

"14.19 Thirty days after issuance of ENGINEER'S final recommendation for payment, the entire unpaid balance of the Contract Price shall be paid."

*end*

## *guarantees and warranties*

(August 1988)

*This guide augments CIAC Recommendation No. 2 "Guarantees and Warranties". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for warranties in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Subparagraph 9.9.4.

"9.9.4 If all or a portion of the operating systems are used beneficially by any party other than the Contractor, with the prior written authorization of the Owner, the warranty period shall commence on the date when such systems or portion thereof are placed in operation. The beneficial user, if other than the Owner, shall restore such systems or portion thereof to their original condition without cost to the Owner and before acceptance by the Owner."

*In lieu of "operating systems", the specifier may insert specific items, i.e., "elevator, heating, piping, ventilating, refrigeration, plumbing, temperature control, pneumatic, or electrical systems".*

*Also see CIAC Recommendation No. 18 "Substantial Completion" for acceptance of a system or portion thereof by the Owner prior to date of substantial completion.*

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Insert new Subparagraph 14.10.4.

"14.10.4 If all or a portion of the operating systems are used beneficially by any party other than CONTRACTOR, with the prior written authorization of OWNER, the warranty period shall commence on the date when such systems or portion thereof are placed in operation. The beneficial user, if other than OWNER, shall restore such systems or portion thereof to their original condition without cost to OWNER and before acceptance by OWNER."

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

*In lieu of "operating systems", the specifier may insert specific items, i.e., "elevator, heating, piping, ventilating, refrigeration, plumbing, temperature control, pneumatic, or electrical systems".*

*Also see CIAC Recommendation No. 18 "Substantial Completion" for acceptance of a system or portion thereof by the Owner prior to date of substantial completion.*

*end*

## *management and control of construction operations*

(August 1988)

*This guide augments CIAC Recommendation No. 3 "Management and Control of Construction Operations". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for construction management in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Subparagraph 3.3.4.

"3.3.4 The Contractor shall arrange for periodic coordination meetings to be held with the Architect and Subcontractors at the site."

*Expand requirements for coordination meetings in Section 01220 "Progress Meetings" of the specifications.*

Insert new Subparagraph 3.9.2.

"3.9.2 The Contractor shall also employ a coordinator for mechanical and electrical work. The coordinator shall

*Specify requirements for coordination when the project is large or when the mechanical and electrical systems are unusually complex.*

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be knowledgeable in mechanical and electrical systems and capable of reading, interpreting, and coordinating contract drawings, specifications, and shop drawings pertaining to such systems. The coordinator shall plan and expedite the proper sequence of delivery of mechanical and electrical equipment to the site and schedule labor operations in accordance with the construction schedule for the Work."

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

Insert new Subparagraph 6.6.1.

"6.2.1 CONTRACTOR shall also employ a coordinator for mechanical and electrical work. The coordinator shall be knowledgeable in mechanical and electrical systems and capable of reading, interpreting, and coordinating contract drawings, specifications, and shop drawings pertaining to such systems. The coordinator shall plan and expedite the proper sequence of delivery of mechanical and electrical equipment to the site and schedule labor operations in accordance with the progress schedule for the Work."

*Specify requirements for coordinator when the project is large or when the mechanical and electrical systems are unusually complex.*

Insert new Subparagraph 6.6.2.

"6.6.2 CONTRACTOR shall arrange for periodic coordination meetings to be held with ENGINEER and Subcontractors at the site."

*Expand requirements for coordination meetings in Division 1 Section "Progress Meetings" of the specifications.*

*end*

## *assignment of responsibility for providing temporary job utilities and services*

(August 1988)

*This guide augments CIAC Recommendation No. 5 "Assignment of Responsibility for Providing Temporary Job Utilities and Services". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for temporary utilities and services in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in preparing sections under Division 1 "General Requirements" of the specifications. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses should be incorporated in Division 1 Section 01510 "Temporary Utilities". They are intended for use on single contract projects. Change to "the Contractor" or "CONTRACTOR" for multiple contract projects.*

### **Temporary Electricity**

(The Subcontractor) (SUBCONTRACTOR) for the electrical work shall furnish, install, and maintain temporary metered \_\_\_\_\_ ampere, \_\_\_\_\_ volt, \_\_\_\_\_ phase electrical service and sufficient ampere, \_\_\_\_\_ volt, single phase electrical receptacles so that any point on each floor can be reached by a \_\_\_\_\_ foot extension

*Include a cross-reference to this work in Division 16 Section "Service and Distribution".*

*Strike out (the Subcontractor) or (SUBCONTRACTOR).*

*Insert figures for electrical service and receptacles. For a normal project, specify 100 foot extension cord.*

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cord. Each (Subcontractor) (SUBCONTRACTOR) having requirements for power other than those specified herein shall make the necessary arrangements and pay for the additional cost. Excess facilities charges and the cost of electrical energy shall be paid direct to the utility company by (the Owner) (OWNER).

*Type quantity, amperage, and voltage characteristics and voltage characteristics of additional temporary electrical service requirements should be specified or indicated on the drawings.*

*If the Owner is unwilling to pay directly for electrical energy, specify an allowance in a manner similar to that proposed for temporary heating.*

*Strike out (the Owner) or (OWNER).*

### **Temporary Lighting**

(The Subcontractor) (SUBCONTRACTOR) for the electrical work shall furnish, install, and maintain temporary lighting, including lamps, as required by governmental authorities having jurisdiction and additional lighting required by (the Architect) (ENGINEER) for observation of construction.

Each (Subcontractor) (SUBCONTRACTOR) having requirements for lighting other than those specified herein or indicated on the drawings shall make the necessary arrangements and pay for the additional costs.

*Include a cross-reference to this work in Division 16 Section "Lighting".*

*Strike out (the Architect) or (ENGINEER).*

*Type, quantity, wattage, and voltage characteristics of additional temporary lighting requirements should be specified or indicated on the drawings.*

### **Construction Heat**

(The Subcontractor) (SUBCONTRACTOR) for the general work shall furnish, install, and maintain temporary enclosures and heating devices to protect work in place during construction and permit continuation of construction during periods of cold and inclement weather. Temporary heating devices shall be provided until such time as the Work is enclosed by permanent construction and when the permanent heating system, in the opinion of (the Architect) (ENGINEER), is sufficiently completed to allow safe operation.

*Include a cross-reference to this work in Division 15 Section "Heating, Ventilating, and Air Conditioning (HVAC)" or other appropriate sections under Division 15 Mechanical.*

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### **Temporary Heating, Cooling and Ventilating**

After the Work is permanently enclosed the permanent heating system is sufficiently completed to allow safe operation, (the (Subcontractors) (SUBCONTRACTORS) for the heating and ventilating work shall furnish, install, and maintain temporary heating and ventilating services to protect the work in place, to permit continuation of construction during cold weather, and to aid in controlling relative humidity.

Enclosed areas shall be maintained at a minimum temperature of 50 degrees F with a minus 5 degree outside temperature, unless more stringent requirements are specified elsewhere. Ventilation shall be adequate for specific operations, but not less than 1 air change per hour in work areas.

Temporary heating and ventilating work shall include labor, materials, and equipment for the following:

Furnishing and installing heating equipment which will not become part of the permanent system, but which will be required during the temporary heating and ventilating period.

