

# Docu-Drama: AGC Wants Input On A201

## *Organization Hasn't Fully Endorsed Changes To Standard Contract Document*

A few words can make a big difference, especially when it comes to a contract. The American Institute of Architects (AIA) has submitted a revision of its A201 contract to the AGC of America for its endorsement, and the AGC isn't taking that responsibility lightly.

The A201 is used more as a standard contract by owners than any other contract in the industry. The 2007 edition of the A201 has a number of language changes that are less favorable to contractors than the contract it proposes to replace, according to AGC Senior Counsel of Contract Documents and Construction Law Brian Perlberg.

"AIA told us in late February that they wouldn't be making any more changes to the contract," Perlberg said, pointing out that the AIA itself has been quoted in some publications as saying the proposed version is less kind to contractors. "We're working through it, and we're also looking for input from our members and associations."

A number of drafts have been received by the AGC, each one with provisions that the organization sees as problematic for the construction industry as a whole. While the AGC's Private Industry Advisory Committee (PIAC) has not yet had a chance to meet on the latest draft, the PIAC strongly advised against the endorsement of the previous draft.

"The general feeling is that (the document changes) are more favorable to the owner," Perlberg said. "In my opinion, the situations where there may be an adversarial relationship between the owner and the General Contractor, those situations are more likely to arise under this language."

That language includes a provision that says a contractor must provide a written submittal schedule to the architect. Failure to do so can prevent the contractor from obtaining cost or time adjustments for submittals at a later date.

Another language change would prevent a contractor from disputing a decision outside of a 60-day period. Perlberg views this as an insufficient length of time to evaluate decisions early in a project, which could cause contractors to dispute all decisions and make relationships with owners more likely to be adversarial.

Traditionally, Perlberg says, the contract is rewritten every 10 years.

"The number of changes are not atypical," he stated. "The issue is the general tenor of the changes. It's not a major rewrite, but there are some issues we'd like to see revisited."

"We're going to continue to collect information and we want to hear from our members. In the end, what we want is to endorse a contract that shows a fair and balanced risk allocation for everyone involved."


Another issue with the contract language involves the liability of a contractor when performing duties imposed by the architect or owner. Liability is limited to gross negligence in the current

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## Chief Makes Time For Contractors

*President George W. Bush is introduced by AGC of America President Steve Massie before speaking to AGC executives at the AGC Leadership Conference in Washington, D.C. on May 2. Bush spoke to members - including Builders Association President Al Leitschuh and Pepper Construction Company CEO J. David Pepper - about infrastructure, the economy and the war on terror before taking questions.*

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contract, but the language shift would require that contractor to prove that damage came from those methods and techniques imposed by the owner.

There are issues where the AIA changed language per suggestions from the AGC, including a section stipulating that a contractor must demonstrate that requests for an owner's financial information are "reasonable." The current A201 contract, which has been in use since 1997, did not require a prior showing from the contractor when questioning an owner's ability to pay for the project.

In addition, the AIA removed language that would require contractors to obtain insurance for defective construction. Language requiring "continuing operations" insurance coverage remains.

While the AIA continues to refine an A201 document it hopes to have in effect by the end of this year, Perlberg and his colleagues at the AGC continue to work on updating many contracts on the AGC's website. The contracts will be a collective effort by the AGC and a number of other construction organizations, including:

- Associated Specialty Contractors, Inc. (ASC)
- American Subcontractors Association, Inc. (ASA)
- Construction Industry Round Table (CIRT)
- Construction Owners Association of America (COAA)
- Construction Users Round Table (CURT)
- Design-Build Institute of America (DBIA)
- National Association of State Facilities Administrators (NASFA)
- National Association of Surety Bond Producers (NASBP)
- Surety & Fidelity Association of America (SFAA)

The end result, according to the AGC, will be a comprehensive catalog of construction contract documents, hopefully in place sometime this fall.

## AGC Disappointed In Senate's Guest Worker Maneuvering

The U.S. Senate's recent move to cut the guest worker program of the Associated General Contractors of America (AGC) from 400,000 to 200,000 workers annually was seen by the association as an offset to their plan for immigration reform.

The guest worker program would grant productive, law-abiding illegal immigrants a temporary stay in the U.S. before requiring them to return to their home countries to apply for guest worker status and re-entry into the country.

"The guest worker program is a cornerstone of comprehensive immigration reform," said Stephen E. Sandherr, chief executive officer of the AGC.

"The Senate's move ... is short-sighted and chokes off legal means to meet employment shortages."

The AGC had hoped their guest worker program would help solve the national problems of illegal immigration and employment shortages because the end product of the program for foreign workers would be U.S. citizenship. Employment shortages would decline as more citizens would take jobs.

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