ConsensusDocs Guidebook

ConsensusDocs 300 – Tri-Party Agreement for Integrated Project Delivery (IPD)

August 2013 Edition
Introduction to the ConsensusDocs Guidebook

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Lastly, the ConsensusDocs coalition organizations and ConsensusDocs staff are deeply indebted to the hard work of the many the seasoned professionals who contributed countless hours in the creation of the ConsensusDocs contracts as well as this Guidebook. Their collective experience represents hundreds of years of practical experience in the construction field. Contributor names can be found at the conclusion of this Guidebook.
Comments regarding ConsensusDocs 300*
Tri-Party Agreement for Integrated Project Delivery (IPD)

Overview:

ConsensusDocs 300 represents a new approach to construction contracting and project delivery—one that is founded upon an integrated, collaborative approach to design and construction, and a greater alignment of the interest of all project participants with the overall success of the project. Construction has long been a fragmented process separated into disciplines of design, fabrication, construction and operation. Unfortunately, the traditional way of doing business has too often been married with an adversarial ethos; a zero-sum approach that focused on lowest cost and risk shedding. The ConsensusDocs program as a whole is a dramatic initiative against the adversarial and old way of doing business.

A number of influences are now driving the evolution of the construction industry—schedule compression, technology, realignment, globalization and economic integration. The rise of new information technology may be foremost among these factors. The tools of construction are not only becoming faster and smarter, but they require greater collaboration among project participants to reap their full potential. Building Information Modeling (BIM) is but one example.

ConsensusDocs 300 provides the contractual framework for a truly collaborative interaction between an Owner, a designer and a constructor. A tri-party Agreement, the Owner, designer and constructor sign the Agreement at the inception of the project, binding them to collaborate in the planning, design, development and construction of the project and a sharing of project risks and rewards different than traditional project. Lean construction principles underlying design and construction are used to drive out waste. Representatives of the three Parties manage the project through consensus decision-making. While the designer retains ultimate design responsibility in accordance with state licensing laws, the constructor and specialty Contractors and suppliers participate in the development of the project design. There is no guaranteed maximum price or lump sum.

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The approach and contractual framework of ConsensusDocs 300 is not appropriate for everyone or every project. All the Parties should be willing to surrender their specific agendas to do what is in the best interest of the project. A Party that cannot shed itself of the “old school”, traditional and adversarial approach to design and construction will not succeed in using the ConsensusDocs 300 model.

General Considerations:

The user of ConsensusDocs 300 should keep a number of basic considerations in mind:

- This is a Tri-Party Agreement, meaning the Owner, Designer and Constructor all sign the Agreement at the earliest possible stage of the project. The intent is to assemble the collaborative project team at the very beginning of the project, not in a piecemeal fashion.
- The three Parties, together with any critical specialty Contractors and suppliers, truly collaborate throughout design and construction, providing input that will improve the quality, cost and timeliness of the project delivery.
- Lean construction principles apply to the work of the entire Collaborative Project Delivery Team. These principles include:
  - True collaboration among all project participants
  - Strengthening and Aligning the relationships and interests of the Parties to the project
  - Project participants making commitments to work and schedule that can be relied upon by others, and that drive out waste in the form or RFIs, changes and rework
  - Focusing on what is best for the project as a whole and not just certain component parts
  - Seeking constant improvement through continuous assessment and implementation of “lessons learned”.
- The project is managed by a management group comprised of senior representatives of the Owner, Designer and Constructor (article 4).
- To the greatest extent possible, project decisions are made by consensus. When consensus cannot be reached, the Owner retains the ability to make a determination in the best interest of the project (section 4.6).
- In addition to the collaborative elements of necessary for this approach, ConsensusDocs 300 also contains where appropriate many of the elements found in other ConsensusDocs standard forms.

Unique Considerations:

- **Project Target Cost Estimate:** There is no lump sum or guaranteed maximum price established for the project that can create competing interests and counterproductive behavior among the Parties. Instead, the Parties establish a Project Target Cost Estimate under article 8 that serves as the benchmark for measuring the project’s overall success,
the performance of each Party and to what extent each will participate in any savings or losses.

- **Project Risk Allocation:** Under section 3.8, the Parties mutually agree upon an approach to risk allocation. The options include:
  - Safe Harbor Decisions: The Parties release each other from any liability resulting from project decisions that are collaboratively made the Management Group.
  - Traditional Risk Allocation: Under this approach each Party remains liable for its own negligence and breaches of contract or warranty, subject to optional specific, agreed-upon (fill in the blank) limitations of liability for the Designer and Constructor.

- **Target Value Design:** Cost and schedule are design criteria the Designer should consider (section 3.6). For their part, the Constructor and Trade Contractors should support the Designer’s efforts by continuously looking for ways to create value through improved quality, constructability, reduced capital or life cycle costs, for example (section 6.13). This is not traditional constructability review but design fully informed by the efforts of the Constructor and critical Trade Contractors and suppliers.

- **Incentives and Risk Sharing:** Under article 11, The Management Group develops a financial incentive program to encourage and reward superior performance among the project participants. The criteria are not merely financial, but recognize quality, safety, innovation and teamwork. The Parties should also discuss and agree upon how savings (section 11.4) and losses (section 11.5), measured against the Project Target Cost Estimate, will be shared among them. Under section 11.6, the amount of the Designer’s and Constructor’s respective fees can serve as a cap on the extent of the losses those Parties will bear.

- **Right to Audit:** Collaborative project delivery, without a lump sum or GMP, should be based on transparency of decisions and open-book accounting. Article 19 requires the Designer and Constructor to maintain full and detailed accounts subject to inspection and a final accounting.

