

GUIDELINES FOR NEBRASKA SUPPLEMENTAL GENERAL CONDITIONS TO
AIA 2007 A201

Approved by the AGC-Nebraska Building Chapter Board of Directors, April, 2009
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Sec. 3.3.1 SUPERVISION AND CONSTRUCTION PROCEDURES

Sec. 3.3.1 deletes last sentence and adds the underlines sentence.

Sec. 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for.....If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising ~~solely~~ from those Owner-required means, methods, techniques, sequences or procedures, unless Contractor is grossly negligent.

Comments: Typically, a Contractor is solely responsible for construction means, methods, and techniques. The new language in the 2007 A201 encourages Owners to mandate such means and methods and thus create an inappropriate standard of care which requires the Contractor to perform perfectly to avoid liability when operating under such Owner-mandated means and methods.

Sec. 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

Sec. 3.7.5 Modify this section by adding the underlined words, so that the section now reads as follows:

Sec. 3.7.5 If, in the course of the Work, the Contractor knowingly encounters and recognizes human remains, burial markers, archeological sites or previously undelineated wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence or good faith belief of such existence of such remains or features may be made as provided in Article 15.

Comments: This is an entirely new provision. The joint committee added the language requiring "knowledge" on the part of the contractor of the conditions listed so as to avoid the claim that a contractor could be liable for disturbing the listed "remains or features" even without actual knowledge of the condition. Essentially these events are treated as "differing site conditions" requiring immediate action by the contractor, but also allowing for additional time and compensation in the event the Work is disrupted by the discovery of the "event" listed.

SEC. 3.9 SUPERINTENDENT

Sec. 3.9.2 Modify this section by adding the underlined words so that the section now reads as follows:

Sec. 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the owner through the architect the name and qualifications of a proposed superintendent. The architect may reply within 14 days to the contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent, or (2) that the Architect requires additional time to review. **If the owner or architect replies with reasonable objections the contractor shall take reasonable steps to provide a solution to the concerns expressed.** Failure of the architect to reply within the 14day period shall constitute notice of no reasonable objection.

Sec. 3.9.3 The contractor shall not ~~may~~ **employ a proposed superintendent to whom the owner or architect has made reasonable and timely objection if the contractor can address the objections in a reasonable manner. If the contractor cannot satisfy the concerns of the owner and architect, the contractor, at its sole discretion, may ask to be removed from the project with no penalty and all bonds or securities will be returned.** The contractor shall not change the superintendent without the owner's consent, which shall not unreasonably be withheld or delayed.

Comments: This provides an option for contractors with limited personnel resources.

Sec. 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

Sec. 3.10.2 Delete the last sentence of section so that the section now reads as follows:

Sec. 3.10.2 The Contractor shall prepare a submittal schedule promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor ~~shall~~ **may** not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

Comments: The new AIA provision as written penalized the contractor for not providing timely submittal schedules by depriving the contractor of the right to seek additional time/compensation for excessive delays by the design professional in the turnaround of shop drawings. The joint committee amendments eliminate that punitive provision.

Sec. 9.5 DECISIONS TO WITHHOLD CERTIFICATION

Sec. 9.5.3 Delete in its entirety.

~~Sec. 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to~~

~~make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.~~

Comments: Payments between a General Contractor and Subcontractor are governed by the business relationship and contract between these two parties. An Owner's inquiries regarding a Contractor's payment or the issuance of joint checks is intrusive upon that relationship.

Sec. 10.3 HAZARDOUS MATERIALS

Sec. 10.3.4 adds the underlined sentence

Sec. 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances. **Unless required by the Contract Documents, the Contractor shall not be required to perform without its consent any Work relating to a hazardous material or substance, provided that such Contractor consent shall not be unreasonably withheld.**

Comments: This Section adds significantly to the Contractor's liability exposure in regard to hazardous waste and materials. Unless specifically contracted to do so, Contractors should not be expecting to address hazardous waste.
