Practical Applications of the General Conditions

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Presentation Outline

- What are the general conditions (GCs) to the contract?
- Where do they come from?
- What are the essential ingredients?
- How are they modified to fit the project?
- How should they be practically applied?
GCs to the Contract

• They are one of the major components of the contract documents
  • Front End – ITB, Agreement, Forms
  • General Conditions and Special Conditions
  • Technical Specifications

• They define many of the statutory requirements of the project

• They define the roles and obligations of the parties to the contract
Avoiding Conflicts and Ambiguities

• Several items in the General Conditions (00700) are frequently also specified in Division 1;

• For Example:
  • Payment Procedures: GC Article 9 and Section 01290
  • Changes: GC Article 7 and Section 1250
  • Scheduling Requirements: GC Article 8 and Section 01320
  • There are also “definitions” within the documents that may also create ambiguities in the administration of the work.
Origination

• Where do GCs come from?
  • American Institute of Architects
    • A201 -2007
  • AGC
  • Construction Management Association of America (CMAA)
  • Firms may develop their own – in house
  • Client
  • Other
Essential Ingredients

• Definitions

• Roles & responsibilities of Owner, A/E, CM, Contractor & Subcontractor

• Information on how the contract will be administered
  • How changes will be managed
  • How time will be managed
  • How payments will be managed
  • How quality of work and inspections will be managed
Essential Ingredients (continued)

• Precedence of documents
• Safety and hazardous materials
• Insurance, bonds, and indemnities
• Termination provisions
• Statutory requirements
Modification

• The GCs are generally chosen or developed by Owner counsel

• The actual GCs should not be changed

• The supplementary or special conditions (oo8oo) should be the vehicle used to change the GCs for a particular project
Practical Application

Documents: Correlation and Intent

• Documents are to be taken as a “whole”
  • They are complementary and inclusive

• Coverage: all work shown and “reasonably inferable as necessary (incidental) to complete the work”

• Conflicts: most stringent applies
Practical Application

Documents: Correlation and Intent (continued)

• Conformance with various documents and laws
  • Contractor to check (….carefully study and compare the various documents…….)
  • Correct at no cost if could have been avoided, or
  • Change order for correction
Practical Application

Documents: Correlation and Intent (continued)

• Ambiguities/Inconsistencies
  • Contractor to review all and notify Owner within five days of receipt and prior to starting the work

• Correct at no cost if missed
Practical Application

• Patent Ambiguity:
  • A patent ambiguity exists when it is so obvious that an experienced contractor should detect it prior to bid submittal.

• Latent ambiguity:
  • A latent ambiguity exists when the ambiguity is sufficiently subtle so that an experienced contractor would not detect the conflict prior to bid submittal.
Practical Application

• Patent Ambiguity Duty:
  • Contractor to inquire prior to bid submittal.

• Latent ambiguity:
  • Owner responsible.
An Interesting Case……

Conflict Between Specifications and Drawings?

• Setting
  • A contractor received a contract to build a building. The specification for roof insulation required a minimum “R” of 13.2. A drawing detail called for insulation of a minimum thickness of 6.5 inches.
  • The contractor attempted to install 4-inch thick insulation with an “R” value of 13.2 stating that the specified “R” value had been met. The 4-inch insulation was rejected.
  • The contractor then installed 6.5-inch thick insulation and filed a claim for constructive change arguing that the specifications govern.
An Interesting Case

- Conflict Between Specifications and Drawings?
- Question: What is the Contractor entitled to and why?
An Interesting Case.....

Ruling:

• The doctrine that the specifications shall govern applies only when there is a direct conflict between a drawing and a specification

• The contractor is not entitled to disregard the drawing and treat it as meaningless
An Interesting Case.....

• Ruling:

• Here, no conflict existed; the specification and the drawing each established a minimum requirement; the requirements were not mutually exclusive, as it was possible to comply with each
Another case.....

“Typical” drawing details....

• Specifications for a heating, ventilation, and air conditioning project stated that balancing dampers were required “at points depicted on the contract drawings.”

• The distribution drawings referenced details for information on installation and fabrication.
Another case.....

“Typical” drawing details (cont)....

- One detail, labeled typical, depicted a balancing damper where two ducts connected.
- Contractor’s position was that the dampers had to be shown on the distribution drawings in order to be required.
- Do you agree?
Another case.....

“Typical” drawing details (cont)....

• One detail, labeled typical, depicted a balancing damper where two ducts connected.
• Contractor’s position was that the dampers had to be shown on the distribution drawings in order to be required.
• Do you agree?