Making temporary unit connections to the permanent system and isolating portions of the permanent system which will not be used for temporary services.

Operating and maintaining, the permanent system during the temporary heating and ventilating period.

*Include a cross-reference to this work in Division 15 Section "Heating, Ventilating, and Air Conditioning (HVAC)" or other appropriate sections under Division 15 Mechanical.*

*Also see CIAC Recommendation No. 18 "Substantial Completion" for maintenance and operation of fuel and service utilities.*

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Replacing, repairing, and cleaning permanent components which are used for temporary heating and ventilating, at the conclusion of the temporary heating and ventilating period.

Removing temporary equipment at the conclusion of the temporary heating and ventilating period.

The cost of fuel shall be paid for by (the Owner) (OWNER).

(The Subcontractor) (SUBCONTRACTOR) for the heating work shall include an allowance of (\$\_\_\_\_\_) (\_\_\_ hours) for the furnishing of labor by qualified personnel to operate and maintain the system during the temporary heating and ventilating period.

(The Subcontractor) (SUBCONTRACTOR) for the heating work shall state the hourly rates to be applied for the furnishing of labor for operating and maintaining the system. The Contract Sum shall be adjusted to represent the (amount) (hours), based on the quoted hourly rates, actually expended against the allowance.

### **Temporary Water**

(The Subcontractor) (SUBCONTRACTOR) for the plumbing work shall install and maintain temporary metered water service with sufficient \_\_\_\_\_ inch hose bibbs so that any point on each level of the work may be serviced with a \_\_\_\_\_ foot water hose. Water requirements in excess of those specified shall be responsible for its own facility. The cost of water shall be paid directly to the utility company by (the Owner) (OWNER).

*Also see CIAC Recommendation No. 2 "Guarantees and Warranties" for commencement of warranty period on components which are used for temporary heating and ventilating.*

*Insert an appropriate allowance figure, either dollars or hours.*

*Provide appropriate blanks in the Bid Form.*

*Strike out (amount) or (hours).*

*Include a cross-reference to this work in Division 15 Section "Plumbing".*

*Insert figures for size of hose bibbs and length of hose. For a normal project, use 3/4 inch and 100 foot, respectively.*

*Temporary water service is not intended to serve as fire protection. If required, specify in accordance with applicable codes.*

*end*

## *equipment purchasing procedure*

(August 1988)

*This guide augments CIAC Recommendation No. 6 "Equipment Purchasing Procedure". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for prepurchase of equipment in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*Furnishing of equipment shall be included in the specifications of the trade having union jurisdiction. Purchasing of equipment by the Owner is not justified except in rare instances, such as the need to meet a construction schedule, in which case the following clauses are applicable.*

*Purchase orders for equipment should stipulate assignment to the proper contractor, provide for responsibility for handling, installation, performance, and warranty of the equipment, and establish the time when the warranty period commences. Further, purchase orders should include provisions covering transfer of title of the*

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*equipment at the project site, furnishing of labor as a part of the manufacturer's warranty, and responsibility for timely delivery in accordance with the stipulated date. Purchase orders should be available for review during the bidding period.*

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Subparagraph 6.1.5.

"6.1.5 The Owner has prepurchased certain items of equipment and the cost thereof shall be included in the Contract Sum. Copies of the purchase orders and conditions thereof are hereby made a part of the Contract Documents. The purchase orders stipulate that they will be assigned to the Contractor, who shall be responsible for enroute freight damage, handling, installation, performance, and warranty in the same manner as if the Contractor had been the original purchaser."

*Also see CIAC Recommendation No. 22 "Subcontractor Assignments" for assignment of separate subcontracts.*

Insert new Subparagraph 6.1.1.1.

"6.1 1.1 OWNER has prepurchased certain items of equipment and the cost thereof shall be included in the Contract Price. Copies of the purchase orders and conditions thereof are hereby made a part of the Contract Documents. The purchase orders stipulate that they will be assigned to CONTRACTOR, who shall be responsible for enroute freight damage, handling, installation, performance, and warranty in the same manner as if CONTRACTOR had been the original purchaser."

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

*Also see CIAC Recommendation No. 22 "Subcontractor Assignments" for assignment of separate subcontracts.*

*end*

## *construction contract change orders*

(August 1988)

*This guide augments CIAC Recommendation No. 7 "Construction Contract Change Orders". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for change orders in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Subparagraph 7.1.4.

"7.1.5 At the earliest possible time, the Architect will issue explicit instructions defining the scope of a proposed Change in the Work, identifying the proposed change with appropriate nomenclature to be used on document revisions, files and correspondence. The same nomenclature shall be used on submittals by the Contractor and Subcontractors."

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Insert new Subparagraph 7.2.3.

"7.2.3 For each proposed Change Order, the Contractor shall prepare a detailed breakdown of the cost of the Work and a proposed change of Contract Time, if any. The Contractor shall also state any time limitation on acceptance of the proposal."

Insert new Subparagraph 7.2.4.

"7.2.4 The Contractor shall review each Subcontractor's proposal and verify it as correct in scope and reasonable in cost."

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

Insert new Paragraph 10.6.

"10.6 At the earliest possible time, ENGINEER will issue explicit instructions defining the scope of a proposed Change in the Work, identifying the proposed change with appropriate nomenclature to be used on document revisions, files and correspondence. The same nomenclature shall be used on submittals by CONTRACTOR and Subcontractors."

Insert new Subparagraph 11.2.1.

"11.2.1 For each proposed Change Order, CONTRACTOR shall prepare a detailed breakdown of the cost of the Work and a proposed change of Contract Time, if any. CONTRACTOR shall also state any time limitation on acceptance of the proposal."

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Insert new Subparagraph 11.2.2.

"11.2.2 CONTRACTOR shall review each Subcontractor's proposal and verify it as correct in scope and reasonable in cost."

*end*

## "punch list"

(August 1988)

*This guide augments CIAC Recommendation No. 8 "Punch List". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for completion of the work in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### NOTES TO THE SPECIFIER

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Subparagraph 3.3.4.

"3.3.4 The Contractor shall carefully check the Work as it is being performed. Work which does not conform to the Contract Documents shall be corrected immediately."

Insert new Subparagraph 3.3.5.

"3.3.5 During the finishing stages of the Work, the Contractor shall make frequent inspections with Subcontractors and the

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Architect to progressively check for work which does not conform to the Contract Documents. "In Subparagraph 9.8.2, in the fourth sentence, insert "promptly" after "the Architect will".

In Subparagraph 9.8.3, delete the second sentence and Insert the following:

"If the Architect's inspection discloses any items, whether or not included on the Contractor's list, which are not in accordance with the requirements of the Contract Documents, the Architect will promptly prepare a 'punch list' setting forth in accurate detail any items on the Contractor's list and additional Items that are not acceptable. When the 'punch list' has been prepared, the Architect will arrange a meeting with the Contractor and Subcontractors to identify and explain the 'punch list' items and answer questions on the Work which must be done before final acceptance. The Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such items upon notification by the Architect."

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

Insert new Subparagraph 6.1.1.

"6.1.1 CONTRACTOR shall carefully check the Work as it is being performed. Defective Work shall be corrected Immediately."

