
A Brief Comparison of AIA C191-2009 with ConsensusDOCS 300

In 2007, the ConsensusDOCS coalition published a standard integrated project delivery contract. The ConsensusDOCS 300 represented a new approach to design, construction contracting, and project delivery. The contract established a collaborative approach with a greater alignment of the interests of project participants with the overall success of the project. The AIA first published a transitional document, B195-2008, in which separate design and construction contracts were signed while providing for close cooperation of the owner, architect, and contractor, and a separate single-purpose entity document, C195-2008. The single-purpose entity contract set up a limited liability company formed by the project owner, the architect, and the construction manager that then contracted separately for design and construction services.

The AIA changed its position and published C191-2009, the *Standard Form Multi-Party Agreement for Integrated Project Delivery*, which has characteristics in common with ConsensusDOCS 300, the *Standard Form of Tri-Party Agreement for Collaborative Project Delivery*. These two contracts share many concepts but have different approaches and differing provisions. A more in-depth analysis will be available around March or April at www.PlanetRiskManagement.com, but here are some of the features:

Organization: Both contracts significantly change the relationship of the parties. For the first time in standardized contracts, the client, the prime design professional, and the responsible construction entity

all sign the same document. In the past design professionals have been protected from many construction-related claims because their contractual obligations ran only to the client. The risk, however, is managed in these contracts by forcing the parties to cooperate and waive most of their rights against each other.

Process: The ConsensusDOCS 300 changes the design and construction process by attempting to incorporate “lean construction” procedures—quality management concepts adapted from manufacturing. While “lean” seems conceptually advantageous, the system and the savings could be difficult to achieve without a major change in the construction culture. The C191 changes the process by establishing new project phases consistent with those in other AIA integrated project delivery contracts.

Compensation: The contracts both pay for the costs, including overhead, of the design and construction entities, but profit is replaced by the sharing of a negotiated proportion of any savings if the project is built for less than a targeted cost. Both contracts create goal-based compensation related to other negotiated achievements such as timely completion, safety on the site, quality, and innovation. The goal-based awards can occur during the process; the financial incentive payments happen after completion, thus affecting cash flow for the participants.

Financial Risk Sharing: Both contracts seek to use the collaborative process of project delivery to eliminate wasted time and cost to improve quality and

increase the return on the investments made by each party. Neither contract is a true alliance contract by which the parties share totally in the success or failure of the project. The ConsensusDOCS contract has loss allocation approaches that either shift all risk of loss to the owner or share the costs in excess of the targeted amount capped at the fees of the designer and constructor. The AIA contract requires the owner to pay the labor costs of the other parties even if the target cost is exceeded.

Risk Allocation: ConsensusDOCS 300 provides for one of two negotiated approaches to risk allocation. One choice focuses on “safe harbor decisions” in which the parties release each other from any liability resulting from project decisions made collaboratively. The other, a “traditional risk allocation” option, keeps each party liable for its negligence and breaches of contract or warranty subject to optional specific limitations of liability for the designer and constructor. The AIA C191 requires the development of a risk matrix to assign responsibility and general waivers of claims and liability except for willful misconduct and certain contractual and warranty obligations. The AIA document also keeps the architect at risk for professional liability claims from the parties to the contract as well as to third parties because the waivers do not apply “to the extent insurance proceeds are available through insurance expressly required under the Contract Documents.” Many such claims, however, are precluded because of a specific mutual waiver of consequential damages. ♦