- **Dispute Resolution:** Disputes should be resolved collaboratively through the Management Group, but when they are not, the Parties can elect to use a project neutral or dispute review board to mitigate the costs, time and overall impact of disputes. Elimination of or early resolution of disputes are key components of driving out waste in the project.
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ConsensusDocs 301 – Building Information Modeling (BIM) Addendum

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Comments regarding ConsensusDocs 301*
Building Information Modeling (BIM) Addendum

Overview:

The Building Information Modeling (BIM) addendum is intended for use on Projects on which the Project Owner and other major Project Participants have made a commitment very early in the Project planning process to utilize BIM or virtual design and construction.

The 301 BIM Addendum should be used where the Owner, lead design professional, lead construction professional, and major subcontractors and suppliers are willing to commit to model the Project design and construction media using three-dimensional design or modeling software with demonstrated interoperability, so as to eliminate the need for conversion of two-dimensional design and construction documents into three-dimensional virtual models.

The 301 BIM Addendum should be used when the Parties are prepared to involve all essential participants, including key subcontractors, subconsultants, and suppliers, early in the design, procurement, and construction planning process.

The 301 BIM Addendum is envisioned to be used with traditional project delivery methods, especially where construction is to be priced by means of a negotiated guaranteed maximum price (GMP) with significant preconstruction services. For the 301 BIM Addendum to be of value, it is not necessary for the Parties to agree to mutually shared cost-saving bonus arrangements for all Participants (as anticipated in, for instance, the ConsensusDocs 300 Standard Form of Tri-Party Agreement for Collaborative Project Delivery involving three-Party collaboration).

The 301 BIM Addendum can be used whether or not any Design Model is considered a Contract Document.

The 301 BIM Addendum can be used when the Owner has determined that a three-dimensional, digital building model is to be used as the primary means of communicating specified geometric,

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quantity, and other metric and representational data required for the design, procurement, and construction processes of a construction project.

The 301 BIM Addendum can be used when Models and Drawings co-exist on a project (for example, details such as waterproofing a parapet wall may more conveniently be drawn, not modeled, in some circumstances).

The 301 BIM Addendum is intended to incorporate a consensus of what many observers believe to be the current best practices in the use of BIM techniques and technology. Currently, many, if not all, BIM technologies and methodologies rely on a Federated Model. The 301 BIM Addendum assumes that the Project Model and some other models, such as the Full Design Model, will be Federated Models.

Definition of Affiliated Contract (section 2.1): When any given copy of the Addendum (as prepared for a given Project) is appended to and incorporated into a specific contract, the contract to which it is appended is the Governing Contract with respect to that copy of the Addendum. Each contract on a Project to which it is appended is a Governing Contract with respect to that copy of the Addendum and an Affiliated Contract with respect to the other copies of the Addendum that are appended to other contracts on the Project.

Definition of Contract Documents (section 2.3): This section clarifies that to the extent that any Design Models are included as part of the Contract Documents, Project Participants may rely on the accuracy of the information in those Design Models. This reliance, however, does not extend to the dimensional accuracy of such Models which is controlled by agreement of the parties in the BIM Execution Plan pursuant to section 4.3.11.

Definition of Governing Contract (section 2.10): When any given copy of the Addendum (as prepared for a given Project) is appended to and incorporated into a specific contract, the contract to which it is appended is the Governing Contract with respect to that copy of the Addendum. Each contract on a Project to which it is appended is a Governing Contract with respect to that copy of the Addendum and an Affiliated Contract with respect to the other copies of the Addendum that are appended to other contracts on the Project.

Information Management (section 3.1): The Owner has the option of appointing as the IM one person for the duration of the Project, or changing that appointment as the Project progresses. The Owner also has the option of appointing as the IM someone who is already fulfilling a function on the Project, such as the Architect/Engineer or Contractor. There is no requirement under the BIM Addendum that the Owner hire a third party or a separate consultant for this function.

Record User Role (section 3.2.5 b): This information may be stored with the user registration information, but a user may have different roles, and the role a user is playing when a data entry is made may be important.
Record Contact Information (section 3.2.5 c): This information is typically stored with the registration information, but may be added here as an aid in operations.

Meeting and Conferring on BIM Execution Plan (section 4.1): The BIM Addendum assumes that the Owner, Architect/Engineer, and Contractor may not be able to meet, confer and agree on issues relating to the BIM Execution Plan until after the Owner-Architect/Engineer and the Owner-Contractor agreements are negotiated. Ideally, if possible, the details of the BIM Execution Plan should be resolved prior to execution of the agreements, so that the compensation for such agreements can accurately reflect the scope of services to be provided. As additional Project Participants join the Project, it is necessary to convene another meeting to consider whether the addition of other Project Participants requires any modification of the BIM Execution Plan. Such a meeting could easily occur as part a regular project meeting.

Here is What the BIM Execution Plan Addresses (section 4.3): In addition to the elements provided in the BIM Addendum, additional elements may be added to the BIM Execution Plan for project specific needs.

Object Property Data (section 4.3.5 b): An example would be wall fire-rating.

Object Constitution Data (section 4.3.5 c): For example, how are assemblies broken down.

Definition of what Model shall constitute part of the record documents (section 4.3.8): For example, as-builts.

Project Owner’s Entitlement to use Full Design Model after completion of the Project (section 6.4): If modifying the 301 BIM Addendum for a Design-Build project, users should change “Architect/Engineer” to “Design-Builder.”

Non-exclusive License (section 6.5): A Project Participant’s Model may contain Contributions from multiple Project Participants. Should a Project Participant wish to use the Contribution of another Project Participant for marketing and/or educational purposes, such use should be clarified in the Project Participant’s Governing Contract. In the absence of any such provision in the Governing Contract, the license is limited to the keeping of an archival copy.