Insert new Subparagraph 6.1.2.

"6.1.2 During the finishing stages of the Work, CONTRACTOR shall make frequent inspections with Subcontractors and

*continued on next page*

*continued*

ENGINEER to progressively check for defective Work."

In Paragraph 14.8, delete the third sentence and insert the following:

"If ENGINEER does not consider the Work substantially complete, ENGINEER will promptly prepare a 'punch list' setting forth in accurate detail any items on CONTRACTOR'S list and additional items that are not acceptable. When the 'punch list' has been prepared, ENGINEER will arrange a meeting with CONTRACTOR and Subcontractors to identify and explain the 'punch list' items and answer questions on the Work which must be done before final acceptance. CONTRACTOR shall, before issuance of the definitive certificate of Substantial Completion, complete or correct such items upon notification by ENGINEER."

*end*

## *substitutions*

(August 1988)

*This guide augments CIAC Recommendation No. 9 "Substitutions". It is intended for use by those persons who are responsible, directly or indirectly, for specifying procedures for substitutions in construction bidding documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC) and in preparing sections under Division 1 "General Requirements" of the specifications. If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A701 "Instructions to Bidders", 1997 Edition.*

Insert new Subparagraph 3.3.4.

"3.3.4 Consideration of substitutions may also be requested on separate sheets submitted with the Bid. Such substitutions will not be considered in selection of the lowest responsible Bidder."

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Insert new Subparagraph 3.3.5.

"3.3.5 Prior to award of the Contract, consideration of substitutions may be requested by the successful Bidder up to \_\_\_\_\_ days after the receipt of Bids."

*Insert number of days.*

Change Subparagraph 3.3.4 to 3.3.6.

*The following clauses amend or supplement EJCDC No. 1910-12 "Guide to the Preparation of Instructions to Bidders", 1983 Edition.*

In Paragraph 9, after "Effective Date of the Agreement", insert, "unless otherwise specified".

Insert new Subparagraph 9.1.

"9.1. Consideration of substitutions may also be requested on separate sheets submitted with the Bid. Such substitutions will not be considered in selection of the lowest responsible bidder."

Insert new Subparagraph 9.2.

"9.2. Prior to award of the Contract, consideration of substitutions may be requested by the successful Bidder up to \_\_\_\_\_ days after the receipt of Bids."

*Insert number of days.*

*The following clauses should be incorporated in Section 01600 "Material and Equipment".*

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## **Substitutions**

After award of the Contract, substitutions will be considered only under one or more of the following conditions:

Required for compliance with subsequent interpretation of code requirements or insurance regulations.

Unavailability of specified products through no fault of (the Contractor) (CONTRACTOR).

*Strike out (the Contractor) or (CONTRACTOR).*

Subsequent information discloses inability of specified products to perform properly or to fit in designated space.

Manufacturer/fabricator refuses to certify or warrant performance of specified product as required.

When it is clearly seen in the judgment of (the Architect) (ENGINEER), that a substitution would be substantially to the best interest of (the Owner) (OWNER), in terms of cost, time or other considerations.

*Strike out (the Architect) or (ENGINEER).*

Substitution requests shall be written, timely, and accompanied by adequate technical and cost data. Requests shall include complete description of the proposed substitution, name of the material or equipment for which it is to be substituted, drawings, cuts, performance and test data and any other data or information necessary for a complete evaluation by (the Architect) (ENGINEER).

*Strike out (the Owner) or (OWNER).*

*end*

## *project record documents*

(August 1988)

*This guide augments CIAC Recommendation No. 10 "Project Record Documents". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for field record documents in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in preparing sections under Division 1 "General Requirements" of the specifications. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses should be incorporated in Section 01700 "Contract Closeout".*

### **Project Record Documents**

Significant departures from the Contract Documents and detailed information on underground and permanently concealed portions of the Work shall be documented by (the Contractor) (CONTRACTOR) during construction. Such information shall include the following:

Changes due to field coordination.

Change orders and supplemental instructions issued during construction.

*Strike out (the Contractor) or (CONTRACTOR).*

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Location, depth, and termination of underground mechanical and electrical services, utilities, and appurtenances, referenced to permanent surface improvements.

Location of mechanical and electrical services, utilities, and appurtenances that are concealed in the building, referenced to accessible features of the building.

Layout of concealed work that is schematically indicated in the Contract Documents.

The field record information shall be marked on reproducible prints of approved shop drawings, when applicable shop drawings are required for the work. When shop drawings are not required, the field record information shall be marked on reproducible prints of applicable Contract Drawings issued by (the Architect) (ENGINEER).

*Strike out (the Architect) or (ENGINEER).*

Upon completion of the Work, submit the field record documents to (the Architect) (ENGINEER).

*end*

## *application for payment and sworn statement*

(August 1988)

*This guide augments CIAC Recommendation No. 11 "Application for Payment and Sworn Statement". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for payment in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in preparing sections under Division 1 "General Requirements" of the specifications. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses should be incorporated in Section 01025 "Measurement and Payment".*

#### **Application for Payment**

Applications for payment shall be submitted on prepared forms entitled "Application for Payment and Sworn Statement for Contractor and Subcontractor to Owner", as published by the Construction Industry Affairs Committee of Chicago. A specimen copy is bound herein.

*end*

## *construction completion schedules related to building costs*

(August 1988)

*This guide augments CIAC Recommendation No. 12 "Construction Completion Schedules Related to Building Costs." It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for time of completion of a project in construction contract documents. This guide has been endorsed by the Construction Industry Affairs Committee of Chicago, and was prepared by one of its member organizations, the Chicago Chapter of the Construction Specifications Institute.*

*The clauses in the guide were drafted for use as a provision in the Instructions to Bidders on contracts to be let under the principles of competitive bidding.*

### **NOTES TO THE SPECIFIER**

*Prior to issue of the construction documents, it is recommended that the Owner, Architect/Engineer, and representative prospective bidders confer to establish a realistic completion schedule for the project.*

During the bidding period, should any bidder determine that the specified time for completion would necessitate overtime labor, would be impossible to meet by reason of delivery date of materials, would be detrimental to local, regional, and national economies, or for any other logical reason, it should so advise the (Architect) (Engineer) at least 72 hours prior to the time set for the receipt of bids. Any change in time for completion determined necessary by the (Architect) (Engineer) will be issued in the form of an addendum.

*Strike out (Architect) or (Engineer) or insert other appropriate name for the Owner's agent.*

*In lieu of "72 hours", the specifier may insert another appropriate time period.*

*end*

## *waiver of lien procedure*

(August 1988)

*This guide augments CIAC Recommendation No. 13 "Waiver of Lien Procedure". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for waivers of lien in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Sub-subparagraph 9.3.1.3.

".3 The first payment application shall be accompanied by the Contractor's partial waiver of lien, for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by the Contractor's partial waiver and by the partial waivers of lien of Subcontractors and Suppliers who were included in the immediately preceding payment application,

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to the extent of that payment. Progress payments following a payment from the Owner of 100% completion of any Subcontractor's or Supplier's portion of the Work shall be accompanied by final waivers of lien from that Subcontractor or Supplier. Application for final payment shall be accompanied by final waivers of lien from the Contractor, Subcontractors, and Suppliers who have not previously furnished such final waivers."

