

## A NEW AGE OF CONSENSUS

*"Can't we all just get along?"*

—RODNEY KING

These frustrated words, issued as a result of the 1992 riots in Los Angeles, may also have some application to the construction industry. For too long, the industry has been driven by conflict that begins when the owner puts one-sided contract documents out for bid, the contractor sends at least one, if not more, one-sided document 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 member's best interests in mind, and often little else.

This was the situation in the industry when many of the major construction trade associations, including groups as diverse as Associated General Contractors of America and the American Subcontractors Association, got together with other associations (representing owner, contractor, surety and subcontractor interests) in a collaborative process that has culminated in the ConsensusDOCS.

The ConsensusDOCS offer 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 (200 Series); Collaborative Documents (300 Series); Design-Build (400 Series); Construction Manager at Risk (500 Series); Subcontracting (700 Series) and Project Management (800 Series).

They have been endorsed by more than two dozen of the leading construction associations in this country including the ASA, Association Builders & Contractors, AGC, Associated Specialty Contractors, Association of the Wall and Ceiling Industry, 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. **Engineering News-Record**, in its Sept. 24, 2007, cover story, said that the "New Standard Forms Seek Unity on Fairness" and in its editorial that 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 common denominator or simply a form that protects its own members at the expense of others.

The ConsensusDOC 750 Subcontract contains these key elements:

- Sub is entitled to payment within

seven days after the contractor is paid. "Pay when 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.
- LDs 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 AIA A401 Subcontract, ASA decided not to endorse the newly issued edition of AIA's 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, the ConsensusDOCS issue 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. The ConsensusDOCS are an important tool available to advance the cause.

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

—Donald W. Gregory, Esq.,  
is the general counsel for AWCI and ASA,  
among others. He is with the law firm  
of Kegler Brown Hill & Ritter in  
Columbus, Ohio.

## PROPOSED LEGISLATION SUPPORTS BUILDING SAFETY

Sen. Mary Landrieu of Louisiana and Rep. Dennis Moore of Kansas introduced legislation on Capitol Hill Dec. 12, the Community Building Code Administration Grant Act of 2007, to provide federal grants to building departments to enhance public safety. The grant would provide \$100 million over five years to help local governments hire, train and equip code officials, including building and fire inspectors.

"Too often, especially in smaller communities, there simply aren't sufficient resources for building safety," said International Code Council CEO Rick Weiland. "The Code Council has long recognized this need and applauds the vision of Sen. Landrieu and Rep. Moore for taking the lead in this important effort to provide much-needed funds to local code enforcement departments."

If approved by Congress, the Community Building Code Administration Grant Act would support hiring and training code officials to save lives and protect property. It would aid communities that see their resources stretched when they face building booms or major rebuilds after a disaster. Studies show that every dollar invested to build stronger and safer results in savings of \$4 to \$7 in reduced damages when a disaster occurs.

Co-sponsors of the Community Building Code Administration Grant Act are Reps. Melissa Bean of Illinois, Timothy Bishop of New York, Earl Blumenauer of Oregon, Ginny Brown-Waite of Florida, Ruben Hinojosa of Texas, Ron Klein of Florida, Doris Matsui of California and Christopher Murphy of Connecticut.

The Community Building Code Administration Grant Program Act now awaits consideration by the Senate Committee on Banking, Housing and Urban Affairs and House Committee on Financial Services.

## OCTOBER CONSTRUCTION TOTALS UNCHANGED

At a seasonally adjusted annual rate of \$570.4 billion, new construction starts in October stayed essentially the same as September, according to McGraw-Hill Construction, a division of The McGraw-Hill Companies. While total construction was unchanged, there was a varied performance by construction's main sectors. Nonresidential building showed renewed growth after retreating in September, but a loss of momentum was reported for residential building and public works.

During the first 10 months of 2007, total construction on an unadjusted basis came in at \$530 billion, down 10 percent from the same period in 2006.

Excluding residential building, new construction starts in the first 10 months of 2007 advanced 4 percent compared to last year.

The October data kept the Dodge Index at 121 (2000=100), the same reading as in September.

Nonresidential building in October jumped 9 percent to \$221.8 billion, helped by strong gains for several institutional structure types. Health-care facilities surged 47 percent, boosted by the groundbreaking for three large hospital projects in Kentucky (\$400 million), Wisconsin (\$161 million) and Arizona (\$160 million).

The public buildings category climbed 41 percent, regaining the heightened activity reported earlier, with October including such projects as a \$71-million federal courthouse in Buffalo, N.Y. Transportation terminal work rebounded 88 percent from a weak September, helped by a \$190-million addition for a baggage screening facility at Los Angeles International Airport. While the educational building category settled back 4 percent in October, this structure type showed several large projects reach groundbreaking—a \$300-million addition to a research center in New York City, plus three new university buildings in Princeton, N.J. (\$150 million); Cambridge, Mass. (\$140 million); and Ithaca, N.Y. (\$108 million). Amusement-related work in October slipped 1 percent while church construction declined 6 percent.

On the commercial side, hotel construction had a strong October, rising 13 percent. The largest hotel project included as an October start was \$550 million for the hotel portion of the massive Cosmopolitan Resort and Casino in Las Vegas, with an estimated construction cost of \$1.4 billion. Warehouse construction also posted a substantial gain, rebounding 30 percent after a sluggish September. The office category improved 7 percent in October, aided by groundbreaking for large projects in Washington, D.C. (\$160 million); Northlake, Ill. (\$90 million); Seattle (\$84 million) and two in Denver (\$78 million and \$76 million).