

# ConsensusDOCS offers industry a way to work together better

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**F**or too long, the construction industry has been driven by conflict that begins when the owner puts one-sided contract documents out for bid, the contractor sends at least, if not more, one-sided contracts to the subcontractor and so forth, all the way down the construction food chain.

It has been a lot easier to draft unfair, risk-shifting contract language than it has been to seek cooperation and fair terms from the construction team to ensure a timely project, on budget, and with a fair profit for those doing the work.

While trade association forms have traditionally been less onerous than proprietary contract forms, each group publishing the form has had its own members' best interests in mind and often little else.

This was the situation when many of the major construction trade associations got together with other associations (representing owner, contractor, surety and subcontractor interests) in a collaborative process that culminated in the ConsensusDOCS (the DOCS stands for designers, owners, contractors and surety).

ConsensusDOCS offers an alternative to unfair risk shifting and reflect best practices and appropriate risk allocation. The ConsensusDOCS family of documents offers more than 70 documents dealing with general contracting, collaborative documents, design-build, construction manager at risk, subcontracting and project management.

They have been endorsed by more than two dozen of the leading construction associations in the country, including American Subcontractors Association, Associated Builders and Contractors, Associated General Contractors, Associated Specialty Contractors, Construction Owners Association of America, Construction Industry Roundtable, National Association of State Facilities Administrators, National Association of Surety Bond Producers and Surety and Fidelity Association of America.

This historic alignment has not gone unnoticed by the industry. *ENR* magazine, in its Sept. 24 cover story, said the "new standard forms seek unity on fairness," and in its editorial it said the "new consensus standard documents should be exciting."

It is indeed exciting to have so many diverse groups agreeing to fair documents reflecting best practices, not the lowest



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common denominator or simply a form that protects its own members at the expense of others.

The ConsensusDOCS 750 Subcontract contains these key elements:

- Sub is entitled to payment within seven days after the contractor is paid.
- When the sub is not timely paid, the sub may stop work.
- Conflicts between documents are construed in favor of the subcontract terms.
- Indemnification is limited to the sub's negligence.
- Review of plans/specs does not imply constructability.
- Unconditional lien waivers are prohibited.
- Liquidated damages are limited to the sub's actual responsibility.
- Arbitration must take place where the project is located.
- Sub is not required to indemnify the contractor's willful and repeated safety violations.
- Additional insured is not mandated.

Largely out of a concern about the "additional insured" mandate inserted for the first time in the 2007 edition of the American Institute of Architects A401 Subcontract, American Subcontractors Association decided not to endorse the newly issued edition of the subcontract. Subcontractors continue to believe that it is inequitable to force a subcontractor (and its insurance carrier) to bear a loss (and higher premiums) when a contractor or owner causes a loss.

Hopefully, ConsensusDOCS issues in a new era of collaboration and consensus to a challenging industry by encouraging all to manage the risk they control in a cooperative way with all members of the construction team. ConsensusDOCS is an important tool available to advance the cause.

More information concerning ConsensusDOCS can be found at the Web site [consensusdocs.org](http://consensusdocs.org).

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