In Subparagraph 9.3.3, delete the second sentence.

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

Insert new Subparagraph 14.2.1.

"14.2.1 The first payment application shall be accompanied by CONTRACTOR's partial waiver of lien, for the full amount of the payment. Each subsequent monthly payment application shall be accompanied by CONTRACTOR's partial waiver and by the partial waivers of lien of Subcontractors and Suppliers who were included in the immediately preceding payment application, to the extent of that payment. Progress payments following a payment from OWNER of 100% completion of any Subcontractor's or Supplier's portion of the Work shall be accompanied by final waivers of lien from that Subcontractor or Supplier. Application for final payment shall be accompanied by final waivers of lien from CONTRACTOR, Subcontractors, and Suppliers who have not previously furnished such final waivers."

In Paragraph 14.3, delete "free and clear of all Liens".

*end*

## *shop drawings*

(August 1988)

*This guide augments CIAC Recommendation No. 14 "Shop Drawings". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for shop drawings in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in preparing sections under Division 1 "General Requirements" of the specifications. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses should be incorporated in Section 01300 "Submittals".*

#### **Submittals**

Within 30 days after award of the Contract, (the Contractor) (CONTRACTOR) shall submit to the Architect for approval a proposed list of manufacturers and suppliers and a schedule of specific target dates for the submission and return of Submittals required by the Contract Documents. The schedule shall be divided into construction categories. All submittals for interrelated items shall be scheduled for submission at the same time. Not less than 2 weeks shall be allocated to each submittal for processing by (the Architect) (ENGINEER).

*Strike out (the Contractor) or (CONTRACTOR).*

*Items requiring submission of shop drawings should be defined in Divisions 2 through 16 of the specifications.*

*Also see CIAC Recommendation No.15 "Submittal Data and Equipment Quality Control".*

*Strike out (the Architect) or (ENGINEER).*

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Submittals shall be submitted to (the Architect) (ENGINEER) only through (the Contractor) (CONTRACTOR).

Submittals prepared by a subcontractor shall be signed or initialed by (the Contractor) (CONTRACTOR) and shall bear (the Contractor's) (CONTRACTOR'S) stamp evidencing that the submittal has been examined and checked and that it is complete and in accordance with the Contract Documents.

(The Architect) (ENGINEER) will review submittals and return them to (the Contractor) (CONTRACTOR) within the period established in the schedule, appropriately marked. Where corrections or revisions are requested or submittals are rejected, (the Architect) (ENGINEER) shall indicate the reasons for such action.

(The Architect) (ENGINEER) may hold submittals in cases where partial submission cannot be reviewed until the complete submission has been received or where submittals cannot be reviewed until correlated items affected by them have been received. When such submittals are held, (the Architect) (ENGINEER) will advise (the Contractor) (CONTRACTOR) in writing that the submittals will not be reviewed until all related items have been received.

*end*

## *submittal data and equipment quality control*

(August 1988)

*This guide augments CIAC Recommendation No. 15 "Submittal Data and Equipment Quality Control". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for quality control of material and equipment in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in preparing sections under Division 1 "General Requirements" of the specifications. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses should be incorporated in Section 01300 "Submittals".*

#### **Submittals**

Submit equipment drawings and performance data prepared by the equipment manufacturer.

When specified, an officer of the company manufacturing the equipment shall certify that the drawings and performance data represent documentation of the actual item of equipment, including any variations, which will be supplied for the Work.

*Certified shop drawings and specific criteria for each piece of equipment requiring such drawings should be specified in Divisions 2 through 16 of the specifications.*

*Certification of submittals by an officer of the manufacturing company requires an extended period of time.*

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When specified, tests of the equipment shall be conducted by the manufacturer in the manufacturer's plant or by an independent approved testing laboratory. Seven days advance notice of equipment tests shall be given to (the Architect) (ENGINEER). Tests may be witnessed by (the Architect) (ENGINEER). Laboratory tests shall be certified by an officer of the laboratory.

*Strike out (the Architect) or (ENGINEER).*

*See the Recommendation for information to be incorporated in the purchase agreement when the owner prepurchases major equipment. Also see CIAC Recommendation No. 6 "Equipment Purchasing Procedure."*

*Also see CIAC Recommendation No. 14 "Shop Drawings."*

*end*

## *substantial completion*

(August 1988)

*This guide augments CIAC Recommendation No. 18 "Substantial Completion". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for substantial completion in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1987 Edition.*

In Subparagraph 9.8.2, delete all words after "which shall establish the Date of Substantial Completion".

Insert new Subparagraph 9.8.2.

"9.8.2 On the date on which the Work has been certified by the Architect as substantially complete:"

*Also see CIAC Recommendations No. 4 "Operation and Maintenance of Dynamic Systems" and No. 5 "Assignment of Responsibility for Providing Temporary Job Utilities and Services".*

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Insert new Sub-subparagraph 9.8.2.1.

"1 The Owner shall assume responsibility for maintenance, operation, and costs of fuel and service utilities."

Insert new Sub-subparagraph 9.8.2.2.

".2 The Owner shall hold the Contractor harmless against losses and injuries not directly attributable to the Contractor's negligence, and shall have in effect necessary insurance to protect the Owner, the Owner's employees, and the Contractor against losses attributable to occupancy prior to final completion."

Change existing Subparagraph 9.8.3 to 9.8.6

Insert new Subparagraph 9.8.3.

"9.8.3 Warranty periods shall begin on the Date of Substantial Completion unless a prior date has been established for substantial completion of a portion of the Work, In which case the prior date shall be effective for such portion only."

*Also see CIAC Recommendation No. 2 "Guarantees and Warranties".*

Insert new Subparagraph 9.8.4.

"9.8.4 The Contractor shall arrange a schedule so that items to be corrected are completed in the designated time by working during regular working hours. If the Architect determines that the Work interferes with beneficial use of the Project, and the Owner is unable to adjust operations to permit the Contractor to perform such Work during regular working hours, the Architect shall certify to the Owner that such Work

*Also see CIAC Recommendation No. 8 "Punch List."*

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must be performed on an overtime basis and the Owner shall compensate the Contractor for the additional expense."

Insert new Subparagraph 9.8.5.

*Also see CIAC Recommendation No. 1 "Retentions."*

"9.8.5 The retained amount of payment shall equal approximately twice the value of the work to be completed or corrected as determined by the Architect."

Change existing Subparagraph 9.8.3 to 9.8.6.

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

In Paragraph 14.8, delete all words after "consideration of any objections from OWNER" through "insurance and warranties".

Insert new Paragraph 14.9.

*Also see CIAC Recommendations No. 4 "Operation and Maintenance of Dynamic Systems" and No. 5 "Assignment of Responsibility for Providing Temporary Job Utilities and Services."*

"14.9 On the date on which the Work has been certified by ENGINEER as substantially complete:"

Insert new Subparagraph 14.9.1.

"14.9.1 OWNER shall assume responsibility for maintenance, operation, and costs of fuel and service utilities."

Insert new Subparagraph 14.9.2.

"14.9.2 OWNER shall hold CONTRACTOR harmless against losses and Injuries not directly attributable to CONTRACTOR'S negligence, and shall have in effect all

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necessary insurance to protect OWNER, OWNER'S employees, and CONTRACTOR against losses attributable to occupancy prior to final completion."