• The court determined that dampers were required at all locations where two ducts connected.
Practical Application

Documents: Correlation and Intent

• Rules of Document Interpretation
  
  • General notes apply throughout the drawings
  • Schedules are complementary with other notes and drawings
  • Larger scale drawings take precedence over smaller scale drawings
Practical Application

Documents: Correlation and Intent

• Rules of Document Interpretation continued
  • GC’s take precedence over drawings and specifications
  • Special conditions (SC’s) take precedence over GC’s
  • Agreement takes precedence over the SC’s
Practical Application

Information provided by the Owner

• Site survey and soils report
  • Contractor Reliance:

  • Contractor has a right to rely on survey and soils report and has a right to a change order if conditions are materially different and proper (5 day) notice is given.
Practical Application

Information provided by the Owner

• Utilities
  • Documented: Contractor to investigate exact locations prior to commencing work to avoid damage
  • Undocumented: CO for repair or relocation or to avoid
Practical Application

• Disclaimers
  • Seek to disclaim responsibility or liability
  • Allocate or assign risk

• Examples
  • Unforeseen conditions
  • Delay
  • Nonpayment
  • Inaccurate quantities
  • Flawed design documents
Practical Application

• When Owner has right to do the work
  • Inadequate work force
  • Insufficient materials
  • Failure to perform
  • Failure to comply with safety requirements
  • In case of emergency
  • Failure to comply with critical path of schedule
  • Failure to comply with contracting laws
Practical Application

Supervision & Procedures

• Superintendent: Statement of qualifications to be provided to Owner and Architect prior to commencing the work
  • Competent
  • Capable of communication
  • Continuous presence on site
  • Authority to bind the contractor
  • Cannot be changed without approval of Owner
Practical Application

Warranty

• Effective period is measured from “date of completion.” (may be statutory.)

• One week notice in writing (Owner may self perform and bill contractor if no response)
Practical Application

Construction Schedules

• Early development and submittal (10 days after award)

• Scheduling requirements should match the complexity of the project

• Acceptance or approval means the same thing; reject or disapprove in writing when appropriate
Practical Application

Construction Schedules

- Failure to provide is material breach of contract and grounds for termination (Owner may withhold in whole or in part progress payments in lieu of termination)
Practical Application

Materials and Submittals

• Timeliness
  • schedule for submittals is part of the project schedule
  • may be on the critical path!

• Substitutions
  • unless the product is unavailable, substitution requests must be made at the time of submitting bids and cannot be a condition to the bid (non-responsive)

• “Or equals”
  • Contractor may propose an equal except where it is specifically stated that no substitutions or equals are allowed
Practical Application

Daily Reports
- Description of work
- Labor
- Materials
- Equipment
- Inspections
- Weather Conditions
Practical Application

Completion of the project: punch list (notify all parties of the procedure early in the project)

• Contractor to provide first draft of punch list with a notice that he is ready for an inspection

• Architect, IOR, and CM to do a field review of the contractor’s punch list and one follow up inspection if required

• Costs incurred for further field reviews and inspections shall be invoiced to the Contractor and deducted from the final payment
Practical Application

Claims

• Claim is not basis for discontinuing work
• Notification within certain number of days is required
• Review and decision by Architect is condition precedent to remedies
• If Contractor does not agree with Architect’s decision, formal claim appeal can be pursued
• Certification of claim is required
Practical Application

Subcontractors

• Never get between a contractor and a sub

• Contracts usually require that a sub be bound by the same requirements as the prime

• Substitution of subcontractors on hard bid job is usually controlled by statute.
Practical Application

Site security

• Upon commencement of work, the Contractor becomes “constructive owner” of the site

• All risk of loss or damage is the contractor’s
Practical Application

Changes

• Define the scope completely and accurately in a PCO prior to asking for a price

• Determine the time impact of the change

• Demand a timely response to the PCO

• Direct T&M work when necessary

• Resolve the matter early and fully
Pricing Change Orders

- If you don’t get the contractor’s proposal within two weeks, bring him in and develop the costs together

- Labor: to direct costs, add taxes, benefits, and insurance

- Materials: confirm pricing with quotes or invoices and apply all discounts

- Equipment: rented equipment and owned equipment are priced differently
Practical Application

Progress Payments

• Timing and process: agree on a process that works for all at the pre-construction meeting

• Notify contractor of all intended withholdings and discuss them in advance

• Make all submittals and shop drawings a condition precedent to the second pay request

• Make schedule update a condition precedent to processing all pay requests
Practical Application

Liquidated Damages (LDs)

• Send letter to Contractor when he is in danger of having liquidated damages assessed
• Withhold LDs on the exact date set forth in the contract documents if he does not perform
• If the contractor provides justification for the delay or makes up the time, release the withheld monies
• Be prepared to negotiate on the taking of LDs (let contractor buy back the time, etc.)
Practical Application

As-Built or Record Drawings

• Don’t rely upon Contractor, IOR or A/E; review them monthly yourself!!
• Withhold monies if they are not kept current
• Beware of unrealistic requirements; compare as-built specifications in contractor’s documents with those in the A/E agreement
• Be prepared to produce the as-builts by another means
• Must include dimensions to all buried or new construction
Partial Occupancy or Use

• Owner has a right to use any completed or partially completed portion of the work at any stage

• An agreement clarifying all conditions and responsibilities is required prior to use

• Early use may trigger warranty
Practical Application

Termination for Convenience

• AIA 201 provides that contractor can recover "reasonable overhead and profit on the work not completed"
Practical Application

Ownership of Documents

- AIA says that the documents are the exclusive property of the architect

- California Ed Code 17316 says that documents are the property of the Owner

Know your rights with respect to document ownership!
Summary

• Spend the time upfront to make sure your front end specifications fit your project

• Make sure your front end specifications have the tools for you to administer your project
Summary

If you run your project according to the provisions of the general conditions

• You’re a spokesperson for the general conditions
• You won’t be either a good or bad person
• A good way to gain respect

Don’t make it personal, use the contract as a mutual villain, not yourself
Questions ?