Insert new Paragraph 14.10.

114.10 Warranty and guarantee periods shall begin on the Date of Substantial Completion unless a prior date has been established for substantial completion of a portion of the Work, in which case the prior date shall be effective for such portion only."

*Also see CIAC Recommendation No. 2 "Guarantees and Warranties".*

Insert new Paragraph 14.1.1.

"14.11 CONTRACTOR shall arrange a schedule so that items to be corrected are completed in the designated time by working during regular working hours. If ENGINEER determines that the Work interferes with beneficial use of the Project, and OWNER Is unable to adjust operations to permit CONTRACTOR to perform such Work during regular working hours, ENGINEER shall certify to OWNER that such Work must be performed on an overtime basis and OWNER shall compensate CONTRACTOR for the additional expense."

*Also see CIAC Recommendation No. 8 "Punch List."*

Add new Paragraph 14.12.

"14.12 The retained amount of payment shall equal approximately twice the value of the work to be completed or corrected as determined by ENGINEER."

*Also see CIAC Recommendation No. 1 "Retentions."*

Change Paragraph 14.9 to 14.13.

*end*

## *unit prices*

(August 1988)

*This guide augments CIAC Recommendation No. 20 "Unit Prices". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for unit prices in construction bidding and contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A701 "Instructions to Bidders", 1997 Edition.*

Insert new Article 9 "UNIT PRICES".

Insert new Paragraph 9.1.

"9.1 Within 72 hours after a request is made, the selected low Bidder shall submit to the Architect unit prices for specific items or systems of the Work."

Insert new Paragraph 9.2.

"9.2 If, after review by the (Owner and ) Architect, the proposed unit prices are not acceptable, the Bidder (Owner), and Architect may negotiate acceptable unit prices. If

*Include Owner if applicable.*

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negotiations fail, the next lowest Bidder, in order of succession, may be invited to submit unit prices for consideration."

Insert new Paragraph 9.3.

"9.3 Unit prices shall be established for both additions to and deductions from the Work."

*The percentage for overhead and profit for additional work may be higher than the percentage for deductions.*

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1987 Edition.*

Insert new Sub-subparagraph 7.1.4.1.

".1 Unit prices shall remain in effect for a period of \_\_\_\_\_ days after the Contract has been signed between the Owner and Contractor. Unit prices may be subject to revision after the stipulated period."

*Insert number of days.*

Insert new Sub-subparagraph 7.1.4.2.

".2 Unit prices shall include net costs of labor, material, tools, and equipment, and a percentage for overhead and profit."

*The following clauses amend or supplement EJCDC No. 1910-12 "Guide to the Preparation of Instructions to Bidders", 1983 Edition.*

Insert new Article 23 "Unit Prices".

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Insert new Paragraph 23. 1.

"23.1 Within 72 hours after a request is made, the selected low Bidder shall submit to Engineer unit prices for specific items or systems of the Work."

Insert new Paragraph 23.2.

"23.2 If, after review by (Owner and) Engineer, the proposed unit prices are not acceptable, the Bidder (, Owner,) and Engineer may negotiate acceptable unit prices. If negotiations fail, the next lowest Bidder, in order of succession, may be invited to submit unit prices for consideration."

*Include Owner if applicable.*

Insert new Paragraph 23.3.

"23.3 Unit prices shall be established for both additions to and deductions from the Work."

*The percentage for overhead and profit for additional work may be higher than the percentage for deductions.*

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

In Subparagraph 11.9.2, delete all words after "to cover CONTRACTOR'S" and add the words "net cost of labor, material, tools, and equipment, and a percentage for overhead and profit."

Insert new Sub-subparagraph 11.9.2.1.

"11.9.2.1 Unit prices shall remain in effect for a period of \_\_\_\_\_ days after the Contract has been signed between OWNER and CONTRACTOR. Unit prices may be subject to revision after the stipulated period."

*Insert number of days.*

*end*

## *allowances*

(August 1988)

*This guide augments CIAC Recommendation No. 21 "Allowances". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for allowances in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC) and in preparing sections under Division 1 "General Requirements" of the specifications. If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Sub-subparagraph 3.8.1.1.

*".1 A cash allowance is a stipulated sum for the anticipated purchase of specified products, cost of installation, if applicable, and other specified costs."*

Insert new Sub-subparagraph 3.8.1.2.

*".2 A contingency allowance is a stipulated sum available as a reserve to cover unanticipated costs."*

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In Subparagraph 3.8.2, after "Contract Documents", insert ", the following requirements apply to cash allowances".

In Sub-subparagraph 3.8.2.2, after "installation costs," Insert "protection and storage, finishing, testing, adjusting, and balancing".

Insert new Subparagraph 3.8.4.

"3.8.4 Unless otherwise provided in the Contract Documents, the following requirements apply to the contingency allowance:"

Insert new Sub-subparagraph 3.8.4.1.

.1 The Contract Sum shall be adjusted by Change Order for all costs agreed upon."

Insert new Sub-subparagraph 3.8.4.2.

.2 At final completion any monies remaining in the contingency allowance shall be credited to the Owner by Change Order."

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

In Paragraph 11.8, after "acceptable to ENGINEER.", insert "A cash allowance is a stipulated sum for the anticipated purchase of specified products, cost of installation, if applicable, and other specified costs. A contingency allowance is a stipulated sum available as a reserve to cover unanticipated costs."

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In Subparagraph 11.8.2, after "installation costs," insert "protection and storage, finishing, testing, adjusting, and balancing,".

Insert new Subparagraph 11.8.3.

"11.8.3 Unless otherwise provided in the Contract Documents, the following requirements apply to the contingency allowance:"

Insert new Sub-subparagraph 11.8.3.1.

"11.8.3.1 The Contract Price shall be adjusted by Change Order for all costs agreed upon."

Insert new Sub-subparagraph 11.8.3.2.

"11.8.3.2 At final completion any monies remaining in the contingency allowance shall be credited to OWNER by Change Order."

*In Section 01020 "Allowances" of the specifications, refer to each section where the technical description and dollar amount of cash allowances are specified. The cash allowance statement in each section should state whether the allowance is a lump sum or unit cost.*

*In Section 01020 "Allowances", state the exact amount of the contingency allowance.*

*In Section 01370 "Schedule of Values" or the Bid Form, state estimated quantities relative to unit cost cash allowances.*

*end*

## *subcontractor assignments*

(August 1988)

*This guide augments CIAC Recommendation No. 22 "Subcontractor Assignments". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for assignment of subcontracts in construction bidding and contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses should be included in the bid form for the general contract work.*

The fee for overhead and profit for administering assigned subcontracts will be \_\_\_\_\_% of the contract amount of each assigned subcontract.

The fee for including the work of assigned subcontracts in the Performance Bond and Labor and Material Payment Bond will be \_\_\_\_\_% of the contract amount of each assigned subcontract.

The undersigned agrees to accept assignment of the subcontract Bidders on the list Issued by (the Architect) (ENGINEER) dated \_\_\_\_\_ except any to which

*Strike out (the Architect) or (ENGINEER).*

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written exception has been taken in the undersigned's letter dated \_\_\_\_\_.

The following clauses amend or supplement AIA Document A701 "Instructions to Bidders", 1997 Edition.

Insert new Subparagraph 4.1.8.

"4.1.8 Separate bids are being invited for each of the following parts of the Work:

PART OF WORK	SPECIFICATION SECTION
_____	_____
_____	_____
_____	_____
_____	_____

Insert new Subparagraph 4.1.9.

"4.1.9 During the bidding period, the Architect will issue a list of general contract Bidders and subcontract Bidders for parts of the Work to be assigned. Bidders shall advise the Architect in writing if they have objections to the assignment process with a listed contractor. In the absence of such notification, it will be assumed that a Bidder is agreeable to working on an assigned basis with any of the listed contractors."

Insert new Subparagraph 4.1.10.

"4.1.10 Accepted bids on each of the above parts of the Work will be assigned to the Contractor to award as subcontracts

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in the agreed amounts. The Contractor shall supervise, coordinate, expedite, and administer assigned subcontracts in the same manner as though directly solicited and awarded as subcontracts by the Contractor."

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Subparagraph 6.1.5.

"6.1.5 When stipulated in the Instructions to Bidders, separate bids for parts of the Work to be assigned will be taken by the Owner. Accepted bids for such parts of the Work will be assigned to the Contractor to award as subcontracts in the agreed amounts."

*Also see CIAC Recommendation No. 6 "Equipment Purchasing Procedure" for assignment of prepurchased equipment.*

Insert new Subparagraph 6.1.6.

"6.1.6 Upon such assignment, the Contractor shall be responsible for performance of the Work and as fully responsible to the Owner for acts and omissions of the assigned Subcontractors and persons either directly or indirectly employed by them as the Contractor is for the acts and omissions of Subcontractors with whom the Contractor has directly entered into subcontracts for other parts of the Work."

Insert new Subparagraph 6.1.7.

"6.1.7 The Contractor shall be responsible for processing progress and final payment requests of assigned Subcontractors. Payment shall be made as follows:"

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Insert new Sub-subparagraph 6.1.7.1.

".1 The Owner shall pay assigned Subcontractors directly in the approved amounts of their payment requests for assigned work."

".1 The Owner shall jointly pay the Contractor and assigned Subcontractors in the approved amounts of their payment requests for assigned work."

".1 After payment by the Owner, the Contractor shall pay assigned Subcontractors in the approved amounts of their payment requests for assigned work."

*Select the appropriate payment method.*

*The second method requires endorsement of both the Contractor and the assigned Subcontractor on the owner's payment check.*

*The following clauses amend or supplement EJCDC No. 1910-12 "Guide to the Preparation of Instructions to Bidders", 1983 Edition.*

Insert new Paragraph 16.7.

"16.7 Separate bids are being invited for each of the following parts of the Work:

PART OF WORK	SPECIFICATION SECTION
_____	_____
_____	_____
_____	_____
_____	_____

*continued on next page*

*continued*

Insert new Paragraph 16.8.

"16.8 During the bidding period, Engineer will issue a list of general contract Bidders and subcontract Bidders for parts of the Work to be assigned. Bidders shall advise Engineer in writing if they have objections to the assignment process with a listed contractor. In the absence of such notification, it will be assumed that a Bidder is agreeable to working on an assigned basis with any of the listed contractors."

Insert new Paragraph 16.9.

"16.9 Accepted bids on each of the above parts of the Work will be assigned to Contractor to award as subcontracts in the agreed amounts. Contractor shall supervise, coordinate, expedite, and administer assigned subcontracts in the same manner as though directly solicited and awarded as subcontracts by Contractor."

*The following clauses amend or supplement ELCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

Insert new Subparagraph 6.11.1.

"6.11.1 When stipulated in the Instructions to Bidders, separate bids for parts of the Work to be assigned will be taken by OWNER. Accepted bids for such parts of the Work will be assigned to CONTRACTOR to award as subcontracts in the agreed amounts."

*Also see CIAC Recommendation No. 6 "Equipment Purchasing Procedure" for assignment of prepurchased equipment.*

Insert new Subparagraph 6.11.2.

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"6.11.2 Upon such assignment, CONTRACTOR shall be responsible for performance of the Work and as fully responsible to OWNER for acts and omissions of the assigned Subcontractors and persons either directly or indirectly employed by them as CONTRACTOR is for the acts and omissions of Subcontractors with whom CONTRACTOR has directly entered into subcontracts for other parts of the Work."

Insert new Subparagraph 6.11.3.

"6.11.3 CONTRACTOR shall be responsible for processing progress and final payment requests of assigned Subcontractors. Payment shall be made as follows:"

Insert new Sub-subparagraph 6.11.3.1.

"6.11.3.1 OWNER shall pay assigned Subcontractors directly in the approved amounts of their payment requests for assigned work."

"6.11.3.1 OWNER shall jointly pay CONTRACTOR and assigned Subcontractors in the approved amounts of their payment requests for assigned work."

"6.11.3.1 After payment by OWNER, CONTRACTOR shall pay assigned Subcontractors in the approved amounts of their payment requests for assigned work."

*Select the appropriate payment method.*

*The second method requires endorsement of both the Contractor and the assigned Subcontractor on the Owner's payment check.*

*end*

## *project payment information*

(August 1988)

*This guide augments CIAC Recommendation No. 23 "Project Payment Information". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for payment in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC) and in preparing sections under Division 1 "General Requirements" of the specifications. If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Delete Subparagraph 11.5.1 and insert the following:

" 1 1.5.1 The Contractor shall provide executed performance bond and labor and material payment bond in the full amount of the Contract within 10 days after signing the Contract. The surety company shall be acceptable to the Owner and cost of the bonds shall be paid by the Contractor."

*Use if bonds are required for the project.*

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*continued*

*Add Paragraph 13.8 "No-Lien Contract" and appropriate requirements for a no-lien contract, if applicable.*

*The following clauses amend or supplement EJCDC No. 2910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

At the end of Paragraph 8.3, insert "In addition, OWNER shall, at CONTRACTOR'S request, furnish to CONTRACTOR reasonable evidence that financial arrangements have been made to fulfill OWNER'S obligations under the Contract."

*Add Paragraph 17.5 "No-Lien Contract" and appropriate requirements for a no-lien contract, if applicable.*

*The following clauses should be incorporated in Section 01025 "Measurement and Payment".*

### **Project Payment Information**

When requested by a Subcontractor, (the Owner) (OWNER) shall submit the following project payment information during the progress of the Work:

Amount for which the Subcontractor is listed on (the Contractor's) (CONTRACTOR's) current statement.

Date when current payment is made to (the Contractor) (CONTRACTOR) and amount certified for the Subcontractor within the payment.

Amounts of (the Contractor's) (CONTRACTOR's) performance bond and labor and material payment bond and name of the surety.

*Strike out (the Owner) or (OWNER).*

*Strike out (the Contractor's) or (CONTRACTOR's).*

*Delete if bonds are not specified for the project..*

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*continued*

*The following clauses should be incorporated in Section 01300 "Submittals".*

### **Financial Arrangements**

When requested by (the Contractor) (CONTRACTOR), (the Owner) (OWNER) shall submit the following evidence that financial arrangements have been made to fulfill (the Owner's) (OWNER, s) obligations under the Contract:

Name and address of the title company (if any) that insures the property, number of the title policy, and number of the escrow account. If the property is registered, e.g., Torrens, the certificate number shall be furnished.

Financing sources and the full amounts of same.

Sources of funds other than financing sources if necessary to cover the Contract Sum.

Notice if the contract is a no-lien contract and alternate methods of resolving financial claims.

*Delete if the contract is not described as a no-lien contract.*

*end*

## *hazardous substances at the project site*

(August 1988)

*This guide augments CIAC Recommendation No. 24 "Hazardous Substances at the Project Site". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for hazardous substances in client agreements and construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

The following clauses amend or supplement AIA Document B141 "Standard Form of Agreement between Owner and Architect", 1997 Edition.

At the end of Paragraph 1.2.2.5, insert "The Owner shall furnish complete information gained from a site investigation conducted by experts technically qualified to locate, identify and quantify hazardous substances. The Owner shall furnish certification that any hazardous substances discovered during the site investigation have been eliminated, abated or controlled and the project site is ready for construction."

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Insert new Paragraph 1.2.2.8

"1.2.2.8 The Owner shall contract directly with experts to locate, identify and quantify hazardous substances. The Owner shall contract directly with a firm legally qualified for the elimination, abatement, and control of hazardous substances. If this work will affect the construction process, the manner and extent of the impact shall be made known to the Architect and parties to the construction contract."

Insert new Paragraph 1.2.2.9

"1.2.2.9 The Owner shall hold harmless the Architect and parties to the construction contract and their agents and employees from liability directly or indirectly related to the existence of hazardous substances at the project site."

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

Insert new Subparagraph 2.2.6.

"2.2.6 The Owner shall provide certification that the project site has been investigated by experts technically qualified to locate, identify and quantify hazardous substances and that any hazardous substances have been eliminated, abated or controlled and the project site is ready for construction."

Insert new Paragraph 2.5 INDEMNIFICATION.

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Insert new Subparagraph 2.5.1.

"2.5.1 The Owner shall indemnify and hold harmless the Contractor and Architect and their agents and employees from liability directly or indirectly related to the existence of hazardous substances at the project site."

*The following clauses amend or supplement EJCDC Document 1910-1 "Standard Form of Agreement between Owner and Engineer for Professional Services", 1984 Edition.*

Insert new Paragraph 3.17.

"3.17 Furnish complete information gained from a site investigation conducted by experts technically qualified to locate, identify and quantify hazardous substances. OWNER shall furnish certification that any hazardous substances discovered during the site investigation have been eliminated, abated or controlled and the project site is ready for construction."

Insert new Paragraph 3.18.

"3.18 Contract directly with experts to locate, identify and quantify hazardous substances. OWNER shall contract directly with a firm legally qualified for the elimination, abatement, and control of hazardous substances. If this work will affect the construction process, the manner and extent of the impact shall be made known to ENGINEER and parties to the construction contract."

Insert new Paragraph 3.19.

"3.19 Hold harmless ENGINEER and parties to the construction contract

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and their agents and employees from liability directly or indirectly related to the existence of hazardous substances at the project site."

*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

Insert new Paragraph 8.9.

"8.9 OWNER shall provide certification that the project site has been investigated by experts technically qualified to locate, identify and quantify hazardous substances and that any hazardous substances have been eliminated, abated or controlled and the project site is ready for construction."

Insert new Subparagraph 8.9.1.

"8.9.1 OWNER shall indemnify and hold harmless CONTRACTOR and ENGINEER and their agents and employees from liability directly or indirectly related to the existence of hazardous substances at the project site."

*end*

## *payment for material and equipment stored off-site*

(August 1988)

*This guide augments CIAC Recommendation No. 25 "Payment for Material and Equipment Stored Off-Site". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for payment procedures in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

In the second sentence of Subparagraph 9.3.2, insert "project-specific" before "materials and equipment suitably stored off the site".

At the end of Subparagraph 9.3.2, insert "Certificates of insurance for project-specific materials and equipment stored off the site shall indicate the nature, quantity and location of the stored items. Such materials and equipment stored off the site shall be:".

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Insert new Sub-subparagraph 9.3.2.1.

".1 protected from diversion, destruction, theft, and damage;"

Insert new Sub-subparagraph 9.3.2.2.

".2 specifically marked or otherwise identified for use on the project; and"

Insert new Sub-subparagraph 9.3.2.3.

".3 available for inspection by the Owner and Architect."

*The following clauses amend or supplement ELCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

In the second sentence of Paragraph 14.2, insert "project-specific materials and equipment suitably stored" before "at another location".

At the end of Paragraph 14.2, insert "Certificates of insurance for project-specific materials and equipment stored off the site shall indicate the nature, quantity and location of the stored items. Such materials and equipment stored off the site shall be:"

Insert new Subparagraph 14.2.1.

"14.2.1 protected from diversion, destruction, theft, and damage;"

Insert new Subparagraph 14.2.2.

"14.2.2 specifically marked or otherwise identified for use on the project; and"

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*continued*

Insert new Subparagraph 14.2.3.

"14.2.3 available for inspection by OWNER and  
ENGINEER."

*end*

## *dispute resolution*

(August 1988)

*This guide augments CIAC Recommendation No. 27 "Dispute Resolution". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for dispute resolution in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement or modify AIA Document A201 "General Conditions of the Contract for Construction", 1987 Edition.*

In Subparagraphs 4.1.4, 4.3.2, 4.4.4, 8.3. 1, 10.1.2, 11.3.9, and 11.3.10, delete "arbitration" and insert "dispute resolution/ arbitration".

Insert new Sub-subparagraph 4.4.4.1.

"1. If a decision rendered by the Architect is unacceptable to the Owner or the Contractor, either party may request in writing within 5 days to resolve the dispute by one or more of the following methods:

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- "a. Negotiation.
- "b. Mediation.
- "c. Mini-trial."

*For explanation of these methods, refer to the Recommendation.*

Insert new Sub-subparagraph 4.4.4.2.

"2. If an agreement is still not reached by the methods described in Sub-subparagraph 4.4.4.1, then either party may request arbitration in accordance with Paragraph 4.5."

In the first sentence of Paragraph 4.5.1, insert "if not settled in accordance with Sub-subparagraph 4.4.4.1," before "shall be settled by arbitration".

Delete Subparagraph 4.5.5 and insert the following:

"4.5.5 No arbitration arising out of or relating to the Contract Documents shall include, by consolidation or joinder or in any other manner, any other person or entity (including the Architect, the Architect's employees and consultants) which is not a party to the Contract unless:"

Insert new Sub-subparagraph 4.5.5.1.

".1 the inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration."

Insert new Sub-subparagraph 4.5.5.2.

".2 such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings."

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*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 edition.*

Insert new Subparagraph 9.11. 1.

"9.11.1. If a decision rendered by ENGINEER is unacceptable to OWNER or CONTRACTOR, either party may request in writing within five days to resolve the dispute by one or more of the following methods:

- "a. Negotiation.
- "b. Mediation.
- "c. Mini-trial."

*For explanation of these methods, refer to the Recommendation.*

Insert new Subparagraph 9.11.2.

"9.11.2. If an agreement is still not reached by the methods described in Subparagraph 9.11. 1, then either party may request arbitration in accordance with Article 16."

In the first sentence of Paragraph 16.1, insert "unless decided by methods proposed in Subparagraph 9.11. 1," before "will be decided by arbitration".

In Paragraph 16.2, delete the first sentence and insert "No demand for arbitration of any claim, dispute or other matter that is required to be referred to ENGINEER for decision in accordance with paragraph 9.11 will be made until all methods of dispute resolution stated in subparagraph 9.11.1 have been first pursued." In the second sentence, delete "date on which ENGINEER has rendered a written decision in respect thereof in accordance with paragraph 9.11" and insert "date on which all methods of dispute resolution stated in subparagraph 9.11.1 have been exhausted".

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In Subparagraph 16.4.2, delete ", and" and insert a period.

Delete Subparagraph 16.4.3.

*end*

## *precompletion occupancy*

(August 1988)

*This guide augments CIAC Recommendation No. 28 "Precompletion Occupancy". It is intended for use by those persons who are responsible, directly or indirectly, for including provisions for precompletion occupancy in construction contract documents. The guide was prepared by the Chicago Chapter of the Construction Specifications Institute, a CIAC member organization, and has been endorsed by the Construction Industry Affairs Committee of Chicago.*

*The clauses in the guide were drafted for use in Supplementary Conditions which amend or supplement standard documents of the American Institute of Architects (AIA) and the Engineers' Joint Contract Documents Committee (EJCDC). If documents other than the referenced documents are used, the clauses must be modified correspondingly. The clauses should be reviewed by legal counsel before incorporating them in contract documents.*

### **NOTES TO THE SPECIFIER**

*The following clauses amend or supplement AIA Document A201 "General Conditions of the Contract for Construction", 1997 Edition.*

In Subparagraph 9.9.1, delete "may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing" and substitute "shall commence when the Owner and Contractor have accepted in writing, a Certificate of Substantial Completion prepared by the Architect, establishing".

*Also see CIAC Recommendation No. 18 "Substantial Completion" for additional completion requirements.*

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Insert new Sub-subparagraph 9.9.1.1.

".1 The Owner shall post notices in conspicuous locations to clearly warn occupants and visitors of the occupied portions of the Work that construction is in progress and that unauthorized access to the areas under construction is prohibited."

Insert new Sub-subparagraph 9.9.1.2.

".2 The Owner shall make reasonable efforts to secure the occupied areas and keep unauthorized persons out of the unoccupied or uncompleted portions of the Work. The Owner shall direct its property managers and leasing agents to comply with these terms. The Contractor shall provide secure access to the Owner's occupied areas and prevent construction personnel from entering therein without the Owner's permission."

Insert new Sub-subparagraph 9.9.1.3.

".3 The Owner shall maintain and keep elevators serving occupied portions of the Work in good operating order at all times during completion of the Work. The Contractor shall be responsible for costs and expenses incurred by reason of any negligence in the use or operation of such elevators by the Contractor. The Owner and Contractor shall mutually define the Contractor's access to any elevators during normal business hours or other times to the extent necessary to move workers and materials during the continuance of construction operations. If multiple elevators are available, one shall be reserved for the Contractor's exclusive use."

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Insert new Sub-subparagraph 9.9.1.4.

".4 The Owner shall defend and indemnify the Contractor, its Subcontractors, suppliers and their employees from claims, costs and expenses consequent to any accident, injury or damage on, in, or about the Work to any person or property arising out of the acts or omissions of the owner and occupants of completed portions of the Work, their employees, agents, guests, invitees and trespassers at the site. Excluded from such indemnification should be claims arising out of the Contractor's negligence."

*Also see CIAC Recommendation No. 26 "Indemnification" for indemnification guidelines.*

Insert new Sub-subparagraph 11.4.1.5.1.

".1 Prior to partial occupancy, the Owner shall purchase and maintain comprehensive general public liability insurance against bodily injury and property damage occurring in, on, or about the site, with limits which are mutually agreed upon by the Owner and Contractor. The policy shall include cross liability coverage and evidence meeting the Contractor's requirements that occupancy will not affect or impair the amount and conditions of insurance coverage and potential for recovery under fire, casualty, boiler and other Owner's insurance for the Work. The policy shall name the Contractor as an additional named insured."

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*The following clauses amend or supplement EJCDC No. 1910-8 "Standard General Conditions of the Construction Contract", 1983 Edition.*

Insert new Subparagraph 5.15. 1.

"5.15.1 Prior to partial occupancy, OWNER shall purchase and maintain comprehensive general public liability insurance against bodily injury and property damage occurring in, on, or about the site, with limits which are mutually agreed upon by the OWNER and CONTRACTOR. The policy shall include cross liability coverage and evidence meeting the CONTRACTOR'S requirements that occupancy will not affect or impair the amount and conditions of insurance coverage and potential for recovery under fire, casualty, boiler and other OWNER'S insurance for the Work. The policy shall name the CONTRACTOR as an additional named insured."

*Also see CIAC Recommendation No. 8 "Substantial Completion" for additional substantial completion requirements.*

Insert new Sub-subparagraph 14.10.1.1.

".1 OWNER shall post notices in conspicuous locations to clearly warn occupants and visitors of the occupied portions of the Work that construction is in progress and that unauthorized access to the areas under construction is prohibited."

Insert new Sub-subparagraph 14.10.1.2.

".2 OWNER shall make reasonable efforts to secure the occupied areas and keep unauthorized persons out of the unoccupied or uncompleted portions of the Work. OWNER shall direct its property managers and leasing agents to comply with these terms. CONTRACTOR shall provide secure access to OWNER'S occupied areas and prevent construction personnel from entering therein without OWNER'S permission."

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Insert new Sub-subparagraph 14.10.1.3.

".3 OWNER shall maintain and keep elevators serving occupied portions of the Work in good operating order at all times during completion of the Work. CONTRACTOR shall be responsible for costs and expenses incurred by reason of any negligence in the use or operation of such elevators by CONTRACTOR. OWNER and CONTRACTOR shall mutually define the CONTRACTOR'S access to any elevators during normal business hours or other times to the extent necessary to move workers and materials during the continuance of construction operations. If multiple elevators are available, one shall be reserved for CONTRACTOR'S exclusive use."

Insert new Sub-subparagraph 14.10.1.4.

".4 OWNER shall defend and indemnify CONTRACTOR, its Subcontractors, suppliers and their employees from claims, costs and expenses consequent to any accident, injury or damage on, in, or about the Work to any person or property arising out of the acts or omissions of the owner and occupants of completed portions of the Work, their employees, agents, guests, invitees and trespassers at the site. Excluded from such indemnification should be claims arising out of CONTRACTOR'S negligence."

*Also see CIAC Recommendation No. 26 "Indemnification" for indemnification guidelines.*

Delete Subparagraph 14.10.2.

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*The following clause should be incorporated in Section 01500 "Construction Facilities and Temporary Controls".*

**Precompletion Occupancy**

Since precompletion occupancy of portions of the Work is anticipated and the Contractor's use of elevators will be curtailed, provide alternate means of completing the Work, such as outside hoists or scheduling work after regular working hours.

*end*